

NATIONAL COMPETITION POLICY

NCP Assessment –

**Regulation of Certificates for Prescribed Occupations
under the *Workplace Health and Safety Regulation 1997***



Queensland Government
Department of Industrial Relations

November 2001

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EXECUTIVE SUMMARY

Purpose

This report examines the National Competition Policy (NCP) implications of requirements relating to certification for prescribed occupations under the *Workplace Health and Safety Regulation 1997* (the Regulation).

Issues

The Workplace Health and Safety Regulation 1997 requires a person to hold a certificate or be a trainee in order to perform a prescribed occupation. There are three categories of prescribed occupations in the regulations as follows:

Category 1 – Certificates under the National Certification Standard

The National Certification Standard covers certificates for scaffolding, rigging, dogging, crane or hoist operation, and pressure equipment operation. It is considered that for NCP purposes, no further analysis of the certificates related to the National Standard is required. This category of certificates has satisfied the Public Benefit Test Guidelines for NCP review. The rationale for this conclusion includes public benefit on workplace health and safety grounds, full support from stakeholders as providing the appropriate framework for continuing national certification arrangements and national uniformity. See Attachments 1, 1.1, 1.2 and 1.3 for information relating to State and National reviews of certification in prescribed occupations.

Category 2 – Certificates under the National Certification Guidelines

The National Certification Guidelines cover certificates for operators of load shifting equipment. Each State or Territory in Australia has the discretion to regulate certificates for the operation of all or some of the load shifting equipment contained in the Guidelines.

It is considered beneficial to stakeholders to move the load shifting requirements from the workplace health and safety Regulation to the Vocational Education and Training (VET) system. Benefits include the removal of duplication between the two systems, a nationally consistent approach to load shifting qualifications and a more comprehensive training scheme to improve knowledge and competencies for the tasks involved.

The proposed changes outlined in this report meet National Competition Policy (NCP) requirements. The proposed change will bring Queensland's approach to the regulation of certification of operators of load shifting equipment within the nationally agreed framework, while maintaining the desired health and safety outcomes.

Category 3 - Prescribed occupations that are unique to Queensland.

These are occupations relating to demolition work, and asbestos removal work. In essence, demolition work and asbestos removal work certificates will have been replaced with business certificates for the prescribed activities from 1 February 2002. These changes were the subject of an NCP review in early 2000 in conjunction with amendments to the Regulation and have met NCP requirements.

Conclusion

It is therefore concluded that provisions in the Queensland Workplace Health and Safety Regulation 1997 relating to prescribed occupations (including the proposed changes for category 2 certificates) have been reviewed and have met all NCP requirements.

NATIONAL COMPETITION POLICY ASSESSMENT

Requirements on Certificates for Prescribed Occupations under the *Workplace Health and Safety Regulation 1997*

PURPOSE

This report examines the National Competition Policy (NCP) implications of requirements relating to certification for prescribed occupations under the *Workplace Health and Safety Regulation 1997* (the Regulation).

BACKGROUND

Scope of NCP Review

During the NCP review of the Workplace Health and Safety (WHS) Act 1995 and the WHS Regulation 1997, the provisions under the Regulation for a person to hold a certificate in order to undertake a prescribed occupation were identified as possibly restricting competition. This was a review of all existing and proposed requirements for a person to hold a certificate in order to undertake a prescribed occupation in Queensland, based on the Public Benefit Test Guidelines for NCP review.

Categories of Certificates in Queensland

There are three categories of certification for prescribed occupations that are regulated under the Workplace Health and Safety legislation in Queensland.

Category 1 - These are certificates issued by adopting the *National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment* – NOHSC 1006 (the National Standard). Category 1 certificates cover scaffolding, rigging, dogging, crane or hoist operation, and pressure equipment operation.

Category 2 - These are certificates issued by adopting the National Guidelines for Occupational Health and Safety Competency Standards for the Operation of Loadshifting Equipment and other Types of Specified Equipment – NOHSC 7019 (the National Guidelines). Category 2 certificates cover bridge or gantry cranes (if load is more than 5 tons and being lifted by remote control having not more than 3 powered operations), dozers, excavators, forklift trucks (other than a pedestrian operated fork lift truck), front-end loaders, front-end loaders/backhoes, graders, order picking forklift trucks, road rollers, skid steer loaders and scrapers. It should be noted that not all States and Territories in Australia have legislative requirements for such certificates. Attachment 2 is a table of comparison showing the States that impose requirements for category 2 certificates.

Category 3 - These certificates cover demolition work and asbestos removal and are unique to Queensland. No other States or Territories in Australia require workers engaged in these occupations to hold certificates under their legislation. The majority require business certificates to be held by the employers or contractors who are engaged in these prescribed activities. To achieve Australia-wide uniformity, business certificates will replace the regulatory requirement in Queensland for category 3 certificates by 1 February 2002.

The rest of this report will be divided into three parts to deal with the review of each of the three categories of certificates.

PART 1 – CATEGORY 1 CERTIFICATES ISSUED IN ACCORDANCE WITH THE NATIONAL STANDARD

ISSUES

Workplace Health and Safety

The objective as set out in Section 7 of the *Workplace Health and Safety Act 1995* (the Act) is to prevent a person's death, injury or illness being caused by a workplace or an activity at a workplace. It achieves this objective by establishing a framework for preventing or minimising a person's exposure to the risk of death, injury or illness caused by a workplace or a workplace activity.

Part 3 of the Act imposes workplace health and safety obligations on certain persons, including principal contractors, employers and self-employed persons. When a regulation is made about preventing or minimising a risk, a person can only discharge an obligation for that risk by following the regulation.

Part 3 of the Regulation requires that to perform a prescribed occupation a person must hold either a certificate issued under the Regulation or be a trainee in that occupation. Essentially the system of certification seeks to validate that the operators and users of certain plant and equipment have the required minimum standard of knowledge and skill to perform the tasks safely.

The current regulatory provisions for certification of prescribed occupations are consistent with objectives of the Act to prevent death, injury or illness at a workplace.

The National Standard for Prescribed Occupations

The National Occupational Health and Safety Commission (NOHSC) declared the National Standard in November 1992 after a long development and consultation process. Its development resulted from:

- An agreement of NOHSC in December 1990 to develop a competency based national certification standard for users and operators of industrial equipment; and
- An agreement of Premiers and Chief Ministers in November 1991 to achieve uniformity.

The National Standard has been adopted by all States as a result of a Ministerial agreement and specifies uniform competencies and certification for scaffolding (3 certificates), rigging (3 certificates), dogging (1 certificate), crane or hoist operation (14 certificates), and pressure equipment operation (5 certificates). In all, there are 26 types of certificate under five prescribed occupations issued in this category under the Queensland Regulation.

The National Occupational Health and Safety Commission (NOHSC) conducted a review of the National Standard during 1999-2000 and concluded that: *The National Standard (which covers Category 1 certificates) provides the appropriate framework for continuation of national certification arrangements for the equipment classes it currently covers. Therefore, the National Standard (the requirements of which have been adopted by all States and Territories around Australia) is to continue in its current format.* See Attachments 1, 1.1, 1.2 and 1.3 for information relating to State and National reviews of certification in prescribed occupations.

Market Opportunities Generated by National OHS Certification

The implementation of the National Standard has enabled the free movement of people between States and Territories for all certificates covered by the Standard. The Australia-wide portability of these certificates has made it a lot easier for people to gain employment anywhere in Australia. The demand for certificates covered by the National Standard increased significantly since its implementation in 1992.

The National OHS Certification approach enabled the OHS Authorities to step back from the processes of training and certification of operators and users of plant and equipment. Their role has been reduced to regulatory functions to ensure compliance with the relevant Acts and Regulations. Training and assessment of competencies are provided by the private sector, except in locations where private services are commercially unviable. The OHS Authorities provide these services in a reserve role.

National OHS Certification has therefore generated another market for services, being the training and assessment of candidates. Training can be provided to anyone without seeking approval from any authority. Assessment is through registered Certificate Assessors, who having been registered in one jurisdiction, may practise in any jurisdiction and register assessment outcomes in any jurisdiction, provided the processes for registering the assessment outcomes have been achieved for that jurisdiction's requirements.

All OHS Authorities provide a list of Certificate Assessors that intending candidates or their employers may use to select a person or company to complete the assessment. Certificate Assessors also advertise, and promote their businesses in a variety of ways. Certificate Assessors have also developed related services, such as training candidates, provision of other training including OHS training, and provision of plant inspection services.

Under the current system, to become a Certificate Assessor in Queensland requires the applicant (amongst other things) to:

- make application in the prescribed forms, together with the applicable fee (currently \$350).
- be the holder of a certificate, including where applicable, the relevant national certificate, to work in a prescribed occupation within the group the applicant is applying to be an assessor for.
- have successfully completed Stage 1 of a Workplace Health & Safety Officers course.
- provide details of operational experience, with supporting evidence.
- provide details of training and supervisory experience, with supporting evidence.
- have successfully completed a module in conducting a competency-based assessment.

Once all other requirements have been met, the applicant will be required to conduct a full assessment with a candidate in the company of a Senior Technical Officer of the Division of Workplace Health and Safety. The Senior Technical Officer will assess the applicant's knowledge of and ability to use the Guidelines for Accredited Providers (Certificate Assessors) and an assessment instrument, and assess the applicant's conduct of an assessment. At the assessment, the applicant must also have in their possession:

- the current Workplace Health and Safety Act;
- the WHS Regulation 1997;
- the Plant Advisory Standard 2000;
- the Risk Management Advisory Standard 2000;
- NOHSC 1006 (1992) Certification Standard for Users and Operators of Industrial Equipment;
- NOHSC 7019 Loadshifting Guidelines.

If the applicant is successful, a further fee of \$41 is payable for the production of the certificate and ID card.

Mutual Recognition Agreement

The introduction of the Mutual Recognition Agreement was one of the considerations when the National Standard was being developed, and was part of the rationale for a national OHS certificate, and for the operation of Certificate Assessors across all jurisdictions.

The mutual recognition legislation pursues the following two principles regarding freedom of interstate trade in goods and labour in a national market in Australia:

- The first principle is that goods which may be legally sold in one State or Territory may be sold in a second State or Territory, regardless of differences in standards applying to goods in the relevant jurisdictions.
- The second principle is that if a person is registered to practise in an occupation in one State, he or she should be able to be registered to practise an equivalent occupation in a second State or Territory.

These principles were important motivational factors for the development of the national OHS certification approach. The national portability of qualifications has been perceived by all consulted as one of the key benefits of the National OHS Certification. In its time, the Standard was considered to be a significant advance, both in implementing the portability features, the application of competency standards, and in the use of nationally consistent assessment instruments.

CONCLUSIONS FOR CATEGORY 1 CERTIFICATES

It is considered that for NCP purposes, no further analysis of the certificates related to the National Standard is required. This category of certificates has satisfied the Public Benefit Test Guidelines for NCP review. The rationale for this conclusion is that:

- The original justification of these certificates was that they were of public benefit on workplace health and safety grounds. This justification, which still continues, is that the certificates ensure operator and user competency in order to reduce the significant risks and hazards involved.
- The certification under the National Standard was reviewed by NOHSC during 1999-2000. As a result of the outcomes of that review the Queensland Workplace Health and Safety Board recommended that the current certification requirements under the Act with respect to the National Standard should remain.
- Certification under the National Standard has full support from stakeholders as providing the appropriate framework for continuing national certification arrangements.
- The scheme is nationally uniform, and has been developed and agreed upon by Commonwealth, State and Territory Ministers, with reciprocal recognition across Australia of the certificates issued in each jurisdiction.
- NCP issues were considered during the review of the National Standard for Prescribed Occupations.

PART 2 – CATEGORY 2 CERTIFICATES ISSUED IN ACCORDANCE WITH THE NATIONAL GUIDELINES

ISSUES

The National Guidelines

The National Occupational Health and Safety Commission (NOHSC) developed the National Guidelines in 1992 to establish workplace health and safety competency standards for the operation of load shifting equipment. It was agreed that each State or Territory may regulate certificates for the operation of all or some of the load shifting equipment listed in the guidelines. Jurisdictions may also decide to facilitate industry-issued qualifications in line with the competency statements in the National Guidelines. Queensland issues certificates for the operation of 11 types of load shifting equipment.

The NOHSC conducted a review of the National Guidelines during 1999-2000 and concluded that certification to operate load shifting equipment classes contained in the National Guidelines should be replaced over time with arrangements that recognise an appropriate Vocational Education and Training (VET) qualification or Statement of Attainment. The National Guidelines also provide competency standards to be used as a basis for determining basic training requirements.

While Queensland and NSW require certification under the regulation, other States and Territories already recognise appropriate VET qualifications. A move by Queensland and NSW to the VET system will ensure uniformity throughout Australia. The Workplace Health and Safety Board, which is the peak body formed under the Queensland legislation to advise the Minister, endorsed this move last year, together with a broad transitional arrangement to achieve this objective over a 5-year timeframe.

Duplication with VET system

A major concern with the current system is that there are instances of duplication between the workplace health and safety certification scheme and the training/assessment of persons under the VET system. In certain VET approved training, students receive training in some of the occupations covered by workplace health and safety prescribed occupations. A student therefore may receive comprehensive training and prove competency in a prescribed occupation (including workplace health and safety competencies), and then have to prove workplace health and safety competency to the Division before being granted a certificate.

As a consequence, persons wanting qualifications in some areas have to meet the requirements of both the VET and workplace health and safety systems despite there being significant overlap in the competencies of each.

In addition, the VET system registers training organisations to train and issue relevant qualifications or statements of attainment. The workplace health and safety certification approves persons as accredited certificate assessors to assess persons in prescribed occupations. The current cost is \$350 for a 3-yearly appointment, to operate in Queensland only. Some persons are accredited under both systems.

Before it can be registered as a Registered Training Organisation (RTO), an organisation must establish its ability to comply with the Standards for Registered Training Organisations and must continue to comply with these at all times. These standards apply nationally, and are administered in Queensland by the Department of Education and Training. Registration

enables the organisation to operate nationally, and currently costs from \$1200 for a five-year registration.

Under the proposed system, there are no prequalification requirements for recipients of training.

A move from certification to the VET system will eliminate possible duplication between the two systems. The new system has not yet been fully charted. The details will be finalized during the five-year phase in, during which the various options will be explored.

Uniformity for Load Shifting Certificates

Under the Queensland Workplace Health and Safety (WHS) Regulation 1989, the requirement for operators of load shifting equipment to hold the relevant certificate is listed in column 2 of the following Table. A total of 17 certificates were required in 1989. The majority of these certificates came into existence as a result of negotiations with industry and responses to workplace incidents.

The certificate requirement for load shifting equipment under the 1997 WHS Regulation is listed in column 3 of the following Table. A total of 11 certificates are required.

Under the proposed conversion to the VET system, none of the load shifting certificates will be required under the WHS Regulation. Only proof of training approved under the national VET system will be required.

Comparison of Load Shifting Certification Requirements under the WHS Regulations of 1989, 1997 and those proposed under the VET system

No.	Certificates under the WHS Regulation 1989	Certificates under the WHS Regulation 1997	Certificates under the WHS Regulation after the conversion to VET system
1	Bridge and gantry crane	Bridge and gantry crane	-
2	Backhoe	Front-end loader/backhoe	-
3	Excavators	Excavator	-
4	Front-end loader	Front-end loader	-
5	Dragline	-	-
6	Industrial Trucks (forklifts)	Forklift truck	-
7	Straddle carrier	-	-
8	Order picking truck	Order picking truck	-
9	Bulk loader/ship loader	-	-
10	Building maintenance equipment	-	-
11	Grader	Grader	-
12	Dozer	Dozer	-
13	Road roller	Road roller	-
14	Skid steer loader	Skid steer loader	-
15	Trencher	-	-
16	Scraper	Scraper	-
17	Other plant	-	-
Total	17	11	Nil

It should be noted that there has been a significant reduction [6 certificates (or 35%)] in the load shifting certificates that were required under the 1989 Regulation. When the National Guidelines were implemented in 1993, National Competition Policy was not an issue. Hence there was no real pressure then for a more drastic reduction to bring the certification requirements in line with other States and Territories.

Currently Queensland regulates for most of the certificates in the National Guidelines. There are 11 classes of certificates issued under the Regulation for the operation of load shifting

equipment. Eight of these are in the National Guidelines. The other three (grader, scraper and road roller) are not in the National Guidelines but their assessment instruments have been based directly on those instruments for other load shifting equipment in the National Guidelines.

New South Wales is the only other State to adopt the certification for load shifting equipment under the National Guidelines to any significant extent. Victoria, Tasmania and Northern Territory have adopted workplace health and safety certification for forklift trucks only.

Below is a summary of the load shifting requirements for the various jurisdictions. The extensive requirement of load shifting certificates in Queensland is inconsistent with other jurisdictions in Australia. This inconsistency came about because of the absence of a national framework. Moving to the VET system will engender uniformity amongst all States and Territories in relation to load shifting certification requirements.

QLD	<ul style="list-style-type: none"> • Workplace health and safety certificates required for the operation of 11 items of load shifting equipment. • General provisions of the Act cover operators of other equipment.
NSW	<ul style="list-style-type: none"> • Workplace health and safety certificates required for the operation of 7 items of load shifting equipment. • General provisions of the Act re: training cover operators of other equipment.
VIC	<ul style="list-style-type: none"> • Workplace health and safety certificates required for the operation of 2 items of load shifting equipment (forklifts). • General provisions of the Act re: training cover operators of other equipment.
SA	<ul style="list-style-type: none"> • General provisions of the Act re: training cover operators of other equipment.
TAS	<ul style="list-style-type: none"> • Workplace health and safety certificates required for the operation of 2 items of load shifting equipment (forklifts). • General provisions of the Act re: training cover operators of other equipment.
WA	<ul style="list-style-type: none"> • General provisions of the Act re: training cover operators of other equipment.
NT	<ul style="list-style-type: none"> • Workplace health and safety certificates required for the operation of 1 item of load shifting equipment (forklift). • General provisions of the Act re: training cover operators of other equipment.

A table listing the plant and equipment covered in the National Guidelines and the certification/training situation in each State is provided at Attachment 2.

Cost of Existing Certification System

The following table provides an indicative cost to industry for certification for load shifting equipment. The figures are based on the number of Queensland certificates issued for the 1998/1999 and 1999/2000 financial years.

Year	Certificates issued	Estimated Dept Fees for Issuing Certificates	Estimated Assessment Fees *	Total Estimated Fees [Dept fee + Assess fee]
1998/1999	41,858	\$1,716,178	\$3,139,350	\$4,855,528
1999/2000	44,701	\$1,881,912	\$3,352,575	\$5,234,487

* this figure is based on the number of load shifting certificates issued, at an average estimated cost of \$75.00 per assessment, excluding the cost of training.

The proposed VET system

During the State review of certification in 2000, consideration was given to deregulating certification for load shifting by progressively moving to recognition of a relevant VET qualification or statement of attainment (a 'VET document'). The VET system was reviewed as part of the National Competition Policy review of the Queensland Employment and

Training Act 2000 in 1999-2000. Previous legislation was also subject to a National Competition Policy review in 1997.

The proposed move to adopt the VET system in Queensland is in line with the outcome of the review of the National Guidelines by NOHSC in 1999-2000. The move will lead to a nationally consistent approach to the operation of load shifting equipment.

Other advantages of moving to the VET system include:

- The proposal will, in time, remove any overlap and duplication in assessment and training between workplace health and safety certification and VET training.
- The VET system will provide an operator with a more comprehensive and relevant range of knowledge and competencies for the whole job, whereas workplace health and safety certification only ensures that the operator can safely operate a particular piece of equipment.

Impact on Stakeholders

It is expected that the move to the VET system for load shifting equipment will impact on the following stakeholders:

- Industry participants;
- Accredited providers;
- the Government.

The following is an outline of the expected impacts on stakeholders:

Industry participants

Industry participants include employers, self-employed persons, principal contractors and workers. With the move to the VET system the requirement to hold a certificate issued under the Regulation will be abolished. It will then become the responsibility of employers, self-employed persons and principal contractors to ensure that a person operating load shifting equipment has the appropriate VET qualifications or Statement of Attainment.

Under the existing regulation, once an applicant has successfully been assessed they apply to the Department for a certificate. Under the VET system this certificate will no longer be required. Using the figures for the financial year 1999/2000 this would be a saving of \$1.9M to industry.

The other change to impact on industry would be requirements for RPL. Under the existing Regulation, assessment for the RPL process is conducted by the Government OHS jurisdiction. Under the VET system, the RPL would need to be undertaken by an RTO, at a cost determined by the RTO.

There may be some increase in costs to these stakeholders, e.g. cost of training under the VET system. Employers would have had to bear some form of training cost under the existing OHS certification scheme. It is arguable that any increase in training expenses would only be marginal and would be offset by savings achieved through higher productivity and less workplace injuries due to better and more organised training programs. By moving to the VET system, in addition to being able to operate the piece of plant in a competent and safe manner, the operator will also receive a broad appreciation of workplace health and safety issues related to particular workplaces. This will be beneficial, as it will ensure that the operator has the necessary workplace health and safety knowledge as well as the necessary operational skills and competencies.

Accredited providers

Currently, an accredited assessor is appointed by the Department to conduct assessments of persons in prescribed occupations, which includes load shifting equipment. An assessor pays the prescribed fee of \$350 for a three year certificate, which applies in Queensland only.

There are approximately 530 certificate assessors for load shifting occupations. Some of these assessors undertake assessment of other prescribed occupations contained within the Regulation.

Before it can be registered as a Registered Training Organisation (RTO), an organisation must establish its ability to comply with the Standards for Registered Training Organisations and must continue to comply with these at all times. These standards apply nationally, and are administered in Queensland by the Department of Education and Training. Registration enables the organisation to operate nationally, and currently costs from \$1200 for a five-year registration. This registration allows the RTO to provide a broad range of training to industry, which is not facilitated under the current Certificate Assessor arrangements.

From information provided from the Division of Training it would appear that at least 33% of assessors are or are associated in some way with an RTO in the VET system, for example, providing training courses and/or assessments services on behalf of an RTO.

The remaining accredited assessors would have a minimum of five years to apply to VET for recognition as an RTO.

Government

It is estimated that the reduction in revenue to Government would be approximately \$1.9M. This consisting of:

- \$1.88M – prescribed fees that will no longer be paid for load shifting certificates; and
- \$61 900 – average prescribed fees for workplace assessors (for load shifting only).

Offset against this would be savings of approximately \$300 000, made up as follows:

- **Production of certificates** – it is estimated that the production and costs of cards is currently \$2.00 per certificate. This equates to a saving of approximately \$89,000 per year, based on 44,701 certificates issued in 1999/2000.
- **Technical officers** – there are four Senior Technical Officers throughout the State who are responsible for the management of the prescribed occupation system, which covers both the issue of the certificates to perform a prescribed occupation, and the appointment of accredited assessors. It is estimated that on average 5 percent of these officers workload involves load shifting issues. The Department has four Senior Technical Officers. This represents a saving of approximately \$11,000 per year.
- **Administrative staff** – under the current system one Administrative Officer workload is full time with certification and one Administrative Officer works 40% of their time with certification. In the 1999/2000 financial year 75% of certificates issued were load shifting certificates. Certification is undertaken in the six regions. Based on this information the approximate saving would be \$203,000.

In relation to the savings and loss of revenue the following factors should be noted:

- It is not expected that there will be immediate savings or loss of revenue as there is expected to be a five-year transitional phase to the VET system.

- The number of certificates varies from year to year and therefore the revenue raised from the certificates varies from year to year.
- Recently there has been the introduction of business certification system for demolition work and asbestos removal work. It is expected that some of the savings from the technical and administrative officers will be absorbed into this new system.

Proposed Transitional Arrangements

Under the transitional arrangements, the workplace health and safety load shifting certification is to be phased out and replaced by recognition of a relevant VET document. A 3-phase process will achieve this as follows:

Phase 1 – Ensure that the VET sector is able to deliver competencies to the standard contained in the National Guidelines. During this phase industry stakeholders (including small business) will be consulted to ensure that the training to be provided under relevant units of a Training Package will deliver the required competencies, while not being too broad in coverage.

Phase 2 – Competency to operate load shifting equipment to be demonstrated by holding either a workplace health and safety certificate or an appropriate VET document, i.e. a dual system will operate.

Phase 3 – Deregulate workplace health and safety certification for load shifting equipment. Workplace health and safety certificates for load shifting would only be issued where a class of equipment is not covered by VET accredited Training Packages or courses, or applicants cannot access the VET system (e.g. the applicant is located in a remote area).

It is estimated that it may take five years to progress to Phase 3, with Phase 1 taking two or three years to achieve. In view of the importance of Phase 1 in establishing the capability and capacity of the VET system, the Board has established an industry-based reference group to oversee the transition. This will require close consultation with relevant Industry Training Advisory Bodies (ITABs), industry stakeholders and RTOs. Phase 2 will not commence until the Board is confident that Phase 1 has achieved its objectives.

CONCLUSIONS FOR CATEGORY 2 CERTIFICATES

It is considered beneficial to stakeholders to move the load shifting requirements from the workplace health and safety system to the VET system. Benefits include:

- The removal of duplication between the two systems;
- A nationally consistent approach to load shifting qualifications;
- The fact that VET training provides for more formal and consistent quality of training and hence better knowledge and competencies for the task, for example using risk assessment before commencing a job.

It is expected that there will be costs and savings to the various stakeholders. The move to the VET system is expected to take about 5 years. The costs or savings to the stakeholders will take effect progressively during Phase 2 of the implementation (commencing after phase 1 is completed in about 3 years), and will be fully in place in phase 3.

A preliminary assessment of the proposed approach to move the certification requirement for load shifting operators under the *Workplace Health and Safety Regulation 1997* to the VET system (Attachment 3) indicates that the proposal fully meets NCP requirements.

The proposed changes outlined in this report meet National Competition Policy requirements, bringing Queensland's approach to the regulation of certification of operators of load shifting equipment within the nationally agreed framework, while maintaining the desired health and safety outcomes.

PART 3 – CATEGORY 3 CERTIFICATES UNIQUE TO QUEENSLAND

ISSUES

Category 3 certificates relate to prescribed occupations that are unique to Queensland. No other OHS jurisdictions in Australia issue them under their legislation. Certificates in this category cover occupations relating to welding (13 certificates), demolition work (4 certificates) and asbestos removal work (1 certificate).

Welding certificates have been deleted from the Regulation from 1 February 2001. With effect from 1 February 2002, certificates for demolition work and asbestos removal work will be replaced by business certificates for the prescribed activities of demolition work and asbestos removal.

CONCLUSIONS FOR CATEGORY 3 CERTIFICATES

Prior to the development of the amendment to the Workplace Health and Safety Regulation 1997 to effect changes to category 3 certificates, a review was conducted to ensure the changes were in line with the requirements of the National Competition Policy (NCP). Attachment 4 is a letter of 21 March 2000 from the Queensland Treasury confirming this compliance.

No further NCP review will be needed for category 3 certificates.

ATTACHMENT 1

State and National Reviews of Certification in Prescribed Occupations

Review of Certification – State

A review of the certification scheme under the Regulation was undertaken between May 1999 and October 2000 using the formal consultative arrangements under the Act, namely the Workplace Health and Safety Board established under Part 6 of the Act. It comprises persons who represent employers and workers, as well as persons with practical experience and competence in the management of workplace health and safety. The primary function of the Board is to give advice and make recommendations to the Minister about policies, strategies, allocation of resources and legislative arrangements for workplace health and safety. In discharging this function the Board is required to review the appropriateness of provisions of regulations.

To assist in the review of certification for prescribed occupations, the Board established an industry taskforce with representatives of employer, union and technical organisations with expertise in occupational health and safety, including the Queensland Chamber of Commerce and Industry (QCCI), the Australian Metal Workers Union (AMWU), the Accredited Providers Association, Construction Training Queensland and the Construction, Forestry and Mining Energy Union Ltd (CFMEU). The taskforce also received policy and technical support from the Division of Workplace Health and Safety and the Division of Training of the Department of Employment, Training and Industrial Relations.

Review of Certification – National

At the same time as the Board established its taskforce, NOHSC commenced a review of the National Standard and Guideline. The Board's taskforce continued its review of the miscellaneous categories of prescribed occupations that were unique to Queensland and the outcome of that component of the review has proceeded with amendments to the Regulation as noted previously.

In addition, the Board's taskforce became the State reference point for the NOHSC review that comprised two streams:

- A Technical Review Group to examine improving technical and administrative aspects within the existing scope and intent of the National Standard and Guidelines.
- A consultancy to consider broader issues related to the following parts:
 - (A) Evaluation of implications of developments in the vocational education and training (VET) sector, including whether developments in the VET sector are sufficient to enable removal of the need for OHS certification either immediately or at a later time;
 - (B) Evaluation of the effectiveness of the role of OHS certification; and
 - (C) Evaluation of the impact on small business operators.

The consultant's brief required relevant advice to be provided:

- in accordance with the National Competition Policy Agreement, and
- on whether any proposed change meets the tests for good regulation as outlined in the COAG Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies.

These two aspects are covered in Chapter 10 of the consultant's report. The text of that chapter is attached as Attachment 1.1.

The methodology adopted by the consultant is contained in Chapter 4 of the report (Attachment 1.2). In addition to the analysis and evaluation of relevant data and information, the consultant's consultative process included:

- Part (A) –
 - Stakeholder interviews, in particular those closely involved with the VET sector, others involved in the OHS sector, employers and unions.
 - Interviews with individuals and groups representing NOHSC, ANTA, State Training Authorities, National and State ITABs and training providers.
- Part (B) –
 - Stakeholder interviews,
 - Interviews with individuals representing NOHSC, State OHS authorities, employer associations, unions, training providers working in the area of OHS certification, and certificate assessors,
 - Survey of OHS inspectors,
 - Information from jurisdictions.
- Part (C) –
 - Focus group session with small business personnel in Adelaide,
 - Questionnaire survey of a sample of small businesses,
 - Stakeholder interviews (including small businesses and associations representing small business),
 - Stakeholders who have contact with small business, eg. employer associations, training providers and OHS inspectors.

Outcomes of the National and State Reviews

NOHSC recently completed its review of certification under the National Standard and National Guidelines. The taskforce established by the Workplace Health and Safety Board acted as Queensland's reference group for this review.

The outcomes of the two streams of the review were considered by NOHSC on 10 July 2000. In summary, NOHSC recommended to Ministers:

National Standard – *The Standard provides the appropriate framework for continuation of national certification arrangements for the equipment classes it currently covers, ie. the current certification under the National Standard should continue.*

The WH&S Board's meeting held on 22 August 2000 supported this recommendation and this has been accepted by the Minister for Industrial Relations.

National Guidelines – *In order to increase national consistency, certification of the equipment classes contained in the Guidelines be replaced over time with arrangements in each jurisdiction that recognise appropriate Vocational Education and Training (VET) documents. Accordingly, those States and Territories which regulate for certification to operate load shifting equipment should progressively move to an arrangement under which the OHS certificate would be replaced by a VET qualification or Statement of Attainment.*

The WH&S Board's meeting held on 22 August supported the recommendation. This issue will primarily involve Queensland and New South Wales; however, other jurisdictions will also be affected as they have forklift truck certification.

If the Commonwealth and State Ministers adopt this recommendation, it has been recognised that the progressive shift to a VET document will depend on each

jurisdiction developing its own transitional arrangements in consultation with industry stakeholders and the VET sector, possibly over 5 years.

The meeting of the Board on 26 September recommended transitional arrangements to progressively move away from OHS load shifting certification to the use of a relevant VET document.

The Minister has accepted the Board's recommendations, including the transitional arrangements set out in Attachment 3.

OHS/VET Working Group – *The Education and Training Sub-committee (of NOHSC)* should address issues raised by stakeholders during the review that required discussion with the Australian National Training Authority (ANTA).

The WH&S Board's meeting held on 22 August supported this recommendation which will enable discussions to take place with the VET sector about the incorporation of the competency standards in the National Standard and Guidelines into Training Packages.

In finalising their recommendations, the consultant considered the following three main options for the future of OHS certification –

- Option 1 OHS Certification to continue with little change.
- Option 2 Remove the need for OHS Certification, with alternative (VET) training arrangement to apply.
- Option 3 To bring the OHS Certification and VET requirements and arrangements closer so that OHS requirements are incorporated into VET training arrangements.
This was the option favoured by the consultant.

The rationale underpinning the consultant's findings is set out in Attachment 1.3.

In addition, the consultants state in their report (see Attachment 1.1) that in their opinion the terms of the NCP have been met in the approach taken by the various jurisdictions. Their main concern about these processes is the differing requirements between jurisdictions for forklifts and load shifting equipment. Impacts that the consultants identify as requiring further consideration in terms of the NCP if their recommendations are taken further, have been addressed in the Department's review. These issues are:

- Impacts of any proposed changes on certificate assessors;
- Impacts on occupations when equipment classes are proposed for deletion from OHS certification.

ATTACHMENT 1.1

Compliance with Intergovernmental Agreements

10.1 IMPACT OF CERTIFICATION IN TERMS OF NATIONAL COMPETITION POLICY

One of the key questions for the consultants has been to determine in what ways the National Competition Policy should be applied during this review. Two aspects have been considered:

1. What markets are associated with National OHS Certification, and
2. In what ways are government authorities and/or corporations involved in these markets.

The occupational markets associated with OHS Certification are the occupations of scaffolders; riggers; doggers; crane and hoist operators; boiler, turbine and steam engine attendants; forklift operators; and operators of various forms of load shifting equipment. The implementation of the National OHS Certification Standard has enabled the free movement of people between States and Territories for all classes except for forklift operators and operators of various forms of load shifting equipment.

The National OHS Certification approach enabled the OHS Authorities to step back from the processes of training and certification of operators and users of plant and equipment. Their role has been reduced to regulatory functions to ensure compliance with the relevant Acts and Regulations. Training and assessment of competencies are provided by the private sector, except in locations where private services are commercially unviable. The OHS Authorities provide these services in a reserve role.

National OHS Certification has therefore generated another market for services, being the training and assessment of candidates. Training can be provided to anyone without seeking approval from any authority. Assessment is through registered Certificate Assessors, who having been registered in one jurisdiction, may practise in any jurisdiction and register assessment outcomes in any jurisdiction, provided the processes for registering the assessment outcomes been that jurisdiction's requirements.

All OHS Authorities have lists of Certificate Assessors that intending candidates or their employers may use to select a person or company to complete the assessment. Certificate Assessors also advertise, and promote their businesses in a variety of ways. Certificate Assessors have also developed related services, such as training candidates, provision of other training including OHS training, and provision of plant inspection services.

Prior to the implementation of National OHS Certification and after the preparation of the national assessment instruments, each State, Territory and Commonwealth jurisdiction determined its approach to the provision of assessment in the certificate classes. The decisions made in each jurisdiction were to allow private assessors to operate as they became registered. It appears that private assessors now operate throughout the nation.

It is our opinion that the terms of the National Competition Policy have been met in the approach taken by the various jurisdictions. Our main concern about these processes is the differing requirements between jurisdictions for forklifts and load shifting equipment.

The recommendations below include changes which, if to be taken further, should be considered in terms of National Competition Policy. These include:

- the impact on Certificate Assessors from legislative and operational changes;
- the impact on occupations when equipment classes are proposed for deletion from OHS Certification.

10.2 IMPACT OF CERTIFICATION IN TERMS OF THE MUTUAL RECOGNITION AGREEMENT

The introduction of the Mutual Recognition Agreement was one of the considerations when the National OHS Certification Standard was being developed, and was part of the rationale for a national certificate, and for the operation of Certificate Assessors across all jurisdictions.

"The mutual recognition legislation pursues the following two principles regarding freedom of interstate trade in goods and labour in a national market in Australia:

The first principle is that goods which may be legally sold in one State or Territory may be sold in a second State or Territory, regardless of differences in standards applying to goods in the relevant jurisdictions.

The second principle is that if a person is registered to practise an occupation in one State, he or she should be able to be registered to practise an equivalent occupation in a second State or Territory.

The premise is that the existing regulatory standards of all jurisdictions establish standards applying to goods and occupations, which satisfy public expectations across the country." [from the website of the Department of Prime Minister and Cabinet, www.dpmc.gov.au/drrc/into.html; dated 23/09/1999]

The second principle was an important motivation for developing the National OHS Certification Standard.

The national portability of qualifications has been perceived by all consulted as one of the key benefits of the National OHS Certification Standard. In its time, the Standard was considered to be a significant advance, both in implementing the portability features, the application of competency standards, and in the use of nationally consistent assessment instruments.

At the same time, there was considerable negative comment about national inconsistency in the equipment classes contained in the Guidelines document. This inconsistency is causing people moving between jurisdictions some difficulty and additional costs. Our conclusion is that the processes operating for these classes do not meet the requirements of the Mutual Recognition Agreement.

10.3 COAG PRINCIPLES AND GUIDELINES FOR NATIONAL STANDARD SETTING

The proposed changes in the recommendations have been assessed against the COAG Principles and Guidelines for National Standard Setting as follows:

Minimising the impact of regulation

The recommendations are designed to reduce the impact of regulation in the following ways:

- (a) a person who wishes to complete a VET course incorporating the use of certificated equipment will be eventually able to complete both requirements with one assessment;
- (b) a person who wishes just to meet the OHS certification requirements, will be able to obtain an assessor's certificate for an increased range of classes. The involvement of OHS Authorities will be progressively reduced.

Minimising the impact on competition

The proposals will progressively bring together the VET and OHS Certificate assessment markets, thus increasing the number of competitors.

Predictability of outcomes

The proposals aim to maintain the OHS competency standards as the basis for operator competency, either directly or indirectly through the cross-recognition of equivalent VET courses.

The staged approach to changes is designed to minimise the impact of change, especially in terms of risks of reduced competency.

International standards and practices

This principle is not seen to apply to OHS Certification as there are no known relevant international standards. Some countries or areas within countries may require occupational licences or certificates related to OHS.

Regulations should not restrict international trades

OHS Certification is not seen as having significant effect in international trade.

Regular review of regulation

This report is part of the review process.

Flexibility of standards and regulation

The proposals provide flexible approaches to meeting OHS legislative requirements. An employer or employee will have wider choice.

The exercise of bureaucratic discretion

Appropriate processes will need to be established to ensure the granting of equivalence to a VET course is done to objective measures. We recommend that discretion be given to an expert panel, with the ability to seek external expertise. Decisions of the panel should be subject to appeal.

One of the reasons for recommending the update of the OHS Certification standards is to provide VET organisations and OHS Authorities with objective measures for granting equivalence.

Methodology

4.1 BASIS FOR METHODOLOGY

The methodology for the review was developed around several key factors in expected quantitative and qualitative information:

- the quality of numeric data was expected to be limited;
- there are a wide range of stakeholder views to be sampled, often related to their exposure to and role within OHS Certification;
- implementation of OHS Certification in each jurisdiction varies.

Wherever possible, the methodology was designed to capture multiple sources of evidence across the scope of the review. In some cases, any single piece of evidence was not sufficiently comprehensive and/or reliable to draw conclusions. However, gathering a range of information from diverse sources has allowed us to draw conclusions with some confidence.

The methodology is described in Sections 4.2 to 4.6 below.

4.2 PRELIMINARY WORK

The preliminary work for this project comprised:

- developing the project reporting processes and contacts;
- planning each component part in detail;
- identifying sources of material;
- publicising the Review among stakeholders.

4.3 PART A - EVALUATION OF IMPLICATIONS OF DEVELOPMENT IN THE VET SECTOR

The evaluation involved:

- Analysis of prior work for NOHSC relating to OHS in the VET sector;
- Review of the National Training Information System (NTIS) for relevant Registered Training Organisations (RTOs);
- Stakeholder interviews, in particular those closely involved with the VET sector, and others involved in the OHS sector, employers and unions;
- Interrogating the NTIS database for the overlap of industry units of competency with the OHS Certification units of competency.

The approach to this part was based in part on prior consultations taken in developing OHS guidance for the VET Sector during a prior consultancy for NOHSC. The stakeholder interviews have been designed to provide additional information to that previously obtained. Stakeholder interviews have been held with individuals and groups representing NOHSC, ANTA, State Training Authorities, National and State Industry Training Advisory Bodies and training providers.

The review of the NTIS revealed that a number of organisations that are training in the areas of the OHS Certification classes have obtained registration as an RTO in the VET Sector. A

questionnaire was developed and telephone interviews conducted with a small number of these organisations to seek information on their level of involvement with OHS Certification.

Interrogation of the NTIS database seeking industry competency standards was based on keywords. To that extent, the consultants cannot guarantee that all industry units that overlap OHS Certification units have been identified. From the searches, about 65 industry units have been selected for analysis.

4.4 PART B - EVALUATION OF THE EFFECTIVENESS OF THE ROLE OF OHS CERTIFICATION

This part involved both qualitative and quantitative analysis, with the aim of developing a balanced view of the effectiveness of OHS Certification in terms of reducing OHS hazards and risks, and in terms of other business factors.

The evaluation involved:

- desktop research, including collation and review of information held by OHS Authorities;
- reviewing statistics provided by the NOHSC Statistics Branch;
- survey of OHS Inspectors; and
- stakeholder interviews.

A list of information sought was distributed to the OHS Authorities. Certain aspects of information sought was not held or was not available at the time of completing this report. Further information will be available for analysis prior to the final report.

Interviews were held (in person or by telephone) with individuals representing; NOHSC, State OHS Authorities, employer associations, unions, training providers working in the area of OHS Certification and individual Certificate Assessors. Additional interviews are planned.

4.5 PART C - EVALUATION OF THE IMPACT OF SMALL BUSINESS OPERATORS

The evaluation approach to this Part of the Consultancy has been to explore the impact of OHS Certification on small business at the industry and enterprise levels. It is recognised that the range of small businesses is diverse and that OHS Certification has an impact across many industry sectors. The approach taken, given the time initially available for the evaluation has been to sample enterprises and sectors to obtain qualitative data for analysis.

The evaluation involved:

- focus Group Session with small business personnel in Adelaide;
- questionnaire survey of a sample of small businesses;
- analysis of survey results; and
- stakeholder interviews (including small businesses and associations representing small business).

Only one focus group session has been possible, and this was held in Adelaide. Outcomes from this session have been very useful.

A number of survey questionnaires have been returned by small businesses and other completed through telephone interviews. These have been analysed to provide a summary of opinions and identify the range of equipment used.

To supplement the survey, interviews were conducted with officers of employer associations with a large number of small business members.

The questionnaires to OHS inspectors under Part B have included questions relating to small business and a number of useful replies have been received covering their contact with small business regarding OHS Certification.

4.6 OTHER AREAS FOR REVIEW

Information obtained from the Technical Review Group (TRG) and other stakeholders in the process of carrying out the above steps has highlighted a range of additional issues to be included in the Review.

The TRG has completed a survey and analysis of survey responses from over 600 stakeholders. The responses and accompanying comments on a wide range of aspects of the National OHS Certification Standard have been brought to our attention. The TRG has asked for more information and options for further action in relation to two sets of questions in the survey (see Section 3). These requirements and associated comments have been incorporated within our methodology.

In addition, the consultants have been advised that the members of the Queensland Review of OHS Certification are also seeking comment on two issues (see Section 3). As these requests have come to the consultants after they commenced work, they have been addressed at appropriate points within the existing methodology.

ATTACHMENT 1.3

Rationale underpinning the Consultant's Recommendations

□ **Options considered by the consultant**

The consultants considered the following three main options for the future of OHS Certifications:

Option 1 OHS Certification to continue with little change

Option 2 Remove the need for OHS Certification, with alternative (VET) training arrangement to apply

Option 3 To bring the OHS Certification and VET requirements and arrangements closer so that OHS requirements are incorporated into VET training arrangements. – [Consultant's favoured option]

□ **Conclusions reached by consultants for each option**

Option 1 - *To continue with OHS Certification in its present form would be a popular recommendation but:*

1. Its implementation in the various jurisdictions will probably continue to unravel, particularly in the load shifting classes.
2. There will be continuing duplication of costs to people seeking to obtain VET qualifications.
3. There is no evidence to conclusively prove that the OHS outcomes will be better than an appropriately constructed and monitored VET program.
4. This approach will not engage the VET sector in the incorporation of OHS training within its training structures to the level desired by OHS Authorities.
5. There will be some difficulty in justifying the continuation of the load shifting classes under National OHS Certification arrangements, in terms of Partially Regulated Occupations and Mutual Recognition due to the varying administrative arrangements applying in the various jurisdictions
6. There will be ongoing difficulty with new work arrangements and new occupations requiring to apply some of the skills under OHS Certification.

Option 2 - *This option is relatively popular, but less popular than Option 1. However, there are significant issues including:*

1. The willingness and readiness of the VET sector to take over OHS Certification is uncertain.
2. There are many in the OHS sector who are not comfortable with the transfer of OHS Certification training and assessment to the VET sector at this stage.
3. There are few 'drivers' for change.
4. The mechanisms for ensuring OHS competencies are appropriately incorporated are not well established in some industries.
5. The OHS sector requirements in the OHS Certification Standards and Guidelines are not stated in the competency standard format currently used by the VET sector.
6. Quality assurance mechanisms for VET sector would need to be agreed. (Should the OHS sector accept the VET sector quality assurance, or should it complete its own checks?)

7. Safeguards to ensure small businesses access only the required OHS training will need to be established within the framework of Training Packages and/or training courses.

Option 3 - This option derives part of its structure from the current NOHSC projects to improve the incorporation of OHS in VET. If successful, it would be a prime example of how OHS can be incorporated in the VET sector. The issues we see with this proposal are:

1. The willingness of stakeholders to support the option.
2. The willingness of the relevant government departments and authorities, including NOHSC and ANTA, to provide the drivers (and the finances) for the change.
3. That the industries and relevant ITABs embrace the change, and establish suitable development processes to incorporate OHS Certification
4. That NOHSC and ANTA agree on suitable quality assurance mechanisms that suit the VET sector and the OHS legislative requirements.
5. That the OHS jurisdictions are prepared to make legislative changes that allow VET training to be recognised as meeting the OHS Certification requirements during the transition.

□ **Option preferred by consultant**

The consultants favoured Option 3 and based the recommendations in the report on this option. It was developed by the consultants after consideration of options 1 and 2 and their outstanding issues. It gives flexibility to both the OHS and VET sectors to address issues within each sector. The broad proposal developed by the consultants is:

1. That the OHS Certification competency standards be updated to the current VET format to assist closer cooperation.
2. That NOHSC and ANTA develop a working relationship based on current arrangements whereby the incorporation of OHS Certification requirements in industry Training Packages/competency standards can be facilitated. This should have the aim of providing 'drivers' and project management.
3. That the quality assurance mechanisms for the OHS training for the classes to be transferred to the VET sector or coordinated with the VET sector, eg review of competency standards, assessment materials and auditing.
4. That NOHSC or the OHS sector work with individual ITABs to incorporate OHS Certification requirements in the relevant Training Packages.
5. That once the relevant Training Packages are adapted for OHS Certification, then transfer of training and assessment to the VET sector proceed on a structured basis using nominated classes, where the OHS outcomes can be monitored on an ongoing basis. The initial classes proposed are the classes in the Guidelines, which have mixed arrangements at present.
6. That the ongoing development of the VET sector will need to include maintenance of the areas of OHS Certification, including input from the OHS sector.

Comparison of Levels of Certification Required in States/Territories for Classes of Plant in the National Guidelines

Load shifting Equipment

	NSW	VIC	QLD	SA	TAS	WA	NT	ACT	C'wealth
Forklift Truck	National Cert	National Cert	National Cert	#	National Cert	#	National Cert	State/Territory Cert	*
Forklift – Order Picking	National Cert	National Cert	National Cert	#	National Cert	#	#	#	
Front End Loader	National Cert	#	National Cert	#	#	#	#	State/Territory Cert	
Front End Loader (Skid Steer Type – Bobcat)	National Cert	#	National Cert	#	#	#	#	State/Territory Cert	
Front End Loader/ Backhoe	National Cert	#	National Cert	#	#	#	#	State/Territory Cert	
Excavator	National Cert	#	National Cert	#	#	#	#	State/Territory Cert	
Dozer – Wheeled/ Tracked	#	#	National Cert	#	#	#	#	#	
Dragline	National Cert	#	#	#	#	#	#	#	
Cableway/ Flying Fox	#	#	#	#	#	#	#	#	

Specified Cranes, Miscellaneous and Pressure Equipment

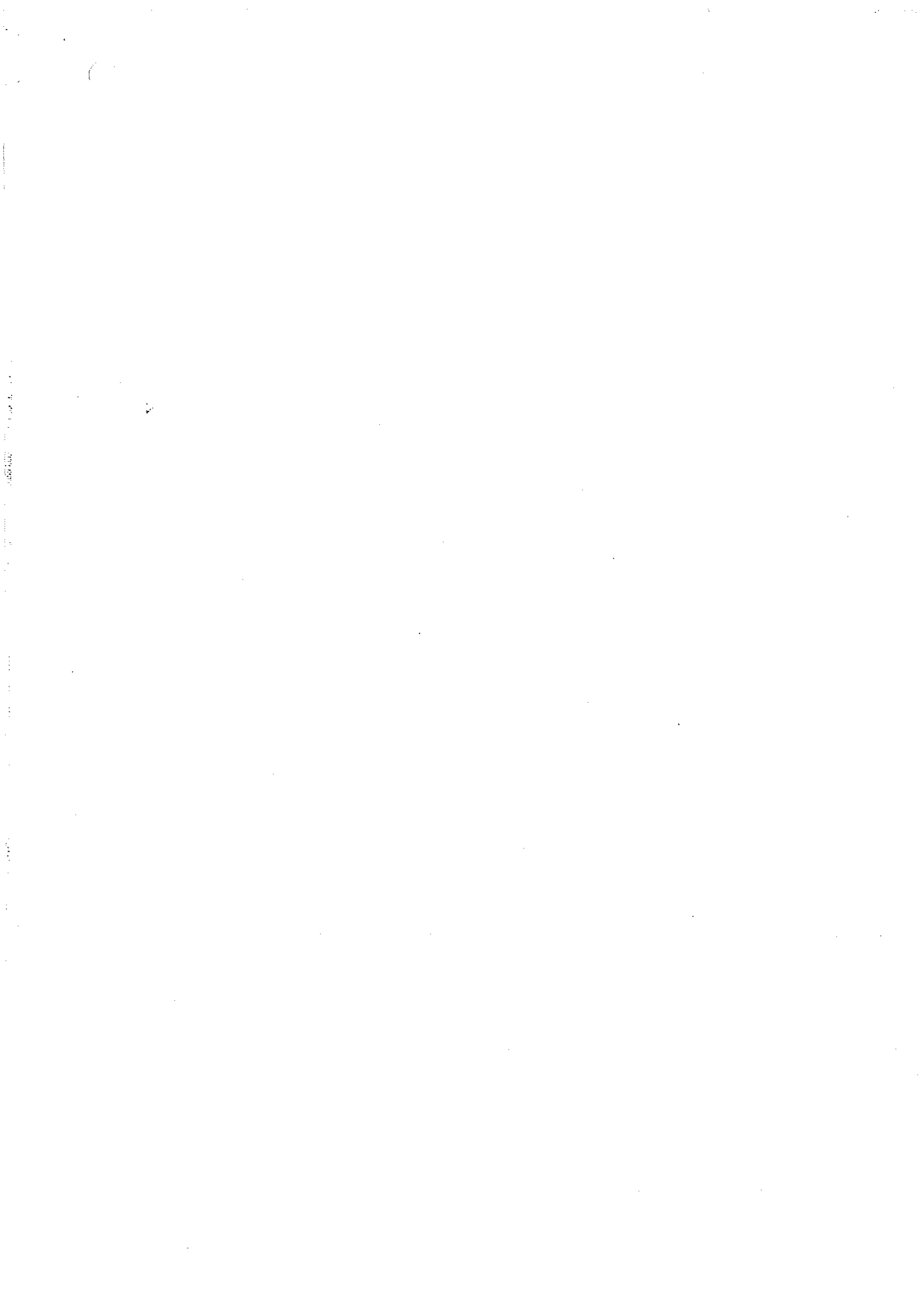
	NSW	VIC	QLD	SA	TAS	WA	NT	ACT	C'wealth
Overhead Travelling Bridge & Gantry Crane – Remote Controlled	#	#	National Cert – [Loads exceeding 5T]	#	#	#	#	State/Territory Cert	*
Vehicle loading crane (less than 10m tonnes cap)	#	#	#	#	#	#	#	#	
Non-slewing, non-articulating mobile crane (less than 3 tonnes)	#	#	#	#	#	#	#	#	
Concreting placing booms (other than mobile truck)	#	#	#	#	#	#	#	#	
Refrigeration Plant Operation	#	#	#	#	#	#	#	#	

Others

Crane Chaser	#	#	#	#	#	#	#	State/Territory Cert	*
Road Roller	#	#	State Certificate	#	#	#	#	#	
Grader	#	#	State Certificate	#	#	#	#	#	
Scraper	#	#	State Certificate	#	#	#	#	#	

* The Commonwealth will require the use of a State or Territory Certificate of Competency.

OHS Act Appropriate Training



ATTACHMENT 3

Assessment of Proposed Approach for Category 2 Certificates to see if it Contains Measures that Restricts Competition

The following provides an outline of the assessment undertaken by the Division to identify whether the proposed approach, as outlined in Part 2 of this report, contain any “measures that restrict competition”.

(i) An outright prohibition in regard to any particular business activity

The proposed approach does not contain provisions that prohibit any particular business activity.

(ii) A statutory monopoly, namely where a body specified in the legislation is created or given powers, either State-wide or in a particular locality, as the sole participant allowed to engage in a particular business activity.

The proposed approach does not establish, or give powers to, a statutory monopoly to engage in a particular business activity.

(iii) Licensing or registration requirements for persons or bodies wishing to engage in a particular business activity and which operate on the basis of either limiting the number of participants or limiting participation to those persons or bodies that meet defined standards, qualifications or training or to those who hold membership of a particular occupational or professional organization.

The proposed approach requires operators of load shifting equipment to attend training accredited under the Vocational Educational and Training (VET) system in Australia. The system does not in any way limit the number of persons attending the training. The VET system also allows any number of Registered Training Organisations (RTOs) to conduct the training. There is no limit to the number of RTOs to conduct the training. However, to ensure quality of training, RTOs are required to meet the minimum criteria before they can be registered for the purpose.

(iv) Allocation of quantitative entitlements, quotas or franchises among participants engaging in a particular business activity.

The proposed approach does not contain any provisions for quantitative entitlements, quotas or franchises for persons engaging in a particular business activity.

(v) Requirements for prescribed quality or technical standards to be observed, or for specified equipment to be used, in regard to a particular business activity, other than those requirements that apply generally in regard to public/workplace health and safety.

The proposed approach contains provisions that prescribe competency standards for operators of load shifting equipment. Such standards include the use of nationally developed assessment instruments to assess the competency of trainees to ensure they operate the equipment safely. These standard instruments also enhance uniformity amongst assessors.

(vi) Price control provisions, whether by way of setting, or prescribing a process for determining, the maximum/minimum prices or charges for a specified good or service or the maximum/minimum rates of commission, agency or fees for any good or service.

The proposed approach does not contain any provision to control prices for any goods or services.

- (vii) **Restrictions on the conduct of a business relating to matters such as hours of operation, size of premises, provision of specified facilities, geographical area of operation, advertising or promotion, sector-specific operation (eg, retail vs wholesale), type of good or service allowed to be offered for sale, etc.**

The proposed approach does not impose any such restrictions.

- (viii) **The nomination of a particular person or body as the sole or preferred customer or supplier in regard to a particular business activity.**

The proposed approach does not nominate a particular person or body as the sole or preferred customer or supplier for a particular business activity.

- (ix) **Measures that have the effect of conferring a benefit on a particular person or body engaged in a particular business activity, relative to other parties engaged in the same activity, including prescribing technical specifications or standards that can only be met by a particular operator, prescribing different requirements for public sector vis a vis private sector operators or making financial assistance available (including the waiver of various State or local government charges or fees as well as direct assistance measures such as a grant or subsidy) if a business is carried on at a particular place or in a particular manner.**

The proposed approach does not impose any such measures.

- (x) **The allocation of licenses or other authorities, which either allow the holder access to natural resources (including water, minerals, forests and fisheries) or which create rights, or permit specified activities, denied to non-holders (for example, licenses to dispose of waste material in a particular manner).**

The proposed approach only allows RTOs to conduct training for people who want to acquire the skills to operate load shifting equipment. This restriction is necessary to ensure that training organisations have the necessary resources and expertise to carry out the function effectively and train people to operate the equipment safely.

- (xi) **Restrictions that have the effect of limiting or preventing participation in a particular business activity by interstate or overseas participants, for example, by way of preferential purchasing arrangements for State-based suppliers, statutory restrictions on supply or purchase arrangements outside the Queensland market and product standards that differ significantly from interstate or international standards.**

The proposed approach will not limit or prevent trained people from interstate or overseas from engaging in the occupation. The approach is consistent with practices in all other states and territories and as such interstate people will not be disadvantaged. There is also a system of recognition of prior learning (RPL) to assess and accept the people with the equivalent qualifications from overseas.

CONCLUSION

It is concluded that the proposed approach to move the certification requirement for load shifting operators under the Workplace Health and Safety Regulation 1997 to the VET system fully meets NCP requirements.

Letter from Queensland Treasury confirming Category 3 arrangements meet NCP requirements

QUEENSLAND TREASURY

21 MAR 2000

Mr B Marshman
Director-General
Department of Employment, Training and
Industrial Relations
6th Floor Block B, Neville Bonner Building
75 William Street
BRISBANE QLD 4000

Dear Mr Marshman

Thank you for your letter dated 28 February 2000 seeking confirmation that the National Competition Policy (NCP) requirements associated with the proposed amendments to the *Workplace Health and Safety Regulation 1997* have been satisfied.

I understand that the proposed amendments to the Regulation will:

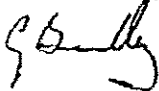
- delete certain prescribed occupations and provide for business certification for higher risk asbestos removal and demolition work; and
- introduce new provisions for identifying and managing in situ asbestos material and consolidate provisions relating to asbestos in the Regulation.

I confirm that the overview and rationale provided for the purposes of justifying the proposed amendments to the Regulation meet Queensland's NCP "gatekeeping" arrangements. I suggest that this justification be incorporated in any submission to Cabinet regarding the proposed amendments.

The review of Queensland's workplace health and safety legislation is listed in the Queensland Legislation Review Timetable and therefore, forms part of Queensland's legislation review obligations under NCP. I suggest that our officers continue to liaise closely on this matter with a view to finalising the review of the legislation by the end of 2000.

I note that an aspect of this review – namely the certification of prescribed occupations - is currently being considered by the National Occupational Health and Safety Commission.

Yours sincerely



(G. Bradley)
Liaison Treasurer