



Occupational Health and Safety (Safety Standards) Regulations 1994

Statutory Rules 1994 No. 414 as amended

made under the

*Occupational Health and Safety (Commonwealth
Employment) Act 1991*

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Regulation 1.01

Part 1 Introduction

1.01 Name of Regulations [see Note 1]

These Regulations are the *Occupational Health and Safety (Safety Standards) Regulations 1994*.

1.02 Commencement

These Regulations commence on 31 March 1995.

Note In these Regulations, boxed notes similar to this are used to help you to read the Regulations. The notes are for information only, and the effect of subsection 13 (3) of the *Acts Interpretation Act 1901* is that they do not form part of the Regulations.

The notes serve various purposes, such as providing historical or explanatory information. They may draw your attention to the existence of documents such as *Approved Codes of Practice*, which provide practical guidance on how a particular standard of health and safety can be achieved and describe the preferred methods or courses of action for achieving the standard of health and safety.

1.03 Definitions located in Part 10

Part 10 contains definitions of certain expressions that are used in these Regulations.

Note Part 10 defines expressions that are generally used in more than one Part of these Regulations. If an expression is used only in one Part of the Regulations, it will be defined at the start of that Part.

In addition, a number of expressions that are used in these Regulations are defined in section 5 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, including **workplace**, **employer**, **contractor** and **employee** (which is explained in more detail in section 9 of the Act).

1.04 General defence

A person is not guilty of an offence against these Regulations if the alleged offence arises out of circumstances over which:

- (a) the person did not have control; and
- (b) the person could not reasonably be expected to have control.

Regulation 1.05

Notes

1. These Regulations incorporate National Standards declared by the National Occupational Health and Safety Commission under subsection 38 (1) of the *National Occupational Health and Safety Commission Act 1985*.
2. Penalties in these Regulations are expressed in penalty units, in accordance with the requirements of section 4AA of the *Crimes Act 1914*. At the time these Regulations commenced, one penalty unit was equal to \$100.
3. State and Territory laws also promote occupational health and safety, and they may apply, in addition to these Regulations, to the people and bodies referred to in these Regulations.

1.05 Hazard identification and risk assessment

- (1) An employer must ensure, in relation to the implementation of these Regulations, that appropriate steps are taken to identify all reasonably foreseeable hazards arising from work which may affect the health or safety of employees or other persons at work.

Penalty: 10 penalty units.

- (2) If a hazard is identified under subregulation (1), the employer must ensure that an assessment is made of the risks associated with the hazard.

Penalty: 10 penalty units.

- (3) In carrying out an assessment under subregulation (2), the employer must, as far as reasonably practicable, determine a method of assessment that adequately addresses the hazards identified, and includes at least one of the following:
 - (a) a visual inspection;
 - (b) auditing;
 - (c) testing;
 - (d) technical or scientific evaluation;
 - (e) an analysis of injury and near-miss data;
 - (f) discussions with designers, manufacturers, suppliers, importers, employers, employees or other relevant parties;
 - (g) a quantitative hazard analysis.

Regulation 1.06

- (4) Without limiting the operation of subregulations (1) and (2), the identification of hazards and the assessment of associated risks must be undertaken:
 - (a) before the introduction of any plant or substance; and
 - (b) before the introduction of a work practice or procedure; and
 - (c) before changing a workplace or a work practice, or an activity or process, where the change may give rise to a risk to health or safety.
- (5) This Regulation does not limit the operation of any other regulation that expressly provides for the identification of hazards or the assessment of risks to the health or safety of a person at work.

1.06 Control of risk after a risk assessment has been made

- (1) An employer must ensure that any risks to health or safety arising from work are:
 - (a) eliminated; or
 - (b) if it is not reasonably practicable to eliminate the risks — minimised.

Penalty: 10 penalty units.

- (2) If it is reasonably practicable only to minimise risk, the employer must implement control measures by taking the following steps:
 - STEP 1:** the application of engineering controls, including substitution, isolation and modifications to design and guarding.
 - STEP 2:** if Step 1 does not minimise the risk, the application of administrative controls, including safe work practices.
 - STEP 3:** if Step 2 does not minimise the risk, the provision of appropriate personal protection.
- (3) This Regulation does not limit the operation of any other regulation that expressly provides for the control of risks to the health or safety of a person at work.

Regulation 1.06

Note The *Occupational Health and Safety (Commonwealth Employment) Act 1991* imposes general duties upon groups of persons. These general duties are supported by specific duties that are prescribed in these Regulations. This note identifies:

- (a) the groups of people upon whom duties are imposed by the Act; and
- (b) the provision of the Act which imposes the general duty.

1. Employers

Employers are referred to in sections 16 (Duties of employers in relation to their employees) and 17 (Duty of employers in relation to third parties) of the Act.

2. Manufacturers

Manufacturers of plant or substances are referred to in section 18 of the Act (Duties of manufacturers in relation to plant and substances).

3. Suppliers

Suppliers of plant or substances are referred to in section 19 of the Act (Duties of suppliers in relation to plant and substances).

4. Persons erecting or installing plant

Persons erecting or installing plant in a workplace are referred to in section 20 of the Act (Duties of person erecting or installing plant in a workplace).

5. Employees

Employees are referred to in section 21 of the Act (Duties of employees in relation to occupational health and safety).

Part 2 Competency requirements and certification standards for users and operators of industrial equipment

Division 1 Introduction

2.01 Object of Part 2

The object of this Part is:

- (a) to minimise the incidence and severity of injuries associated with performing the work of an occupation referred to in regulation 2.03 by requiring employees and contractors performing the work to have a particular standard of competency; and
- (b) to make arrangements for the possession and use of certificates that state that a person has the particular standard of competency.

Note The regulations in this Part should be read with the National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment (NOHSC: 1006 (2001)), declared by NOHSC and as in force on 26 September 2001. The Standard can be found on the Internet at http://www.nohsc.gov.au/PDF/Standards/NOHSC-1006-2001_STANDAR D.pdf.

2.02 Interpretation of Part 2

In this Part, unless the contrary intention appears:

certificate of competency means a document described in regulation 2.04.

certifying authority means an authority referred to in paragraph 2.04 (b).

Class A Commonwealth certificate means a document described in subregulation 2.05 (1).

Class B Commonwealth certificate means a document described in subregulation 2.05 (2).

Commonwealth certificate means a Class A Commonwealth certificate or a Class B Commonwealth certificate.

certificate assessor means a person who is authorised, by a certifying authority, to assess the competency of another person for the purposes of the certifying authority.

Equivalence and Translation Tables means the document entitled Equivalence and Translation Tables:

- (a) published by the Safety Rehabilitation and Compensation Commission; and
- (b) as in force on the day on which this Regulation commences.

interim certificate, for the work of a regulation 2.03 occupation, means a certificate issued by or on behalf of a certifying authority to the effect that the employee has successfully demonstrated competence in the work.

NOHSC: 1006 (2001) means the National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment (NOHSC: 1006 (2001)).

Note NOHSC: 1006 (2001) can be found on the Internet at www.nohsc.gov.au/PDF/Standards/NOHSC-1006-2001_STANDARD.pdf.

pressure equipment operation means the operation of:

- (a) a boiler; or
- (b) a turbine; or
- (c) a reciprocating steam engine.

regulation 2.03 occupation means an occupation referred to in regulation 2.03.

2.03 What occupations are covered by Part 2?

This Part applies to the work of a person involved in performing work or a task that is:

- (a) in any of the following occupations:
 - (i) scaffolding;
 - (ii) dogging;
 - (iii) rigging;
 - (iv) crane and hoist operation;
 - (v) pressure equipment operation; and

Regulation 2.04

- (b) referred to in NOHSC: 1006 (2001).

2.04 What is a certificate of competency?

A certificate of competency is a document that:

- (a) identifies the competency of the person to whom it is issued; and
- (b) is issued by an authority of a State or a Territory that has the power, under a law of the State or Territory, to issue a certificate that relates to the performance of the work of a regulation 2.03 occupation.

Note The States and Territories that implement NOHSC: 1006 (2001) will issue certificates that comply with clause 5.4 of that Standard.

2.05 What are Class A and Class B Commonwealth certificates?

- (1) A Class A Commonwealth certificate is a document:
 - (a) that is issued by an employer before the day on which this Regulation commences; and
 - (b) that is described, in the Equivalence and Translation Tables, as being equivalent to a particular certificate of competency; and
 - (c) that states that the person to whom the document is given has achieved a particular competency in an occupation that, after the day on which this Regulation commences, is a regulation 2.03 occupation.
- (2) A Class B Commonwealth certificate is a document:
 - (a) that is issued by an employer before the day on which this Regulation commences; and
 - (b) that is not referred to in the Equivalence and Translation Tables; and
 - (c) that states that the person to whom the document is given has achieved a particular competency in an occupation that, after the day on which this Regulation commences, is a regulation 2.03 occupation.

Division 2

Duties relating to the performance of work

2.05A Qualified employees and qualified contractors

- (1) For this Division, an employee is *qualified* for an occupation if:
 - (a) the employee holds a valid certificate of competency for the class of occupation; or
 - (b) the certifying authority in the State or Territory has exempted the employee from holding a certificate of competency for the class of occupation; or
 - (c) the employee holds a valid Class A Commonwealth certificate for the class of occupation; or
 - (d) the employee holds a valid Class B Commonwealth certificate:
 - (i) for the class of occupation; and
 - (ii) in relation to the employer who controls the performance of the work; or
 - (e) the employee is allowed, under regulation 2.07B, 2.07C or 2.07F, to perform the work without holding a certificate of competency, a Class A Commonwealth certificate or a Class B Commonwealth certificate.
- (2) For this Division, a contractor is *qualified* for an occupation if:
 - (a) the contractor holds a valid certificate of competency for the class of occupation; or
 - (b) the certifying authority in the State or Territory has exempted the contractor from holding a certificate of competency for the class of occupation; or
 - (c) the contractor holds a valid Class A Commonwealth certificate for the class of occupation; or
 - (d) the contractor holds a valid Class B Commonwealth certificate:
 - (i) for the class of occupation; and
 - (ii) in relation to the employer who controls the performance of the work or who controls the workplace; or

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- (e) the contractor is allowed, under regulation 2.07D, 2.07E or 2.07F, to perform the work without holding a certificate of competency, a Class A Commonwealth certificate or a Class B Commonwealth certificate.

2.06 Performing the work of a regulation 2.03 occupation

- (1) An employee must not perform the work of a regulation 2.03 occupation if the employee is not qualified for the occupation.

Penalty: 10 penalty units.

- (2) A contractor must not perform the work of a regulation 2.03 occupation at a workplace if the contractor is not qualified for the occupation.

Penalty: 10 penalty units.

- (3) Strict liability applies in subregulations (1) and (2) to the physical element that the work is of a regulation 2.03 occupation.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

2.07 Allowing a person to perform the work of a regulation 2.03 occupation

- (1) An employer must not allow an employee to perform the work of a regulation 2.03 occupation if the employee is not qualified for the occupation.

Penalty: 10 penalty units.

- (2) An employer must not allow a contractor to perform the work of a regulation 2.03 occupation at a workplace if the contractor is not qualified for the occupation.

Penalty: 10 penalty units.

- (3) Strict liability applies in subregulations (1) and (2) to the physical element that the work is of a regulation 2.03 occupation.

Note 1 For subregulation (3), for **strict liability**, see section 6.1 of the *Criminal Code*.

Note 2 Employers can use the translation tables in the Equivalence and Translation Tables to determine:

- (a) the classes of occupational health and safety certificates of competency that were issued by State and Territory certifying authorities before the implementation of NOHSC: 1006 (2001); and
- (b) the translation of those classes to classes in NOHSC: 1006 (2001).

2.07B Employee performing work while undergoing training

- (1) An employee (in this Regulation called *a trainee*) may perform the work of a regulation 2.03 occupation, without holding a certificate of competency, a Class A Commonwealth Certificate or a Class B Commonwealth Certificate for the work, if:
 - (a) the trainee is undertaking training in the work; and
 - (b) the employer of the trainee complies with subregulations (2), (3), (4) and (5).
- (2) The employer of the trainee must ensure that the trainee is given directions and demonstrations relating to the work of the regulation 2.03 occupation that:
 - (a) are appropriate to the tasks assigned to the trainee; and
 - (b) are appropriate to the competence of the trainee; and
 - (c) ensure that the trainee is able to perform the work of the occupation in a manner that is safe and without risk to health and safety.

Penalty: 10 penalty units.

- (2A) It is a defence to a prosecution for an offence against paragraph (2) (c) if the employer ensured as far as practicable that the trainee was given directions and demonstrations so as to ensure that the trainee was able to perform the work of the occupation in a manner that was safe and without risk to health and safety.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (2A) (see section 13.3 of the *Criminal Code*).

- (3) The employer of the trainee must ensure that:
 - (a) the trainee is under the direct supervision of:

Regulation 2.07B

- (i) a person who holds a certificate of competency in relation to carrying out the supervision of the trainee; or
 - (ii) if no person referred to in subparagraph (i) is able to supervise the trainee — a person who has qualifications equivalent to the person referred to in subparagraph (i); or
- (b) if the circumstances of a particular task make the direct supervision of the trainee impracticable or unnecessary — the trainee is under supervision of a kind that does not place the trainee, or another person, at risk; or
- (c) if the competency of the employee makes direct supervision unnecessary — the employee is under supervision of a kind that does not place the trainee, or another person, at risk.

Penalty: 10 penalty units.

- (4) The employer of the trainee must ensure that the trainee's performance of tasks is monitored to the extent that:
 - (a) is appropriate to the nature of the tasks; and
 - (b) is appropriate to the competence of the trainee; and
 - (c) ensures that the trainee is able to perform the work of the occupation in a manner that is safe and without risk to health and safety.

Penalty: 10 penalty units.

- (4A) It is a defence to a prosecution for an offence against paragraph (4) (c) if the employer monitored the trainee's performance of tasks as far as practicable so as to ensure that the trainee was able to perform the work of the occupation in a manner that was safe and without risk to health and safety.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (4A) (see section 13.3 of the *Criminal Code*).

- (5) The employer of the trainee must ensure that arrangements exist so that if an emergency involving the trainee arises, action can be taken to rectify immediately any dangerous situation.

Penalty: 10 penalty units.

- (6) Strict liability applies in subregulations (1) and (2) to the physical element that the work performed by the trainee is a regulation 2.03 occupation.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

2.07C Employee performing work before being given a certificate of competency

- (1) Subject to subregulation (2), an employee may perform the work of a regulation 2.03 occupation in a State or Territory, without holding a certificate of competency, a Class A Commonwealth Certificate or a Class B Commonwealth Certificate for the work, if a certificate assessor in the State or Territory gives the employee an interim certificate for the work.
- (2) The employee may perform the work of the occupation, without holding a certificate of competency, a Class A Commonwealth Certificate or a Class B Commonwealth Certificate, until the end of a period commencing on the day on which the employee is given the interim certificate and ending on the latest of:
- (a) the end of 60 days after the day on which the employee is given the interim certificate; or
 - (b) if, before the end of 60 days after that day, the employee applies to be given a certificate of competency and:
 - (i) the employee is given the certificate of competency — the day on which the employee is given the certificate of competency; or
 - (ii) the employee is refused the certificate of competency — the end of 14 days after the day on which the employee is refused the certificate of competency.

Regulation 2.07D

2.07D Contractor performing work while undergoing training

A contractor may perform the work of a regulation 2.03 occupation at a workplace, without holding a certificate of competency, a Class A Commonwealth Certificate or a Class B Commonwealth Certificate for the work, if the contractor is undertaking training in the work.

2.07E Contractor performing work before being given a certificate of competency

- (1) Subject to subregulation (2), a contractor may perform the work of a regulation 2.03 occupation at a workplace in a State or Territory, without holding a certificate of competency, a Class A Commonwealth Certificate or a Class B Commonwealth Certificate for the work, if a certificate assessor in the State or Territory gives the contractor an interim certificate for the work.
- (2) The contractor may perform the work of the occupation, without holding a certificate of competency, a Class A Commonwealth Certificate or a Class B Commonwealth Certificate, until the end of a period commencing on the day on which the contractor is given the interim certificate and ending on the latest of:
 - (a) the end of 60 days after the day on which the contractor is given the interim certificate; or
 - (b) if, before the end of 60 days after that day, the contractor applies to be given a certificate of competency for the work and:
 - (i) the contractor is given the certificate of competency — the day on which the contractor is given the certificate of competency; or
 - (ii) the contractor is refused the certificate of competency — the end of 14 days after the day on which the contractor is refused the certificate of competency.

2.07F Exemption from holding certificates

- (1) An employee may perform the work of a regulation 2.03 occupation, without holding a certificate of competency, a Class A Commonwealth Certificate or a Class B Commonwealth Certificate for the work, if:
 - (a) the employee applies to Comcare, in writing, to be exempted from holding the certificates; and
 - (b) Comcare grants the exemption.
- (2) A contractor may perform the work of a regulation 2.03 occupation at a workplace, without holding a certificate of competency, a Class A Commonwealth Certificate or a Class B Commonwealth Certificate for the work, if:
 - (a) the contractor applies to Comcare, in writing, to be exempted from holding the certificates; and
 - (b) Comcare grants the exemption.
- (3) If an employee or contractor applies to Comcare to be exempted, Comcare must consider the application and:
 - (a) grant the exemption; or
 - (b) refuse to grant the exemption.
- (4) If Comcare grants the exemption, it must, as soon as practicable, give the applicant a written notice of exemption from holding the certificates.
- (5) If Comcare refuses to grant the exemption, it must, as soon as practicable, give the applicant the reasons, in writing, for the refusal.
- (6) Comcare may grant an exemption on the condition that any person to whom the permission applies must be trained in the performance of the work of the occupation by a person approved by Comcare.
- (7) If Comcare grants an employee or contractor an exemption that is subject to the condition referred to in subregulation (6), the employee or contractor must comply with the condition.

Penalty for a contravention of this subregulation: 5 penalty units.

Regulation 2.08

- (8) An offence against subregulation (7) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

2.08 Production of a certificate for inspection

- (1) An investigator may ask an employee or a contractor who holds a certificate of competency, or a Commonwealth certificate, to produce the certificate to the investigator.
- (2) The employee or contractor must show the certificate to the investigator within a reasonable period after being asked.

Penalty for a contravention of this subregulation: 1 penalty unit.

- (3) An offence against subregulation (2) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

Division 3 Suspension and cancellation of certificates

2.09 Recommendation to a certifying authority for the suspension or cancellation of a certificate of competency

- (1) Comcare may recommend the suspension or cancellation of a certificate of competency to the certifying authority that issued the certificate if Comcare has evidence that:
- (a) the certificate was given to a person as a result of the provision of false or misleading information; or
 - (b) the person who holds the certificate is no longer competent to carry out the occupation to which the certificate relates without risk to:
 - (i) the person's health or safety; or
 - (ii) the health or safety of another person; or
 - (c) the person who holds the certificate has contravened a requirement of the Act or these Regulations, or of a

Regulation 2.09

corresponding law of a State or Territory, applying to the person.

- (2) If Comcare believes that one of the reasons set out in subregulation (1) exists, it must give a written notice to the person who holds the certificate:
 - (a) stating that Comcare is considering recommending to the certifying authority that the certificate be suspended or cancelled; and
 - (b) setting out the reason why Comcare believes that it may recommend that the certificate be suspended or cancelled, including any information in support of Comcare's belief; and
 - (c) if Comcare is considering recommending that the certificate be suspended — stating the proposed period of the suspension; and
 - (d) inviting the person to give Comcare reasons why Comcare should not recommend that the certificate be suspended or cancelled; and
 - (e) stating the period in which the person is invited to give reasons, being a period ending at least 14 days after the day on which Comcare gives the notice to the person.
- (3) If the notice given to the person states that Comcare is considering recommending that the certificate be suspended:
 - (a) Comcare may, after considering any reasons given by the person in the period stated in the notice, recommend that the certificate be suspended for a period no longer than the period stated in that notice; and
 - (b) Comcare may not recommend that the certificate be cancelled on the basis of that notice.
- (4) If the notice given to the person states that Comcare is considering recommending that the certificate be cancelled, Comcare may, after considering any reasons given by the person in the period stated in the notice, recommend that the certificate be suspended or cancelled.
- (5) Comcare must give reasons in writing to the certifying authority for a recommendation under this regulation.

Regulation 2.10

- (6) If Comcare recommends that a certificate be suspended or cancelled, it must give the holder of the certificate a written notice setting out its recommendation and its reasons for it.

2.10 Suspension or cancellation of a Commonwealth certificate on Comcare's initiative

- (1) Comcare may suspend or cancel a Commonwealth certificate in accordance with this regulation if:
- (a) the certificate was given to an employee or a contractor as a result of the provision of false or misleading information; or
 - (b) the employee or contractor who holds the certificate is no longer competent to carry out the occupation to which the certificate relates without risk to:
 - (i) his or her health or safety; or
 - (ii) the health or safety of another person; or
 - (c) the employee or contractor who holds the certificate has contravened a requirement of the Act or these Regulations, or of a corresponding law of a State or Territory applying to the employee or contractor.
- (2) If Comcare believes that one of the reasons set out in subregulation (1) exists, it must give a written notice to the employee or contractor who holds the certificate:
- (a) stating that Comcare is considering suspending or cancelling the certificate; and
 - (b) setting out the reason why Comcare believes that it may suspend or cancel the certificate, including any information in support of Comcare's belief; and
 - (c) if Comcare is considering suspending the certificate — stating the proposed period of the suspension; and
 - (d) inviting the employee or contractor to give Comcare reasons why Comcare should not suspend or cancel the certificate; and
 - (e) stating the period in which the employee or contractor is invited to give reasons, being a period ending at least 14 days after the day on which Comcare gives the notice to the employee or contractor.

Regulation 2.11

- (3) If the notice given to the employee or contractor states that Comcare is considering suspending the Commonwealth certificate:
 - (a) Comcare may, after considering any reasons given by the employee or contractor in the period stated in the notice, suspend the certificate for a period no longer than the period stated in that notice; and
 - (b) Comcare may not cancel the certificate on the basis of that notice.
- (4) If the notice given to the employee or contractor states that Comcare is considering cancelling the certificate, Comcare may, after considering any reasons given by the employee or contractor in the period stated in the notice, suspend or cancel the certificate.
- (5) If Comcare suspends or cancels a Commonwealth certificate:
 - (a) Comcare must give the relevant employee or contractor a written notice setting out its decision and its reasons for it; and
 - (b) the suspension or cancellation commences on the later of:
 - (i) the day on which Comcare gives the notice to the employee or contractor; or
 - (ii) the day (if any) stated in the notice.

2.11 Suspension or cancellation of a Commonwealth certificate on the recommendation of a certifying authority

- (1) In spite of regulation 2.10, if a certifying authority:
 - (a) invites an employee or contractor who holds a Commonwealth certificate to give reasons why the Commonwealth certificate should not be suspended or cancelled; and
 - (b) conducts a hearing of the kind authorised by clause 5.32 of NOHSC: 1006 (2001); and
 - (c) recommends to Comcare that the certificate should be suspended or cancelled; and

Regulation 2.12

Comcare may suspend or cancel the certificate in accordance with the recommendation without inviting the employee or contractor to give reasons to Comcare.

- (2) If Comcare suspends or cancels the Commonwealth certificate in accordance with the recommendation:
 - (a) Comcare must give the relevant employee or contractor a written notice setting out its decision and its reasons for it; and
 - (b) the suspension or cancellation commences on the later of:
 - (i) the day on which Comcare gives the notice to the employee or contractor; or
 - (ii) the day (if any) stated in the notice.

2.12 Return of a suspended or cancelled Commonwealth certificate

- (1) An employee or contractor who holds a Commonwealth certificate that is suspended or cancelled must return the certificate to Comcare no later than:
 - (a) 14 days after receiving a notice under subregulation 2.10 (2) or 2.11 (2), as the case requires; or
 - (b) if the suspension or cancellation commences on a later day — that later day.

Penalty: 1 penalty unit.

- (2) If Comcare suspends a Commonwealth certificate, it must return the certificate to the relevant employee or contractor as soon as practicable after the suspension ends.
- (3) An offence against subregulation (1) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

2.13 Review of decisions

Application may be made to the Administrative Appeals Tribunal for review of the following decisions:

- (a) a decision of Comcare under paragraph 2.07F (3) (b) to refuse to grant an exemption from holding a certificate of

Regulation 2.13

competency, a Class A Commonwealth Certificate or a Class B Commonwealth Certificate for the work of a regulation 2.03 occupation;

- (b) a decision of Comcare under paragraph 2.10 (3) (a), subregulation 2.10 (4) or subregulation 2.11 (1) to suspend a Commonwealth certificate;
- (c) a decision of Comcare under subregulation 2.10 (4) or 2.11 (1) to cancel a Commonwealth certificate.

Regulation 3.01

Part 3 Occupational noise

3.01 Object of Part 3

The object of this Part is to ensure that:

- (a) all reasonably practicable steps are taken to ensure that employees and contractors at work are not subjected to noise in excess of the exposure standard set out in regulation 3.03; and
- (b) appropriate personal protective measures are implemented if the taking of all reasonably practicable steps does not reduce noise to or below the exposure standard set out in regulation 3.03.

Note The regulations in this Part should be read with the *National Standard for Occupational Noise* [NOHSC:1007 (2000)] and the *National Code of Practice for Noise Management and Protection of Hearing at Work* [NOHSC:2009 (2000)].

3.02 Interpretation of Part 3

In this Part, unless the contrary intention appears:

administrative noise control means a measure (not including the use of a personal hearing protector) that reduces the noise to which an employee or contractor is exposed at work by means of work arrangements, and includes:

- (a) the scheduling of work; and
- (b) job rotation; and
- (c) limiting the entry of persons to work areas; and
- (d) the observance of quiet work practices.

engineering noise control means a measure (not including the use of a personal hearing protector) that reduces the noise to which an employee or contractor is exposed, by the design or modification of plant or the physical working environment, including design or a modification for the purposes of:

- (a) eliminating noisy plant; or
- (b) replacing noisy plant by quieter plant; or

Regulation 3.03

- (c) reducing noise emission at the source of the noise; or
- (d) isolating or enclosing noisy plant; or
- (e) the acoustical treatment of the plant.

exposure standard means the exposure standard for noise set out in subregulation 3.03 (1).

noise assessment means an assessment, by a person with suitable qualifications and experience, of the noise to which an employee or a contractor is exposed at work:

- (a) to establish whether the noise to which the employee or contractor is exposed exceeds, or is likely to exceed, the exposure standard; and
- (b) to provide information, about the noise to which the employee or contractor may be exposed, that will assist the relevant employer to comply with these Regulations.

relevant plant means plant:

- (a) that may emit hazardous levels of noise; and
- (b) whose manufacturer, supplier or installer ought reasonably to expect will be used by employees, or contractors, at work.

3.03 The exposure standard for noise

- (1) For the purposes of this Part, the exposure standard for noise is:
 - (a) an eight-hour equivalent continuous A-weighted sound pressure level, $L_{Aeq,8h}$ of 85 dB(A) referenced to 20 micropascals; or
 - (b) a C-weighted peak sound pressure level $L_{C, peak}$ of 140 dB.
- (2) The sound pressure level is the noise level determined at the employee's ear position:
 - (a) in accordance with AS/NZS 1269.1:1998 'Occupational noise management — Measurement and assessment of noise immission and exposure'; and
 - (b) without taking into account any protection that may be provided by a personal hearing protector.

Regulation 3.04

- (3) The value of $L_{C, peak}$ must be determined by using sound-measuring equipment with a peak detector-indicator characteristic that complies with the requirements of AS 1259.1-1990 'Acoustics – Sound Level Meters – Non-integrating'.

3.04 Duties of manufacturer of relevant plant

- (1) The manufacturer of relevant plant must take all reasonably practicable steps to ensure that the plant is designed and constructed in a manner that, when the plant is properly installed, reduces the noise emitted by the plant to a level that:
- (a) is safe for employees and contractors; and
 - (b) represents no risk to their health.

Penalty: 10 penalty units.

- (2) The manufacturer of relevant plant must take all reasonably practicable steps to make available to an employer information about:
- (a) the noise emitted by the plant; and
 - (b) ways to keep the noise emitted by the plant to the lowest level that is reasonably practicable to achieve.

Penalty: 10 penalty units.

- (3) The manufacturer of relevant plant must take all reasonably practicable steps to give an employer, at the employer's request, the information described in subregulation (2).

Penalty for a contravention of this subregulation: 10 penalty units.

3.05 Duties of supplier of relevant plant

- (1) The supplier of relevant plant must take all reasonably practicable steps to ensure that the plant is supplied for use by an employee or a contractor in a condition that, when the plant is properly installed and used,:
- (a) is safe for employees and contractors; and

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- (b) represents no risk to their health.

Penalty: 10 penalty units.

- (2) The supplier of relevant plant must take all reasonably practicable steps to make available to an employer information about:
 - (a) the noise emitted by the plant; and
 - (b) ways to keep the noise emitted by the plant to the lowest level that is reasonably practicable to achieve.

Penalty: 10 penalty units.

- (3) The supplier of relevant plant must take all reasonably practicable steps to give an employer, at the employer's request, the information described in subregulation (2).

Penalty for a contravention of this subregulation: 10 penalty units.

3.06 Duties of installer of relevant plant

- (1) The installer of relevant plant must take all reasonably practicable steps to ensure that the plant is erected or installed for use by an employee or a contractor in a manner that:
 - (a) is in accordance with any specific instructions issued by the manufacturer of the plant for its erection or installation; and
 - (b) when the plant is properly installed, reduces the noise emitted by the plant to the lowest level that is reasonably practicable.

Penalty: 10 penalty units.

- (2) The installer of relevant plant must take all reasonably practicable steps to ensure that the plant is not erected or installed in a manner that:
 - (a) makes the plant unsafe for employees or contractors who use it; or

Regulation 3.07

- (b) represents a risk to the health of employees or contractors because of excessive noise emission as a result of erecting or installing the plant.

Penalty for a contravention of this subregulation: 10 penalty units.

3.07 Duties of an employer — risk assessment

- (1) If a risk exists of an employee or a contractor being exposed at work to noise that exceeds the exposure standard, the relevant employer must arrange for a noise assessment of the noise to which employees or contractors are exposed to be carried out.

Penalty: 10 penalty units.

- (2) If a noise assessment is carried out under subregulation (1), the relevant employer must arrange for another noise assessment to be carried out no later than 5 years after the day on which the first-mentioned noise assessment is completed.

Penalty: 10 penalty units.

- (3) In spite of subregulation (2), if:
 - (a) a noise assessment is carried out; and
 - (b) the practices or the administration of the place at which the work is carried out change in a manner that may cause a significant increase in the noise to which an employee or a contractor is exposed;
the relevant employer must revise the noise assessment, or arrange for a new noise assessment to be carried out, to take account of the change.

Penalty for a contravention of this subregulation: 10 penalty units.

3.08 Duties of an employer — risk control

- (1) An employer must provide and maintain:
 - (a) the place at which an employee performs work; and

Regulation 3.08

- (b) plant and systems of work;
in a manner that ensures that the employee is not exposed to noise, at or near the place, that exceeds the exposure standard.

Penalty: 10 penalty units.

- (1A) It is a defence to a prosecution for an offence against subregulation (1) if the employer complied with the subregulation as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (1A) (see section 13.3 of the *Criminal Code*).

- (2) An employer must provide and maintain:
 - (a) a workplace at which a contractor performs work; and
 - (b) plant and systems of work;
in a manner that ensures that the contractor is not exposed to noise, at or near the workplace, that exceeds the exposure standard.

Penalty: 10 penalty units.

- (2A) It is a defence to a prosecution for an offence against subregulation (2) if the employer complied with the subregulation as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (2A) (see section 13.3 of the *Criminal Code*).

- (3) If the employer is required to take action to ensure that an employee or a contractor is not exposed to noise that exceeds the exposure standard, the employer must carry out the following steps:

STEP 1: The employer must implement engineering noise controls to reduce the noise to which the employee or contractor is exposed.

STEP 2: If the engineering noise controls implemented under step 1 do not reduce the noise to which the employee or contractor is exposed to a level that is less than, or equal to, the exposure standard, the employer must implement administrative noise controls to reduce the noise to which the employee or contractor is exposed.

Regulation 3.08

Penalty: 10 penalty units.

- (3A) It is a defence to a prosecution for an offence against subregulation (3) if the employer:
- (a) implemented engineering noise controls in accordance with **STEP 1**; and
 - (b) implemented administrative noise controls in accordance with **STEP 2**;
- as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (3A) (see section 13.3 of the *Criminal Code*).

- (4) Until the engineering noise controls implemented under step 1 and the administrative noise controls implemented under step 2 reduce the noise to which the employee or contractor is exposed to a level that is less than, or equal to, the exposure standard, the employer must give the employee or contractor an appropriate personal hearing protector:
- (a) that complies with the requirements of AS/NZS 1270:2002 'Acoustics — Hearing protectors'; and
 - (b) selected by the employer in accordance with the requirements of AS/NZS 1269.3:1998 'Occupational noise management — Hearing protector program'.

Penalty: 10 penalty units.

Note Guidance for appropriate hearing protection is provided by the *National Code of Practice for Management and Protection of Hearing at Work* [NOHSC:2009(2000)], which can be found on the Internet at <http://www.nohsc.gov.au/pdf/standards/noisestandard.pdf>.

- (4A) Strict liability applies to the physical element in paragraph (4) (a) that the appropriate personal hearing protector complies with the requirements of AS/NZS 1270:2002 'Acoustics — Hearing protectors'.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4B) Strict liability applies to the physical element in paragraph (4) (b) that the appropriate personal hearing protector is in accordance with the requirements of AS/NZS 1269.3:1998 'Occupational noise management — Hearing protector program'.

Regulation 3.09

Note For **strict liability**, see section 6.1 of the Criminal Code.

- (5) In addition to carrying out the steps referred to in subregulation (3), the employer must:
- (a) ensure that noise control measures are properly maintained at the workplace; and
 - (b) give an employee or a contractor information and training about the use of a personal hearing protector that the employee or contractor is given in accordance with subregulation (4); and
 - (c) ensure that a personal hearing protector given to an employee or contractor is properly used and maintained.

Penalty for a contravention of this subregulation: 10 penalty units.

Note Further advice and guidance on noise assessment and control can be found in the National Code of Practice for Occupational Noise.

3.09 Duties of an employee

- (1) An employee at work must:
- (a) comply with any noise control measure implemented in accordance with this Part; and
 - (b) tell his or her employer, as soon as practicable, of any defect of which the employee is aware in any noise control equipment located at the place at which the employee carries out the work.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in paragraph (1) (a) that the noise control measure is implemented in accordance with this Part.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (1B) It is a defence to a prosecution for an offence against subregulation (1) if the employee complied with the subregulation as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (1B) (see section 13.3 of the *Criminal Code*).

Regulation 3.10

- (2) If an employee is given a personal hearing protector, the employee must:
- (a) use the protector; and
 - (b) tell his or her employer, as soon as practicable, of any defect of which the employee is aware in the protector.

Penalty: 10 penalty units.

- (3) To avoid doubt, subregulations (1) and (2) do not affect any existing or future right at common law that would, but for this subregulation, be affected by those subregulations.

3.10 Duties of a contractor

- (1) A contractor at a workplace must:
- (a) comply with any noise control measure implemented in accordance with this Part; and
 - (b) tell the employer, as soon as practicable, of any defect of which the contractor is aware in any noise control equipment located at the workplace.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in paragraph (1)
- (a) that the noise control measure is implemented in accordance with this Part.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (1B) It is a defence to a prosecution for an offence against subregulation (1) if the contractor complied with the subregulation as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (1B) (see section 13.3 of the *Criminal Code*).

- (2) If a contractor is given a personal hearing protector, the contractor must:
- (a) use the protector; and
 - (b) tell the employer, as soon as practicable, of any defect of which the contractor is aware in the protector.

Penalty: 10 penalty units.

Regulation 3.10

- (3) To avoid doubt, subregulations (1) and (2) do not affect any existing or future right at common law that would, but for this subregulation, be affected by those subregulations.

Regulation 4.01

Part 4 Plant

Division 1 Introduction

4.01 Objects of Part 4

The object of this Part is to protect the health and safety of:

- (a) employees; and
- (b) contractors of an employer for the purposes of subsection 16 (4) of the Act; and
- (c) other persons at or near a workplace under an employer's control;

from hazards arising from plant, and systems of work associated with plant, by:

- (d) ensuring that:
 - (i) hazards associated with the use of plant at work or at a workplace are identified; and
 - (ii) risks to health and safety are assessed and controlled; and
- (e) eliminating risks to health and safety, or, if that is not reasonably practicable, minimising them; and
- (f) specifying requirements relating to the design, manufacture, testing, installation, commissioning, use, repair, storage and disposal of plant; and
- (g) requiring the provision of relevant information and training; and
- (h) requiring that:
 - (i) certain plant not be operated unless the employer is licensed to operate the plant; and
 - (ii) certain plant not be operated unless the design of plant has been:
 - (A) notified to the Commission under regulation 4.50; or

- (B) registered by the Commission under paragraph 4.52 (1) (a).

Note **Plant** is defined in subsection 5 (1) of the Act to include any machinery, equipment or tool, and any component thereof.

4.02 Application of Part 4

- (1) This Part applies to the manufacture of plant that begins only after this Regulation commences.
- (2) This Part applies to the design of plant that begins only after this Regulation commences.
- (3) This Part applies:
 - (a) to the supply of plant that is manufactured after this Regulation commences; and
 - (b) as far as is reasonably practicable, to the supply of plant that is manufactured before this Regulation commences.
- (4) This Part applies to importers of plant who order new or used plant, for importation, after this Regulation commences.
- (5) This Part applies to the installation or commissioning of plant that begins only after this Regulation commences.
- (6) The provisions of this Part relating to the reinstallation or recommissioning of plant apply:
 - (a) to the reinstallation or recommissioning of plant that is manufactured after this Regulation commences; and
 - (b) as far as is reasonably practicable, to the reinstallation or recommissioning of plant that is manufactured before this Regulation commences.
- (7) Unless the contrary intention appears, this Part applies to:
 - (a) the use, repair or disposal of plant, whether manufactured before or after the commencement of this Part; and
 - (b) hazard identification, risk assessment and the control of risk in relation to plant, whether manufactured before or after the commencement of this Part.

Regulation 4.04

Division 2 Duties of a manufacturer of plant

Notes

1. The effect of subsection 18 (1) of the Act is that a manufacturer of plant may, in certain circumstances, have duties in relation to the design of the plant.
2. The effect of subsection 18 (3) of the Act is that if:
 - (a) plant is imported into Australia by a person who is not the manufacturer of the plant; and
 - (b) at the time of the importation, the manufacturer of the plant does not have a place of business in Australia;the person importing the plant (who may be an employer or supplier) is taken to the manufacturer of the plant.

4.04 Hazard identification and risk assessment

- (1) A manufacturer of plant that the manufacturer knows, or ought reasonably to expect, will be used by employees at work must take all reasonably practicable steps to ensure that hazards:
 - (a) arising from the design of the plant; and
 - (b) that are identified during the manufacture of the plant; are identified in accordance with Division 7.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in subregulation (1) that the hazards are identified in accordance with Division 7.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) If a hazard is identified under subregulation (1), the manufacturer must ensure that the risks associated with the hazard are assessed in accordance with subregulation (3) and Division 7.

Penalty: 10 penalty units.

- (2A) Strict liability applies to the physical element in subregulation (2) that the risks are assessed in accordance with subregulation (3) and Division 7.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

Regulation 4.05

- (3) In carrying out an assessment required by subregulation (2) in relation to the design of the plant, the manufacturer must ensure that the following are assessed:
- (a) the impact of the plant on the work environment in which it is designed to operate;
 - (b) the range of environmental and operational conditions in which the plant is intended to be manufactured, transported, installed, erected and used;
 - (c) the ergonomic needs of persons who may use the plant;
 - (d) the need for safe access and egress for persons who install, erect or use the plant.

Penalty: 10 penalty units.

4.05 Elimination or control of risk

- (1) If a risk assessment conducted by a manufacturer of plant for the purposes of regulation 4.04 identifies a risk to health and safety, the manufacturer must take all reasonably practicable steps to ensure that:
- (a) the risk is eliminated; or
 - (b) if it is not reasonably practicable to eliminate the risk — the risk is minimised in accordance with Division 7 and subregulation (2).

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in subregulation (1) that:
- (a) the risk assessment is conducted for the purposes of regulation 4.04; and
 - (b) the risk is minimised in accordance with Division 7 and subregulation (2).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) For the purpose of minimising a risk in relation to design, the manufacturer must apply as many of the following measures as are appropriate:
- (a) the use of designs which minimise the risks to health and safety associated with the use of the plant;

Regulation 4.05

- (b) the use of designs which have regard to ergonomic principles;
- (c) the use of designs which enable components to be accessed for maintenance, repair or cleaning purposes with minimised risks to health and safety;
- (d) ensuring that plant is designed according to all relevant standards referred to in Schedule 5;
- (e) ensuring that powered mobile plant is designed to minimise the risk of the plant overturning, or of objects falling on an operator of the plant;
- (f) if the risk assessment for powered mobile plant has identified a risk of:
 - (i) the plant overturning; or
 - (ii) objects falling on an operator of the plant; or
 - (iii) an operator of the plant being ejected from the seat; the use of an appropriate combination of operator protective devices to minimise the risk;
- (g) if a particular system of work or operator competency is a factor in the control of the risk — the specification of that system or competency;
- (h) if the risk assessment has identified an increased risk due to the build up of unwanted substances or materials, the use of designs that minimise that build up.

Penalty: 10 penalty units.

- (2A) Strict liability applies to the physical element in paragraph (2) (d) that a standard referred to in Schedule 5 is relevant.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) Subject to subregulation (4), a manufacturer of plant that the manufacturer knows, or ought reasonably to expect, will be used by employees at work must take all reasonably practicable steps to ensure that the plant is:
- (a) manufactured having regard to the designer's specification; and
 - (b) inspected having regard to the designer's specification; and

- (c) if it is required — tested having regard to the designer's specification.

Penalty: 10 penalty units.

- (4) If a fault in the design of plant that may affect health and safety is identified during the manufacture of the plant, the manufacturer must take all reasonably practicable steps to ensure that:
 - (a) the fault is not incorporated into the plant; and
 - (b) the designer of the plant is consulted on how to rectify the fault.

Penalty: 10 penalty units.

- (5) If a manufacturer knows, or ought reasonably to expect, that, after being manufactured, plant has a fault that may affect the health and safety of employees at work, the manufacturer must take all reasonably practicable steps to ensure that the person to whom the plant was supplied is notified of the fault and of the steps required to rectify it.

Penalty: 10 penalty units.

4.06 Provision of information

A manufacturer of plant that the manufacturer knows, or ought reasonably to expect, will be used by employees at work, must take all reasonably practicable steps to make available to the employer information concerning:

- (a) the systems of work necessary for the safe use of the plant; and
- (b) the knowledge, training or skill needed by a person inspecting or testing the plant; and
- (c) relevant emergency procedures.

Notes

1. See paragraph 18 (1) (c) of the Act for requirements relating to the provision of information about plant by manufacturers to employers in relation to the use of plant by employees at work.

Regulation 4.07

2. The effect of subsection 22 (3) of the Act is that a manufacturer is taken to have complied with regulation 4.05 and with section 18 of the Act if the manufacturer relied on research, testing and examination carried out by another person or organisation and it was reasonable for the manufacturer to rely on that research, testing or examination.

Division 3 Duties of a supplier of plant

4.07 Elimination or control of risk

- (1) If a supplier of plant that the supplier knows, or ought reasonably to expect, will be used by employees at work, identifies a risk to health and safety arising from the use of the plant, the supplier must take all reasonably practicable steps to ensure that, at the time of supply:
- (a) the risk to health and safety arising from the use of the plant is eliminated; or
 - (b) if it is not reasonably practicable to eliminate the risk — the risk to health and safety from the use of the plant is minimised in accordance with Division 7.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in paragraph (1) (b) that the risk is minimised in accordance with Division 7.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) A supplier of plant that is intended to be used at work for scrap or spare parts must, before supplying the plant, tell the employer, in writing or by marking the plant:
- (a) the purposes for which the plant may be safely used; and
 - (b) that the plant must not be placed in service in the form in which it is supplied.

Penalty: 10 penalty units.

- (2A) It is a defence to a prosecution for an offence against subregulation (2) if the supplier complied with the subregulation as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (2A) (see section 13.3 of the *Criminal Code*).

4.07A Hire of plant mentioned in Part 2 of Schedule 6 and registered by a State or Territory authority

- (1) This regulation applies to a supplier who hires or leases plant:
 - (a) mentioned in Part 2 of Schedule 6; and
 - (b) that is registered by an authority of the State or Territory in which the supplier operates, in accordance with a law of that State or Territory.
- (2) The supplier must take all reasonably practicable steps to ensure that:
 - (a) the plant is inspected and maintained in accordance with the laws of the State or Territory mentioned in paragraph (1) (b); and
 - (b) the plant is inspected and maintained between each hire or leasing to identify and, if necessary, minimise any risk to health and safety of employees from the use of the plant at work; and
 - (c) records of the inspection and maintenance of plant mentioned in paragraph (b) are kept for at least 12 months after the end of the hire or leasing period for the plant; and
 - (d) records of the registration of the plant are kept for at least 12 months after the date of registration.

Penalty: 10 penalty units.

- (3) If a supplier hires or leases plant mentioned in subregulation (1) to an employer, being plant that the supplier knows, or ought reasonably to expect, will be used by employees at work, the supplier must take all reasonably practicable steps to ensure that the employer is given the evidence mentioned in paragraph 4.40D (b) in relation to the plant.

Penalty: 10 penalty units.

4.07B Hire of plant not mentioned in Part 2 of Schedule 6

- (1) This regulation applies to a supplier who hires or leases plant, other than plant mentioned in Part 2 of Schedule 6.

Regulation 4.08

- (2) If the supplier hires or leases plant to which this regulation applies to an employer, being plant that the supplier knows, or ought reasonably to expect, will be used by employees at work, the supplier must take all reasonably practicable steps to ensure that:
- (a) any risk to the health and safety of the employees arising from the use of the plant is minimised; and
 - (b) the plant is inspected and maintained between each hire or leasing to identify and, if necessary, minimise any risk to health and safety of employees from the use of the plant at work; and
 - (c) records of the inspection and maintenance of plant mentioned in paragraph (b) are kept for at least 12 months after the end of the hire or leasing period for the plant; and
 - (d) records of the registration of the plant (if any) are kept for at least 12 months after the date of registration; and
 - (e) an assessment is carried out on a regular basis to determine:
 - (i) the need for testing the plant to establish whether new or increased risks to health and safety have developed; and
 - (ii) the times at which testing of that kind is to be carried out; and
 - (f) if, under paragraph (e), it is determined that testing is necessary — testing is carried out and the results of the testing are recorded; and
 - (g) the records of testing mentioned in paragraph (f) are kept for the period in which the supplier hires or leases the plant to employers.

Penalty: 10 penalty units.

4.08 Provision of information — used plant

- (1) A supplier of used plant to an employer, being plant that the supplier knows, or ought reasonably to expect, will be used by employees at work, must take all reasonably practicable steps to ensure that, at the time at which the plant is supplied to the employer, any record relating to the plant kept for the purposes

of these Regulations by the previous owner of the plant is made available to the employer.

Penalty: 10 penalty units.

Notes

1. The duties of a supplier in relation to the provision of information about new plant are set out in paragraph 19 (1) (c) of the Act.

2. The effect of subsection 22 (3) of the Act is that a supplier is taken to have complied with regulation 4.08 and with section 19 of the Act if the supplier relied on research, testing and examination carried out by another person or organisation and it was reasonable for the manufacturer to rely on that research, testing or examination.

- (2) Strict liability applies to the physical element in subregulation (1) that the record is kept for the purposes of these Regulations.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

Division 4 Duties of an erector or installer of plant

4.09 Hazard identification and risk assessment

- (1) A person who erects or installs plant at a workplace must take all reasonably practicable steps to ensure that hazards associated with the plant:
- (a) after it has been erected or installed; and
 - (b) when it is used by employees at work;
- are identified in accordance with Division 7 before and during the erection or installation of the plant.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in subregulation (1) that the hazards are identified in accordance with Division 7.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

Regulation 4.10

- (2) If a hazard is identified under subregulation (1), the erector or installer must ensure that the risks associated with the hazard are assessed in accordance with Division 7.

Penalty: 10 penalty units.

- (2A) Strict liability applies to the physical element in subregulation (2) that the risks are assessed in accordance with Division 7.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) An erector or installer may carry out a risk assessment under subregulation (2) on individual items of plant.
- (4) Subject to subregulation (5), if more than 1 item of plant of the same design is to be used under conditions that are the same for all practicable purposes, an erector or installer may carry out a risk assessment on a representative sample of the plant.
- (5) If a risk to health and safety may vary from operator to operator, the erector or installer must carry out a separate risk assessment on each item of plant that is to be erected or installed.

Penalty: 10 penalty units.

4.10 Elimination or control of risk

- (1) If a risk assessment conducted by an erector or installer of plant for the purposes of subregulation 4.09 (2) or (5) identifies a risk to health and safety, the erector or installer must take all reasonably practicable steps to ensure that:
- (a) the risk to health and safety arising from the use of the plant is eliminated; or
 - (b) if it is not reasonably practicable to eliminate the risk — the risk to health and safety from the use of the plant is minimised in accordance with Division 7.

Penalty: 10 penalty units.

Regulation 4.10

- (1A) Strict liability applies to the physical elements in subregulation (1) that:
- (a) the risks assessment is conducted for the purposes of subregulation 4.09 (2) or (5); and
 - (b) the risk is minimised in accordance with Division 7.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) The erector or installer must take all reasonably practicable steps to ensure that:
- (a) if the plant is designed to be operated in a fixed position — the plant is positioned on and, if necessary, fixed to, a secure base in order to prevent unintentional movement of the plant when power is applied, or while the plant is in operation; and
 - (b) the electrical installations associated with the plant are installed to minimise the risk to the health and safety of an employee, after being installed.

Penalty: 10 penalty units.

Note The effect of subsection 22 (2) of the Act is that an erector or installer is taken to have complied with this Division and section 20 of the Act if the erector or installer reasonably relied on information from the manufacturer or the supplier of the plant, relating to the erection or installation of the plant.

Regulation 4.11

Division 5 Duties of an employer

Subdivision A General duties

Notes

1. An employer's duty under these Regulations may arise because the employer is a manufacturer of plant, an erector of plant, an installer of plant, or acts in another capacity referred to in this Part.
2. If it is necessary for an employer to have work carried out by a competent person, then a certificate permitting the person to carry out the work may be required: see Part 2 of these Regulations.

4.11 Hazard identification and risk assessment

- (1) An employer must take all reasonably practicable steps to ensure that hazards relating to plant at work are identified in accordance with Division 7:
 - (a) before and during the introduction of the plant to a workplace; and
 - (b) before and during:
 - (i) a change in the way that the plant is used that is likely to involve a risk to the health and safety of a relevant person; and
 - (ii) a change in a system of work associated with the plant that is likely to involve a risk to the health and safety of a relevant person; and
 - (iii) if relevant — a change in the location of the plant that is likely to involve a risk to the health and safety of a relevant person; and
 - (c) when new or additional health and safety information relating to the plant, or a system of work associated with the plant, becomes available to the employer.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in subregulation (1) that the hazards are identified in accordance with Division 7.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

(2) For plant that is in use before the commencement of this Regulation, the employer must take all reasonably practicable steps to ensure that hazards are identified in accordance with Division 7 no later than 18 months after the day on which this Regulation commences.

(2A) Strict liability applies to the physical elements in subregulation (2) that:

- Note* For **strict liability**, see section 6.1 of the *Criminal Code*.

- Penalty: 10 penalty units.

- Note* For *strict liability*, see section 6.1 of the *Criminal Code*.

- (a) assess the risk arising from:
 - (i) any system of work associated with the plant; and
 - (ii) the layout and condition of the work environment in which the plant is to be used; and
 - (iii) the capability, skill and experience of the operator ordinarily using the plant; and
 - (iv) any reasonably foreseeable abnormal condition that is likely to affect the plant; and
- (b) identify:
 - (i) items of plant that require records to be kept to minimise the risk to the health and safety of a relevant person; and

Regulation 4.12

- (ii) the kind of records that should be kept; and
 - (iii) the length of time for which the records should be kept.
- (5) An employer may carry out a risk assessment under subregulation (3) on individual items of plant.
- (6) Subject to subregulation (7), if more than 1 item of plant of the same design is to be installed and used under conditions that are the same for all practicable purposes, an employer may carry out a risk assessment on a representative sample of the plant.
- (7) If a risk to health and safety may vary from operator to operator, the employer must carry out a separate risk assessment on each item of plant to determine the risk to each operator of the plant.

Penalty: 10 penalty units.

4.12 Elimination or control of risk

- (1) If a risk assessment conducted by an employer for the purposes of subregulation 4.11 (3) or (7) identifies a risk to health and safety in relation to plant at work, the employer must take all reasonably practicable steps to ensure that:
 - (a) the risk is eliminated; or
 - (b) if it is not reasonably practicable to eliminate the risk — the risk is minimised in accordance with Division 7 and subregulation (2).

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in subregulation (1) that:
 - (a) the risk assessment is conducted for the purposes of subregulation 4.11 (3) or (7); and
 - (b) the risk is minimised in accordance with Division 7 and subregulation (2).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

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- (2) The employer must take all reasonably practicable steps to ensure that:
- (a) control measures are maintained, and supervised effectively, to minimise any risk to the health and safety of a relevant person; and
 - (b) systems of work are implemented and effectively supervised to minimise any risk to the health and safety of a relevant person; and
 - (c) if personal protective equipment is required — the equipment is provided and maintained in a manner that minimises the risk to the health and safety of a relevant person; and
 - (d) if a hazardous situation is reported — a relevant person is not placed at risk until the hazardous situation is rectified.

Penalty: 10 penalty units.

4.13 Design of plant

If an employer engages a person to design plant for use by employees at work, the employer must ensure that the person is provided with relevant information about matters relating to the plant that may affect the health and safety of a relevant person.

Penalty: 10 penalty units.

4.14 Installation and commissioning of plant

- (1) If an employer knows, or ought reasonably to know, of any risk to the health and safety of a relevant person occurring during the installation, erection or commissioning of plant that is to be used at work, the employer must take all reasonably practicable steps to ensure that the risk is:
- (a) eliminated; or
 - (b) if it is not reasonably practicable to eliminate the risk — minimised in accordance with Division 7 and subregulation (2).

Penalty: 10 penalty units.

Regulation 4.15

- (1A) Strict liability applies to the physical element in paragraph (1) (b) that the risk is minimised in accordance with Division 7 and subregulation (2).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) The employer must take all reasonably practicable steps to ensure that:
- (a) the installation, erection and commissioning of the plant are undertaken by a competent person; and
 - (b) the person undertaking the installation, erection or commissioning is given the information that is necessary to allow the plant to be installed, erected and commissioned in a manner that minimises the risk to the health and safety of a relevant person; and
 - (c) the plant is installed or erected in a location that is suitable for:
 - (i) the task to be carried out using the plant; and
 - (ii) the kind of plant; and
 - (d) there is sufficient space surrounding the plant to allow the plant to be used, and repaired, in a manner that minimises the risk to the health and safety of a relevant person; and
 - (e) the layout of the workplace is appropriate for the operation of the plant; and
 - (f) the workplace includes a safe means of access and egress; and
 - (g) if the final means of safeguarding the plant is not in place during the testing or start-up of the plant — an appropriate interim safeguard is used; and
 - (h) as far as can be determined by commissioning the plant — the plant is in a suitable condition to be operated.

Penalty: 10 penalty units.

4.15 Use of plant

- (1) An employer must take all reasonably practicable steps to ensure that a risk to the health and safety of a relevant person arising from plant used by employees at work, or the associated systems of work, under the employer's control is:

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- (a) eliminated; or
- (b) if it is not reasonably practicable to eliminate the risk — minimised in accordance with Division 7.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in paragraph (1) (b) that the risk is minimised in accordance with Division 7.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) Without limiting subregulation (1), the employer must take all reasonably practicable steps to ensure that:
- (a) if the plant is operated by an employee at work, or a contractor of the employer — the employee or contractor:
 - (i) receives necessary information and training in the operation of the plant; and
 - (ii) is supervised to the extent necessary to minimise the risk to health and safety; and
 - (b) the plant is subject to appropriate checks, tests and inspections that are necessary to minimise the risk to the health and safety of an employee or a contractor of the employer; and
 - (c) the plant is used solely for the purpose for which it was designed; and
 - (d) measures are provided to prevent any unauthorised interference to, or use of, the plant that is capable of making the plant a risk to the health and safety of a relevant person; and
 - (e) if safety features or warning devices are incorporated into the plant, they are used in a proper manner; and
 - (f) a person is not allowed to work between the fixed and traversing parts of the plant if there is a risk to the health and safety of a relevant person; and
 - (g) facilities and systems of work are provided and maintained to minimise the risk to the health and safety of a person who maintains, inspects or cleans the plant; and
 - (h) inspections, maintenance and cleaning are carried out having regard to procedures:

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- (i) recommended for the plant by its designer or manufacturer; or
 - (ii) developed for the plant by a competent person; and
- (i) if access to the plant is required for the purpose of maintenance, cleaning or repair, the plant is stopped and 1 or more of the following items is used to minimise the risk to the health and safety of a relevant person:
 - (i) a lockout or isolation device;
 - (ii) a permit to work system;
 - (iii) another appropriate control measure; and
- (j) if danger tags are used on plant that is stopped for the purpose of maintenance, cleaning or repair, the tags are used in conjunction with 1 of the items referred to in paragraph (i); and
- (k) if it is not reasonably practicable to carry out cleaning or maintenance while the plant is stopped:
 - (i) operational controls that permit controlled movement of the plant are fitted; and
 - (ii) a safe system of work is used; and
- (l) each safety feature or warning device used with the plant is maintained, and tested, on a regular basis.

Penalty: 10 penalty units.

- (2A) It is a defence to a prosecution for an offence against paragraph (2) (c) if the employer determined, and a competent person assessed, that a change in the purpose for which the plant is used does not present an increased risk to the health and safety of a relevant person.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (2A) (see section 13.3 of the *Criminal Code*).

- (3) An employer is not required to comply with paragraph (2) (a) in relation to plant that is intended to be operated by the public in general.
- (4) The employer must ensure that plant at work is not available for use if:
 - (a) the function or condition of the plant is impaired or damaged; and

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- (b) the impairment or damage creates an immediate risk to the health and safety of an employee or a contractor of the employer.

Penalty: 10 penalty units.

- (5) It is a defence to a prosecution for an offence against subregulation (4) if the employer:
 - (a) controlled the risk in accordance with this Division; or
 - (b) repaired the plant in accordance with regulation 4.16.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (5) (see section 13.3 of the *Criminal Code*).

4.16 Repair of plant

If the function or condition of plant at work is impaired or damaged to an extent that increases the risk to the health and safety of a relevant person, the employer must take all reasonably practicable steps to ensure that:

- (a) a competent person assesses the damage and advises the employer of:
 - (i) the nature of the damage; and
 - (ii) whether the plant can be repaired; and
 - (iii) if the plant can be repaired — the repairs that must be carried out to minimise the risk to health and safety; and
- (b) a competent person carries out any repairs, inspection or testing that is required; and
- (c) any repairs to the plant are carried out in a manner that maintains the design limits of the plant.

Penalty: 10 penalty units.

4.17 Storage and disposal of plant

- (1) If plant at work is to be stored, the employer must take all reasonably practicable steps to ensure that a competent person stores the plant in a manner that involves no risk to the health and safety of employees at work.

Penalty: 10 penalty units.

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(2) If plant at work:

- (a) is to be disposed of; and
- (b) contains materials that present a risk to the health and safety of employees at work;

the employer must take all reasonably practicable steps to ensure that the disposal is carried out by a competent person and in a manner that minimises any risk to the health and safety of employees at work.

Penalty: 10 penalty units.

4.18 Training, information, instruction and supervision

Note The effect of regulation 4.03 is that each of the following persons is a **relevant person**:

- (a) an employee;
- (b) a contractor of an employer for the purposes of subsection 16 (4) of the Act;
- (c) any other person at or near a workplace under an employer's control.

(1) If a hazard that relates to plant at work, or a system of work associated with the plant, is identified and assessed to be a risk that must be minimised, the employer must ensure that:

- (a) a relevant person who is likely to be exposed to the risk, and a person supervising that person, are, if relevant, appropriately trained in relation to:
 - (i) the nature of the hazard and the processes used for the identification, assessment and control of any risk; and
 - (ii) the safety procedures associated with the plant; and
 - (iii) the need for, and proper use and maintenance of, control measures; and
 - (iv) the use, fitting, testing and storage of personal protective equipment; and
 - (v) the availability and use of specific information relevant to the plant; and
- (b) the persons referred to in paragraph (a) are, if relevant, provided with information and instruction relating to the matters referred to in that paragraph; and

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- (c) before a person uses the plant, the person is given the information and instruction that is necessary to enable the person to use the plant in a manner that minimises any risk to the health and safety of a relevant person; and
- (d) a person who uses the plant is given the training and supervision that is necessary to enable the person to use the plant in a manner that minimises any risk to the health and safety of a relevant person; and
- (e) relevant health and safety information is provided to a person involved in:
 - (i) the installation, erection or commissioning of the plant; or
 - (ii) the use of the plant; or
 - (iii) the testing of the plant; or
 - (iv) the decommissioning or disposal of the plant; and
- (f) if relevant — information on emergency procedures relating to the plant is displayed in a manner that may be observed readily by a person who is, or is likely to be, affected by the operation of the plant.

Penalty: 10 penalty units.

- (2) An employer is not required to comply with paragraph (1) (d) in relation to a member of the public who uses an amusement structure that is under the employer's control.

4.19 Record keeping

- (1) An employer must ensure that records are made and kept concerning relevant tests, maintenance, inspection and commissioning of plant referred to in subregulation (2) while it is operable at work.

Penalty: 5 penalty units.

- (1A) Strict liability applies to the physical element in subregulation (1) that the plant is the plant referred to subregulation (2).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

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- (2) The following plant is specified for the purposes of subregulation (1):
- (a) plant listed in column 2 of an item in Part 2 of Schedule 6 the design of which must be notified under regulation 4.50;
 - (b) any of the following items of plant:
 - (i) concrete placing units;
 - (ii) industrial lift trucks;
 - (iii) mobile cranes;
 - (iv) hoists, with a platform movement in excess of 2.4 metres, designed to lift people;
 - (v) boom-type elevating work platforms;
 - (vi) presence sensing safeguarding systems;
 - (vii) vehicle hoists;
 - (viii) gantry cranes greater than 5 tonnes, bridge cranes greater than 10 tonnes, or any gantry crane or bridge crane designed to handle molten metal or dangerous goods;
 - (ix) mast climbing work platforms;
 - (c) plant in relation to which records are to be prepared on the basis of a risk assessment carried out in accordance with this Part.
- (3) If a document exists that records the results of a risk assessment in relation to the plant, the employer must ensure that the document is kept for the length of time identified by the employer under subparagraph 4.11 (4) (b) (iii).

Penalty: 5 penalty units.

- (3A) Strict liability applies to the physical element in subregulation (3) that the length of time is the length of time identified by the employer under subparagraph 4.11 (4) (b) (iii).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (4) The employer must give health and safety records concerning the plant to a person who purchases or otherwise acquires the plant from the employer.

Penalty: 10 penalty units.

Note The effect of subsection 22 (1) of the Act is that an employer is taken to have complied with this Division and sections 16 and 17 of the Act if the employer reasonably relied on information relating to the use of the plant supplied by the manufacturer or the supplier of the plant.

- (5) It is a defence to a prosecution for an offence against subregulation (4) if the employer sold the plant for scrap or as spare parts for other plant.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (5) (see section 13.3 of the *Criminal Code*).

Subdivision B Specific duties for control of risk

Notes

1. The duties in regulations 4.20 to 4.29 are additional requirements to those in regulation 4.12.
2. The effect of subsection 5 (3) and section 16 of the Act is that an employer is taken to have control over plant if the plant is used by employees at work or at a workplace under the employer's control.

4.20 Gas cylinders

- (1) An employer must take all reasonably practicable steps to ensure that a gas cylinder at work is inspected in accordance with AS 2030.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element in subregulation (1) that the inspection is in accordance with AS 2030.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) If an employer that operates a gas cylinder test station is given a gas cylinder to be inspected and tested, the employer must take all reasonably practicable steps to ensure that the cylinder is inspected and tested in accordance with AS 2030 and AS 2337.

Penalty: 10 penalty units.

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- (4) Strict liability applies to the physical element in subregulation (3) that the inspection and testing is in accordance with AS 2030 and AS 2337.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (5) If an employer that operates a gas cylinder test station is given a gas cylinder to be filled, the employer must take all reasonably practicable steps to ensure that:
- (a) the cylinder is only filled if it bears a current inspection mark in accordance with AS 2030; and
 - (b) the cylinder is in good condition when being filled; and
 - (c) the cylinder is filled in accordance with AS 2030; and
 - (d) the fluid with which the cylinder is intended to be filled is compatible with the cylinder; and
 - (e) the cylinder is filled in a manner that is not a risk to the health and safety of a relevant person.

Penalty: 10 penalty units.

- (6) Strict liability applies to the physical elements in subregulation (5) that the cylinder bears a current inspection mark, and is filled, in accordance with AS 2030.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (7) In this regulation:

AS 2030 means the standard comprising:

- (a) AS 2030.1-1999 'The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 1: Cylinders for compressed gases other than acetylene'; and
- (b) AS 2030.2-1996 'The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 2: Cylinders for dissolved acetylene'; and
- (c) AS 2030.4-1985 'The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 4: Welded cylinders-insulated'.

AS 2337 means the standard comprising:

- (a) AS 2337.1-1999 'Gas cylinder test stations – Part 1: General requirements, inspections and tests – Gas cylinders'; and
- (b) AS 2337.2-1990 'Gas cylinder test stations – Part 2: LP gas fuel vessels for automotive use'; and
- (c) AS 2337.3-1998 'Gas cylinder test stations – Part 3: Inspection and testing of fibre reinforced plastic gas cylinders'.

4.20A Other equipment under pressure

- (1) If pressure equipment, other than a gas cylinder:
 - (a) is mentioned in AS/NZS 1200:2000 'Pressure equipment'; and
 - (b) is in use at work;the employer must take all reasonably practicable steps to ensure that the equipment is inspected in accordance with AS/NZS 3788:2001 'Pressure equipment — In service Inspection'.
- Penalty: 10 penalty units.
- (2) Strict liability applies to the physical elements in subregulation (1) that:
 - (a) the pressure equipment is mentioned in AS/NZS 1200:2000 'Pressure equipment'; and
 - (b) the inspection is in accordance with AS/NZS 3788:2001 'Pressure equipment – In service Inspection'.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

4.21 Plant with moving parts

- (1) If a risk assessment identifies a risk to health and safety arising from the moving parts of plant used at work, the employer must take all reasonably practicable steps to ensure that:
 - (a) the plant is not cleaned, maintained or repaired while the plant is operating; and

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- (b) if the guarding of a moving part does not completely eliminate the risk of entanglement, a person does not operate, or pass in close proximity to, the plant.

Penalty: 10 penalty units.

- (2) It is a defence to a prosecution for an offence against paragraph (1) (a) if there was no other reasonably practicable approach.
- (3) It is a defence to a prosecution for an offence against paragraph (1) (b) if a safe system of work was introduced, enforced and maintained to minimise the risk of entanglement.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulations (2) and (3) (see section 13.3 of the *Criminal Code*).

4.22 Powered mobile plant — general

- (1) An employer must take all reasonably practicable steps to ensure that powered mobile plant at work is used in a manner that minimises any risk to the health and safety of a relevant person.

Penalty: 10 penalty units.

- (2) Subregulation (3) applies if, after an employer minimises the risk to health and safety relating to powered mobile plant at work:
 - (a) there remains a risk of:
 - (i) an item of powered mobile plant overturning; or
 - (ii) objects falling on the operator of the powered mobile plant; or
 - (iii) the operator of the powered mobile plant being ejected from the seat; and
 - (b) the risk needs to be controlled.
- (3) The employer must take all reasonably practicable steps to ensure that:
 - (a) an appropriate combination of operator protective devices is provided; and

- (b) the devices are appropriately maintained and used.

Penalty: 10 penalty units.

- (4) An employer must take all reasonably practicable steps to ensure that appropriate controls are implemented to eliminate or minimise the risk of that plant colliding with other powered mobile plant.

Penalty: 10 penalty units.

4.22A Powered mobile plant — protective structures and restraining devices

- (1) If a tractor is used at work under a tree, or in any other place, that is too low to allow the tractor to work while it is fitted with a rollover protective structure, the structure may be lowered or removed while the tractor is used in that situation.
- (2) An employer must take all reasonably practicable steps to ensure that:
- (a) a protective structure that is fitted to powered mobile plant at work complies with AS 1636 or AS 2294; or
 - (b) if a protective structure, or an associated structural attachment, of a kind mentioned in paragraph (a) is not available — another protective structure is designed by a suitably qualified engineer in accordance with the following requirements:
 - (i) the performance requirements of AS 2294 must be used as the design criteria for a rollover or falling object protective structure;
 - (ii) the engineer is permitted to use calculated deformations if the engineer is satisfied that deformation testing is not required;
 - (iii) the protective structure must be identified with the information required by AS 2294, as appropriate.

Penalty: 10 penalty units.

- (3) Strict liability applies to the following physical elements:
- (a) in paragraph (2) (a) — that the structure complies with AS 1636 or AS 2294;

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- (b) in subparagraph (2) (b) (i) — that the protective structure is designed in accordance with the performance requirements of AS 2294;
- (c) in subparagraph (2) (b) (iii) — that the information is required by AS 2294.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (4) An employer must take all reasonably practicable steps to ensure that, to minimise any risk to the health and safety of employees at work, powered mobile plant used by those employees is fitted with suitable operator restraining devices if:
 - (a) the plant is fitted with a rollover protective structure or a falling object protective structure; and
 - (b) attaching points for operator restraining devices have been incorporated in the original design of the plant.

Penalty: 10 penalty units.

- (5) In this regulation:

AS 1636 means the standard comprising:

- (a) AS 1636.1-1996 'Tractors — Roll over protective structures — Criterion and tests — Part 1: Conventional tractors'; and
- (b) AS 1636.2-1996 'Tractors — Roll over protective structures — Criterion and tests — Part 2: Rear mounted for narrow-track tractors'; and
- (c) AS 1636.3-1996 'Tractors — Roll over protective structures — Criterion and tests — Part 3: Mid-mounted for narrow-track tractors'.

AS 2294 means the standard comprising:

- (a) AS 2294.1-1997 'Earthmoving Machinery — Protective Structures — Part 1: General'; and
- (b) AS 2294.2-1997 'Earthmoving Machinery — Protective Structures — Part 2: Laboratory tests and performance requirements for roll-over protective structures'; and
- (c) AS 2294.3-1997 'Earthmoving Machinery — Protective Structures — Part 3: Laboratory tests and performance requirements for falling-object protective structures'; and

- (d) AS 2294.4-1997 'Earthmoving Machinery — Protective Structures — Part 4: Specifications for deflection-limiting volume'.

4.23 Plant with hot or cold parts

An employer must take all reasonably practicable steps to ensure that:

- (a) if a relevant person is exposed to the hot or cold parts of plant — the exposure is monitored and suitably managed to minimise any risk to the health and safety of the relevant person; and
- (b) if molten metal is transported at work — arrangements are made to prevent access to the path along which it is transported while the transportation occurs; and
- (c) pipes and other parts of plant that are associated with hot or cold plant at work are adequately guarded or insulated to minimise any risk to the health and safety of a relevant person.

Penalty: 10 penalty units.

4.24 Electrical plant and plant that is exposed to electrical hazards

- (1) An employer must take all reasonably practicable steps to minimise any risk from the use of plant at work to the health and safety of a relevant person and, in particular, to ensure that:
 - (a) if damage to plant at work has created an electrical hazard:
 - (i) the plant is disconnected from the electricity supply; and
 - (ii) the plant is not used until the damaged part is repaired or replaced; and
 - (b) plant at work is not used under conditions that are likely to give rise to electrical hazards; and
 - (c) if plant at work has been isolated, but not physically disconnected, from an electrical supply, appropriate work systems are provided to avoid accidentally energising the plant; and

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- (d) only a competent person is permitted to carry out electrical work on plant at work; and
- (e) if excavations are to be carried out, all relevant available information relating to the position of underground cables is obtained; and
- (f) if plant at work is operated near overhead electrical power lines, control options for the plant comply with the requirements of the relevant electrical supply authority, as in force on 31 March 1995.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element in paragraph (1) (f) that the requirements are those of the relevant electrical supply authority, as in force on 31 March 1995.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

4.25 Plant designed to lift or move

- (1) An employer must take all reasonably practicable steps to minimise any risk to the health and safety of a relevant person from plant at work that is designed to lift or move people, equipment or materials, and, in particular, to ensure that:
 - (a) no load is suspended over, or travels over, a relevant person; and
 - (b) for plant that is not specifically designed for the lifting or suspending of individuals — individuals are not lifted or suspended by the plant, or an attachment to the plant; and
 - (c) if the plant is used for lifting or moving a load that may become unstable, the load is appropriately restrained; and
 - (d) a crane or hoist is not used as an amusement structure; and
 - (e) a crane, hoist or building maintenance unit is operated and maintained to minimise any risk to health and safety, having regard to instructions:
 - (i) recommended for the plant by its designer or manufacturer; or
 - (ii) developed for the plant by a competent person; and
 - (f) for plant other than a crane or hoist — the plant is not used to suspend a load; and

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- (g) no load is lifted simultaneously by more than one item of plant; and
- (h) for an industrial lift truck — the truck is:
 - (i) fitted with a warning device that effectively warns individuals who are at risk from the movement of the truck; and
 - (ii) used in a way that minimises the exposure of the operator to risks arising from work practices or systems, and
 - (iii) used in a way that minimises the exposure of the operator to risks arising from the particular environment in which the truck is used; and
 - (iv) equipped with suitable lifting attachments specifically designed for the load to be lifted or moved; and
- (i) for an industrial life truck or tractor — no individual other than the operator is permitted to ride on the truck or tractor.

Penalty: 10 penalty units.

- (2) It is a defence to a prosecution for an offence against paragraph (1) (b) if:
 - (a) the use of another method was not practicable; and
 - (b) a suitable and adequate personnel box or carrier, designed for the purpose, was used and securely attached to the plant; and
 - (c) the plant was fitted with a means by which the personnel box or carrier may be safely lowered in the event of an emergency or the failure of the power supply; and
 - (d) the plant was suitably stabilised at all times while the personnel box or carrier is in use; and
 - (e) a suitable safety harness, securely attached to a suitable point, was provided to and worn by all individuals who are in a suspended personnel box or carrier, unless the personnel box or carrier is fully enclosed.
- (3) It is a defence to a prosecution for an offence against paragraph (1) (f) if:
 - (a) the use of a crane or hoist was not practicable; and

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- (b) the load was only travelled with the lifting arm of the plant fully retracted; and
 - (c) stabilisers were provided and used where necessary to achieve stability of the plant; and
 - (d) relevant persons were not permitted to be under the load; and
 - (e) a welded lug was used as the lifting point; and
 - (f) if a bucket operated by a trip-type catch was used — the catch was bolted or otherwise positively engaged; and
 - (g) an appropriate load chart was provided and all lifting was carried out within the safe working load limits of the plant; and
 - (h) safe working load limits were displayed clearly on the plant; and
 - (i) a load was lifted using attachments suitable to the task to be performed.
- (4) It is a defence to a prosecution against paragraph (1) (i) if:
- (a) the individual was seated in a seat specifically designed for carrying a passenger; and
 - (b) the seat was fitted with suitable seat restraints; and
 - (c) the seat was located within the area protected by the required operator protective devices.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulations (2), (3) and (4) (see section 13.3 of the *Criminal Code*).

4.26 Industrial robots and other remotely or automatically energised equipment

- (1) An employer must take all reasonably practicable steps to ensure that an employee is not permitted to work in the immediate vicinity of an industrial robot or other remotely or automatically energised equipment.

Penalty: 10 penalty units.

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- (1A) It is a defence to a prosecution for an offence against subregulation (1) if suitable controls and systems of work were in place for the control of risk in relation to the robot or equipment.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (1A) (see section 13.3 of the *Criminal Code*).

- (2) If an industrial robot at work can be remotely or automatically energised to create a risk to the health and safety of a relevant person, the employer must take all reasonably practicable steps to ensure that:
- (a) access to the area immediately surrounding the robot is restricted; and
 - (b) access to that area is controlled by:
 - (i) the isolation of the area; or
 - (ii) the provision of interlocked guards; or
 - (iii) the use of presence sensing devices; and
 - (c) suitable systems requiring a specific permit to commence any work in the area are maintained.

Penalty: 10 penalty units.

4.27 Lasers and laser products

- (1) An employer must take all reasonably practicable steps to ensure that:
- (a) a laser or laser product is not operated at work if it has not been classified and labelled in accordance AS/NZS 2211; and
 - (b) a Class 3B or Class 4 laser or laser product, within the meaning of AS/NZS 2211, is not used at work in a building or construction operation; and
 - (c) the use of a laser or laser product at work in a building or construction operation, other than a laser or laser product mentioned in paragraph (b), is in accordance with AS 2397-1993 'Safe Use of lasers in the building and construction industry'.

Penalty: 10 penalty units.

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- (2) Strict liability applies to the following physical elements:
- (a) in paragraph (1) (a) — that the laser or laser product has been classified and labelled in accordance with AS/NZS 2211;
 - (b) in paragraph (1) (b) — that the laser or laser product is for the purposes of AS/NZS 2211;
 - (c) in paragraph (1) (c) — that the use of the laser or laser product is in accordance with AS 2397-1993 ‘Safe Use of lasers in the building and construction industry’.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) In this regulation:

AS/NZS 2211 means AS/NZS 2211.1:2004 ‘Safety of laser products — Equipment classification, requirements and user’s guide’.

4.28 Scaffolds

- (1) An employer must take all reasonably practicable steps to ensure that no work is carried out from:
- (a) a suspended scaffold; or
 - (b) a cantilevered scaffold; or
 - (c) a spur scaffold; or
 - (d) a hung scaffold; or
 - (e) another scaffold from which a person or an object could fall more than four metres.

Penalty: 10 penalty units.

- (1A) It is a defence to a prosecution for an offence against subregulation (1) if the employer obtained written confirmation from a competent person that the scaffold, or the relevant part or portion of the scaffold, is complete.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (1A) (see section 13.3 of the *Criminal Code*).

- (2) If a scaffold of a kind referred to in subregulation (1) is used at work, the employer must take all reasonably practicable steps to ensure that the scaffold, and its supporting structure, are inspected by a competent person, to determine whether they comply with these Regulations:
- (a) before the scaffold is used for the first time; and
 - (b) after the scaffold is used for the first time — at intervals not exceeding 30 days; and
 - (c) if an event occurs that can reasonably be expected to affect the stability or adequacy of the scaffold (for example, severe storm conditions or an earthquake):
 - (i) as soon as practicable after the event occurs; and
 - (ii) before the scaffold is used again; and
 - (d) before the scaffold is used for the first time following repairs.

Penalty: 10 penalty units.

- (2A) Strict liability applies to the physical element in subregulation (2) that the scaffold is of a kind referred to in subregulation (1).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) If any scaffold, or its supporting structure, used at work:
- (a) is inspected; and
 - (b) is found to be in an unsafe condition;
- the employer must take all reasonably practicable steps to ensure that suitable repairs, alterations and additions (as required) are carried out before the scaffold is used again.

Penalty: 10 penalty units.

- (4) If any scaffold used at work is incomplete, and left unattended, the employer must take all reasonably practicable steps to ensure that suitable controls are used (including the use of danger tags or warning signs) to prevent unauthorised access to the scaffold.

Penalty: 10 penalty units.

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4.29 Amusement rides

If an amusement ride is used at work, the employer must take all reasonably practicable steps to ensure that:

- (a) the ride is operated in a manner that minimises the risk to the health and safety of a relevant person, having regard to instructions:
 - (i) recommended for the ride by its designer or manufacturer; or
 - (ii) developed for the ride by a competent person; and
- (b) records relating to the ride are kept in accordance with instructions:
 - (i) recommended for the ride by its designer or manufacturer; or
 - (ii) developed for the ride by a competent person.

Penalty: 10 penalty units.

Notes

- 1. **Amusement ride** is described in the definition of **amusement structure** in subregulation 20.01 (1).
- 2. The effect of subsection 22 (1) of the Act is that an employer is taken to have taken all reasonably practicable steps to control risks in relation to plant under the employer's control if:
 - (a) the employer has taken all reasonably practicable steps to ensure that the use of the plant was in accordance with the information supplied by the manufacturer or the supplier of the plant, relating to health and safety in the use of the plant; and
 - (b) it is reasonable for the employer to rely on that information.

Division 6 Duties of an employee

4.30 Duties

- (1) An employee at work must take all reasonably practicable steps to:
 - (a) comply with any requirement relating to plant implemented in accordance with this Part; and

Regulation 4.31

- Penalty: 10 penalty units.

- Note* For **strict liability**, see section 6.1 of the *Criminal Code*.

Division 7 General requirements for hazard identification, risk assessment and risk control

4.31 Hazard identification

- Penalty: 10 penalty units.

- (b) the actual and intended use of the plant;
- (c) the environmental conditions and terrain in which the plant may be used;
- (d) any foreseeable abnormal situation, misuse or change in operating conditions that may affect the plant;
- (e) the potential for injury caused by entanglement, crushing, trapping, cutting, stabbing, puncturing, shearing, abrasion, tearing or stretching;
- (f) the creation of hazardous conditions because of the pressurised contents of the plant, electricity, noise,

Regulation 4.32

- radiation, friction, vibration, fire, explosion, temperature, moisture, vapour, gas, dust, ice or hot or cold parts;
- (g) the failure of the plant involving the loss of the contents of the plant, the loss of a load, unintended ejection of workpieces, explosion, fragmentation or the collapse of parts;
 - (h) the capability of the plant to lift and move persons, equipment or materials, including the suitability of any secondary backup system to support the load being lifted or moved;
 - (i) any control systems relating to the plant, including, for example, guarding and communications systems;
 - (j) the potential for objects to fall;
 - (k) the potential for the plant to roll over;
 - (l) the suitability of the materials used for the plant;
 - (m) the suitability and condition of accessories used for the plant;
 - (n) any ergonomic requirements relating to the installation and use of the plant;
 - (o) the possibility that a task may need to be carried out without the use of the plant;
 - (p) the location of the plant and its effect on the design or layout of a place at which work is carried out;
 - (q) the suitability and stability of the plant and its supports;
 - (r) the presence of persons and other plant in the vicinity of the plant;
 - (s) the potential for inadvertent movement or operation of the plant;
 - (t) systems of work associated with the plant;
 - (u) the need for, and the adequacy of, access and egress associated with the plant;
 - (v) the competency of an operator of the plant.

4.32 Risk assessment

A person who is required to assess a risk arising from a hazard to health and safety must:

Regulation 4.33

- (a) determine a method of assessment that adequately addresses the hazards identified; and
- (b) carry out one or more of the following activities:
 - (i) a visual inspection of the plant and its associated environment;
 - (ii) an audit of the consequences of the hazard;
 - (iii) a test of the plant;
 - (iv) a technical or scientific evaluation of the plant;
 - (v) a technical or scientific evaluation of the hazard;
 - (vi) an analysis of data relating to injuries and near misses;
 - (vii) discussions with persons involved in the design, manufacture, supply, and importation of plant, and employers, employees, contractors or other relevant parties;
 - (viii) a quantitative hazard analysis.

Penalty: 10 penalty units.

4.33 Risk control

- (1) If a risk assessment identifies a requirement to control a risk to health and safety relating to plant, the person who is required to control the risk must take all reasonably practicable steps to eliminate or minimise the risk.

Penalty: 10 penalty units.

- (2) For the purpose of subregulation (1), one or more of the following controls may be implemented:
 - (a) the substitution of plant or a part of plant;
 - (b) the isolation of the plant;
 - (c) the modification of a design or a guarding device;
 - (d) the design and implementation of appropriate guarding devices.
- (3) If the controls implemented under subregulation (2) do not eliminate or minimise the risk, the person must take all reasonably practicable steps to apply administrative controls, including the introduction of safe working practices.

Regulation 4.34

- (4) Until the controls implemented under subregulation (2) and the administrative controls (if any) applied under subregulation (3) eliminate or minimise the risk, the person must give employees and contractors appropriate personal protective equipment to use at work.

Note Regulations 4.34 to 4.38 apply in addition to the requirements in regulation 4.33.

4.34 Access and egress

- (1) A person who is required to control a risk relating to plant must take all reasonably practicable steps to ensure that there is sufficient access and egress to:
- (a) parts of plant that require cleaning and maintenance; and
 - (b) the workstation of the operator of the plant.

Penalty: 10 penalty units.

- (2) If:
- (a) access to plant at work is required as part of its normal operation; and
 - (b) a person accessing the plant may be trapped and exposed to an increased risk caused by heat, cold or a lack of oxygen;

the person who is required to control the risk must take all reasonably practicable steps to ensure that emergency lighting, safety doors and alarm systems are provided for use with the plant.

Penalty: 10 penalty units.

4.35 Dangerous parts

If a risk assessment identifies a risk of exposure to a dangerous part during:

- (a) the operation of plant at work; or
- (b) the examination of plant at work; or
- (c) the lubrication of plant at work; or
- (d) the adjustment of plant at work; or

- (e) the maintenance of plant at work;
the person who is required to control the risk must take all reasonably practicable steps to ensure that:
- (f) the risk is eliminated; or
- (g) if it is not reasonably practicable to eliminate the risk — the risk is minimised.

- (1) If guarding is used as a control measure in relation to plant at work, the person who is required to control the relevant risk must take all reasonably practicable steps to ensure that the guard provided for the plant is:
 - (a) if no person requires access to the area to be guarded during the normal operation, maintenance or cleaning of the plant — a permanently fixed physical barrier; or
 - (b) if a person requires access to the area to be guarded during the normal operation of the plant — an interlocked physical barrier; or
 - (c) if compliance with paragraph (a) or (b) is not practicable — a physical barrier that:
 - (i) is securely fixed in position by a fastener or another suitable device; and
 - (ii) ensures that the guard cannot be altered or detached without using a tool or a key; or
 - (d) if the provision of a barrier described in paragraph (a), (b) or (c) is not practicable — a presence sensing safeguarding system.

- (2) A guard provided in accordance with subregulation (1) must be:
 - (a) designed in a manner that does not create a risk to the health and safety of a relevant person; and
 - (b) designed and constructed to make by-passing it or defeating it, deliberately or by accident, as difficult as is reasonably possible; and
 - (c) of solid construction; and

Regulation 4.37

- (d) securely mounted to enable it to resist impact and shock; and
 - (e) regularly maintained.
- (3) If:
 - (a) a part of plant used at work is designed to move at high speed; and
 - (b) either:
 - (i) the part may break or disintegrate; or
 - (ii) a workpiece may be ejected from the plant;a guard that is provided in accordance with subregulation (1) must be adequate to effectively contain the fragments or the workpiece.
- (4) If the risk of jamming or blockage of moving parts of plant at work cannot be eliminated, the person must take all reasonably practicable steps to ensure that:
 - (a) work procedures are implemented to ensure that the plant can be cleared in a manner that minimises the risk; and
 - (b) devices and tools are available for use by employees to ensure that the plant can be cleared in a manner that minimises the risk to the health and safety of the employees.

Penalty: 10 penalty units.

4.37 Operational controls of plant

- (1) A person who is required to control a risk relating to plant must take all reasonably practicable steps to ensure that the operational controls of the plant are:
 - (a) suitably identified on plant in a manner that shows the nature and function of the controls; and
 - (b) able to be readily and conveniently operated by each person operating the plant; and
 - (c) located or guarded in a manner that prevents the unintentional activation of the plant; and

Regulation 4.38

- Penalty: 10 penalty units.

- Penalty: 10 penalty units.

- Penalty: 10 penalty units.

4.38 Emergency stops and warning devices

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-
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Regulation 4.39

- (e) is of a kind the operation of which cannot be affected by an electrical malfunction or the malfunction of an electronic circuit.
- (2) If a risk assessment identifies a need to have an emergency warning device fitted to plant, a person who is required to control a risk must take all reasonably practicable steps to ensure that the device is installed in a position that enables its purpose to be achieved easily and effectively.

Division 8 Licence to operate plant

4.39 Definition for Division 8

In this Division:

relevant employing authority, in relation to an employer seeking an exemption under regulation 4.40A, means:

- (a) if the employer is the Commonwealth — the employing authority that wishes to seek the exemption; or
- (b) if the employer is a Commonwealth authority — that Commonwealth authority.

Note The term *employing authority* is defined in subsection 5 (1) of the Act. See also section 10 of the Act in relation to employing authority.

Subdivision A General licence requirements

4.40 Licence to operate certain plant

- (1) Subject to subregulation (2), an employer must not use plant at work, or allow plant to be used, if:
 - (a) the plant:
 - (i) is to be operated at work; and
 - (ii) is specified in column 2 of an item in Part 2 of Schedule 6; and
 - (b) the employer is not:
 - (i) licensed to operate the plant; or

Regulation 4.40A

- (ii) exempted under paragraph 4.40A (4) (a) or regulation 4.40D.

Penalty: 10 penalty units.

- (1A) Strict liability applies in subregulation (1) to the following physical elements:

- (a) in subparagraph (1) (a) (ii) — that the plant is specified in column 2 of an item in Part 2 of Schedule 6;
- (b) in subparagraph (1) (b) (ii) — that the employer is not exempted under paragraph 4.40A (4) (a) or regulation 4.40D.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) Subregulation (1) applies to an employer on and after 1 January 1997.

4.40A Exemption from licensing — exemption by Commission

- (1) Regulation 4.40 does not apply to an employer if the Commission exempts the employer from the application of the regulation.
- (2) The Commission may only exempt an employer in accordance with this Regulation and regulations 4.40B and 4.40C.
- (3) An employer that wants an exemption must:
 - (a) apply to the Commission in writing, using the application form (if any) approved by the Commission; and
 - (b) include with the application evidence that:
 - (i) the employer is required, by a law of a State or Territory, to be licensed to operate the plant; and
 - (ii) the employer holds the appropriate licence under the law.
- (4) On receipt of an application, the Commission may, in writing:
 - (a) give the employer the exemption; or
 - (b) refuse to give the exemption; or

Regulation 4.40B

- (c) ask the employer to give it, through the relevant employing authority, further information relating to the application.
- (5) Before giving an employer an exemption, the Commission must be satisfied that:
 - (a) the employer is required, by a law of a State or Territory, to be licensed to operate the plant; and
 - (b) the law imposes requirements that are substantially the same as those in this Part; and
 - (c) the employer holds the appropriate licence under the law; and
 - (d) there are no circumstances suggesting that granting the exemption would be inconsistent with the objects of this Part.
- (6) If the Commission refuses to give an exemption, it must give the employer a written notice setting out the reasons for the refusal.

4.40B Conditions of an exemption

- (1) An exemption given under paragraph 4.40A (4) (a) is subject to the conditions (if any) that the Commission states in the exemption.
- (2) The Commission may only impose conditions to promote the objects of this Part.
- (3) The Commission may:
 - (a) add a condition to an exemption, or vary a condition, to promote the objects of this Part; or
 - (b) revoke a condition.
- (4) If the Commission adds, varies or revokes a condition, it must give the employer that holds the exemption a written notice setting out:
 - (a) the terms of the decision; and
 - (b) the time when it commences.

4.40C Operation of an exemption

- (1) An exemption given under paragraph 4.40A (4) (a) commences on:
 - (a) the day on which it is granted; or
 - (b) a later date stated in the exemption.
- (2) The Commission must cancel an exemption if:
 - (a) it is satisfied that the employer is no longer required, by a law of a State or Territory, to be licensed to operate the plant; or
 - (b) it is satisfied that the law no longer imposes requirements that are substantially the same as those in this Part; or
 - (c) it is satisfied that the employer no longer holds the appropriate licence under the law; or
 - (d) it is satisfied that continuing the exemption would be inconsistent with the objects of this Part; or
 - (e) the employer that holds the exemption asks the Commission to cancel it.
- (3) The Commission is not required to consult the employer that holds an exemption before cancelling it.
- (4) If the Commission cancels an exemption under paragraph (2) (a), (b), (c) or (d), it must give the employer a written notice setting out:
 - (a) the reasons for cancelling it; and
 - (b) the time from which it is cancelled.
- (5) An exemption ceases on the earlier of:
 - (a) the end of the day (if any) stated in the exemption as the day when it ceases; and
 - (b) the time (if any) when it is cancelled.

4.40D Exemption from licensing — hire of plant for less than 12 months

Regulation 4.40 does not apply to an employer in relation to an item of plant if:

Regulation 4.41

- (a) the item is hired by the employer for less than 12 months; and
- (b) for an item of plant mentioned in regulation 4.07A — the employer obtains from the supplier of the item evidence that:
 - (i) the item, and the design for that type of plant, are registered under a law of the State or Territory in which the supplier operates; and
 - (ii) the item will continue to be registered under the law of the State or Territory for the period of hire; and
 - (iii) the item complies with the requirements of the law of the State or Territory; and
 - (iv) the item has been inspected and maintained in accordance with the requirements of the law of the State or Territory; and
- (c) before hiring the item, the employer inspected the item.

4.41 Application for a licence

- (1) An employer that wishes to operate plant referred to in subregulation 4.40 (1) must apply to the Commission for a licence to operate the plant.
- (2) The application must:
 - (a) be in writing, using the form (if any) approved by the Commission; and
 - (b) include:
 - (i) sufficient information to identify clearly the item or items of plant; and
 - (ii) if the design of any of the plant requires registration under regulation 4.49 — a notification of the design registration number of the plant; and
 - (iii) a statement that each item of plant has been inspected by a competent person and is safe to operate.

4.42 Application for renewal of a licence

- (1) An employer to whom a licence is granted under regulation 4.43 may apply for a renewal of the licence.
- (2) An application under subregulation (1) must:
 - (a) be made before the licence expires; and
 - (b) be in writing, using the form (if any) approved by the Commission; and
 - (c) include a statement to the effect that each item of plant mentioned in the licence has been maintained in a safe condition and is safe to operate.

4.43 Grant and renewal of a licence

- (1) On receipt of an application made in accordance with regulation 4.41, the Commission:
 - (a) must consider the application; and
 - (b) must:
 - (i) grant a licence to the employer, in the name of the employing authority; or
 - (ii) refuse to grant a licence; or
 - (iii) ask the employer to give it additional information that is necessary to assist the Commission to decide whether or not to grant a licence to operate an item of plant; and
 - (c) must notify the employer of the Commission's decision as soon as practicable, but not later than 14 days, after making it.

Note The effect of section 10 of the Act is that an employer is required to act through the employing authority. **Employing authority** is defined in section 5 of the Act and in regulations 4 and 4A of the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*.

- (2) On receipt of an application made in accordance with regulation 4.42, the Commission:
 - (a) must consider the application; and
 - (b) must:
 - (i) renew the licence; or
 - (ii) refuse to renew the licence; or

Regulation 4.43

- (iii) ask the employer to give it additional information that is necessary to assist the Commission to decide whether or not to renew the licence to operate an item of plant; and
 - (c) must notify the employer of the Commission's decision as soon as practicable, but not later than 14 days, after making it.
- (3) If the Commission asks an employer to give the Commission information:
 - (a) the employer must give the information to the Commission within the time specified by the Commission; and
 - (b) in deciding to grant or renew, or to refuse to grant or renew, the licence, the Commission must consider the information.
- (4) A notice under paragraph (1) (c) in relation to the grant of a licence must set out the following:
 - (a) the items of plant that the employing authority is licensed to operate;
 - (b) the employer who applied for the licence;
 - (c) the date that the licence comes into force;
 - (d) the period for which the licence is in force;
 - (e) the conditions to which the licence is subject under subregulation 4.45 (1);
 - (f) the amount of the licence fee to be paid, and the date by which the fee must be paid.

Note Regulation 4.44 provides that a licence comes into force on the day it is granted.

- (5) A notice under paragraph (2) (c) in relation to the renewal of a licence must set out the following:
 - (a) the items of plant that the employing authority is licensed to operate;
 - (b) the employer who applied for the licence;
 - (c) the date that the renewal of the licence comes into force;
 - (d) the period for which the licence is in force;

Regulation 4.46

- (2) An employer must not contravene a condition to which the licence is subject.
- (3) If an employer contravenes a condition to which the licence is subject, the Commission may, by written notice given to the relevant employing authority:
 - (a) cancel the licence; or
 - (b) suspend the licence for a period not exceeding 12 months; or
 - (c) vary the conditions of the licence.
- (4) The notice must include the reasons for the Commission's decision.

4.46 Variation of licence

- (1) This regulation applies if:
 - (a) the name of the employing authority that is licensed to operate plant is changed; or
 - (b) plant that an employing authority is licensed to operate is altered; or
 - (c) for plant that is normally fixed in one location — the plant is relocated; or
 - (d) for mobile plant — the depot or other place at which the plant may be found is changed; or
 - (e) plant is decommissioned or disposed of.
- (2) The employer must, no later than 21 days after becoming aware of an event mentioned in subregulation (1):
 - (a) apply to the Commission in writing, using the form (if any) approved by the Commission, for a variation of the licence relating to that plant; and
 - (b) if paragraph (1) (d) applies — return the licence to the Commission.

Penalty: 10 penalty units.

- (3) On receipt of an application made under subregulation (2), the Commission:
 - (a) must consider the application; and

Regulation 4.47

- (b) must:
 - (i) vary the licence to reflect the event mentioned in the application; or
 - (ii) refuse to vary the licence; or
 - (iii) ask the employer to give it additional information that is necessary to assist the Commission to decide whether or not to vary the licence; and
 - (c) must notify the employer of the Commission's decision as soon as practicable, but not later than 14 days, after making it.
- (4) If the Commission asks the employer to give it information:
 - (a) the employer must give the information to the Commission within the time specified by the Commission; and
 - (b) in deciding to vary, or refuse to vary, the licence, the Commission must consider the information.
 - (5) A notice under paragraph (3) (c) in relation to a variation of a licence must set out the following:
 - (a) the items of plant that the employing authority is licensed to operate;
 - (b) the amount of the fee to be paid, and the date by which the fee must be paid.
 - (6) For paragraph (5) (b), the amount of the licence fee is the amount that the Commission estimates to be the cost of varying the licence.
 - (7) A notice under paragraph (3) (c) in relation to a refusal to vary a licence must set out the reasons for the refusal.

4.47 Notification of compliance with maintenance requirement for plant other than tower cranes

- (1) This regulation applies to an employer that is licensed to operate an item of plant mentioned in Part 2 of Schedule 6, other than a tower crane.

Regulation 4.48

- (2) For each period of 12 months that the employer is licensed to operate the item, the employer must give the Commission a notice to the effect that the employer has carried out the inspections, checks, tests, maintenance and cleaning required under paragraph 4.15 (2) (h) for the item.

Note Subregulation 4.15 (1) requires an employer to take all reasonably practicable steps to ensure that a risk to the health and safety of a relevant person arising from plant used by employees at work, or the associated systems of work, under the employer's control is eliminated or, if it is not reasonably practicable to eliminate the risk, minimised in accordance with Division 7. Paragraph 4.15 (2) (h) requires an employer to take all reasonably practicable steps to ensure that inspections, maintenance and cleaning are carried out having regard to procedures recommended for the plant by its designer or manufacturer, or developed for the plant by a competent person.

- (3) A notice for an item under subregulation (2):
- (a) must be given using the form (if any) approved by the Commission; and
 - (b) must be given to the Commission as soon as practicable after the end of the period to which it relates; and
 - (c) must include:
 - (i) the employer's licence number; and
 - (ii) a statement to the effect that the item has been maintained in a safe condition and is safe to operate.

4.48 Notification of compliance with maintenance requirement for tower cranes

- (1) This regulation applies to an employer that is licensed to operate a tower crane.
- (2) For each period of 36 months that the employer is licensed to operate the tower crane, the employer must give the Commission a notice to the effect that the employer has carried out the inspections, checks, tests, maintenance and cleaning required under paragraph 4.15 (2) (h) for the tower crane.

Regulation 4.50

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in paragraph (1) (a) that the plant is specified in column 2 of an item in Part 1 of Schedule 6.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) This regulation does not apply to an employer in relation to an item of plant if:
- (a) the item is mentioned in Part 2 of Schedule 6; and
 - (b) the item is hired by the employer for less than 12 months; and
 - (c) the employer obtains from the supplier of the item evidence that the design for that type of plant is registered under a law of the State or Territory in which the supplier operates.

4.50 Notification of plant design

- (1) If an employer has registered a plant design with an authority administering a law of a State or Territory that corresponds to the Act or these Regulations, the employer must notify the Commission of that registration, using the form (if any) approved by the Commission.

Penalty: 5 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

4.51 Application for registration

- (1) An employer may apply to the Commission, in the name of the relevant employing authority, for the registration of the design of plant that is specified in column 2 of an item in Part 1 of Schedule 6.
- (2) The employer is not required to apply to the Commission if the plant design has been registered by a person administering a law of a State or Territory that corresponds to the Act or these Regulations.

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Regulation 4.52

4.52 Registration of plant design

- (1) On receipt of an application for the registration of a plant design, the Commission may:
 - (a) register the design; or
 - (b) refuse to register the design; or
 - (c) ask the employer to give it, through the relevant employing authority, any of the following information:
 - (i) detailed drawings of the plant design;
 - (ii) calculations made for the purposes of the design;
 - (iii) details of operating instructions;
 - (iv) diagrams of the control systems associated with the plant, including the sequence for operating the controls;
 - (v) details of maintenance requirements for the plant;
 - (vi) a statement of limitations of the use of the plant.
- (2) If the Commission registers a plant design, it must:
 - (a) give the employer a written notice stating that the Commission has registered the design; and
 - (b) set out, in writing at the time of registration, the conditions to which the registration is subject, including any variations to an existing licence to operate certain plant; and
 - (c) give the employer, as soon as practicable after registering the design:
 - (i) a copy of the conditions to which the registration is subject; and
 - (ii) a design registration number for the design.
- (3) If the Commission refuses to register a design, the Commission must give the employer a written notice setting out the reasons for the refusal.
- (4) If the Commission asks an employer under paragraph (1) (c) to give it information, the Commission must not register, or refuse to register, the plant design until it has received the information.

4.53 Conditions for registration of plant design

- (1) The registration of the design of plant is subject to the following conditions:
 - (a) the employer must comply with the requirements of this Division;
 - (b) the employer must ensure that evidence of the design registration is displayed on or near the plant to which the design registration relates;
 - (c) the employer must give the design registration number referred to in subparagraph 4.52 (2) (c) (ii) to any person who deals with the employer in relation to the plant;
 - (d) any other conditions determined by the Commission, and set out in the registration, for the purpose of:
 - (i) protecting the health and safety of relevant persons; or
 - (ii) assisting the administration of this Division.
- (2) The employer must not contravene a condition to which the registration is subject.
- (3) If the employer contravenes a condition to which the registration is subject, the Commission may, by written notice given to the relevant employing authority, vary the conditions of the design registration given to the employing authority.
- (4) A notice under subregulation (3) must include the reasons for the Commission's decision.

4.54 Alteration of plant design

An employer must not use plant, or allow employees to use plant, if:

- (a) the design of the plant has been registered by:
 - (i) the Commission; or
 - (ii) a person administering a law of a State or Territory that corresponds to the Act or these Regulations; and
- (b) the design is subsequently altered by an employer in control of the plant; and

Regulation 4.55

- (c) the employer has not notified the design of the plant, as altered, to the Commission.

Penalty: 10 penalty units.

Subdivision B Special licences

4.55 Definitions for Subdivision B

In this Subdivision:

licensee means the defence employing authority, as the holder of a special licence.

special licence means a licence granted under subregulation 4.58 (1) or renewed under subregulation 4.58 (2).

4.55A Exemption — Australian Defence Organisation

Regulations 4.41 to 4.54 (inclusive) do not apply to the Australian Defence Organisation if the defence employing authority holds a special licence.

4.56 Application for a special licence

- (1) If the Australian Defence Organisation wishes to operate plant mentioned in Part 2 of Schedule 6, the Australian Defence Organisation may apply for a special licence.
- (2) Before the Australian Defence Organisation makes an application under subregulation (1), the Australian Defence Organisation must consult with:
 - (a) the employees of the Australian Defence Organisation; and
 - (b) at the request of an employee — an employee representative.
- (3) The application must:
 - (a) be in writing, using the form (if any) approved by the Commission; and
 - (b) include:
 - (i) a list of each type of plant to be licensed; and

Regulation 4.58

4.58 Grant and renewal of a special licence

- (1) On receipt of an application made in accordance with regulation 4.56, the Commission:
 - (a) must consider the application; and
 - (b) must:
 - (i) grant a licence to the Australian Defence Organisation, in the name of the defence employing authority; or
 - (ii) refuse to grant a special licence; or
 - (iii) ask the defence employing authority to give it additional information that is necessary to assist the Commission to decide whether or not to grant a special licence to operate plant; and
 - (c) must notify the defence employing authority of the Commission's decision as soon as practicable, but not later than 14 days, after making it.
- (2) On receipt of an application made in accordance with regulation 4.57, the Commission:
 - (a) must consider the application; and
 - (b) must:
 - (i) renew a special licence granted to the licensee under subregulation (1); or
 - (ii) refuse to renew the special licence; or
 - (iii) ask the defence employing authority to give it additional information that is necessary to assist the Commission to decide whether or not to renew the special licence to operate plant; and
 - (c) must notify the defence employing authority of the Commission's decision as soon as practicable, but not later than 14 days, after making it.
- (3) If the Commission asks the defence employing authority to give it information:
 - (a) the defence employing authority must give the information to the Commission within the time specified by the Commission; and

Regulation 4.58

- Occupational Health and Safety (Safety Standards)
-
- Regulations 1994

Regulation 4.59

- (9) If the defence employing authority receives a notice from the Commission under paragraph (1) (c) or (2) (c) in relation to a refusal to grant or to renew a special licence, the defence employing authority may:
- (a) apply again for a special licence or for renewal of a special licence; or
 - (b) apply for a licence under subregulation 4.41 (1).

4.59 Commencement of a special licence

A special licence granted under paragraph 4.58 (1) (a) comes into force on:

- (a) the day on which it is granted; or
- (b) a later date determined by the Commission and stated in the special licence.

4.60 Conditions of a special licence

- (1) A special licence granted under subregulation 4.58 (1), renewed under subregulation 4.58 (2) or varied under regulation 4.62 is subject to the following conditions:
- (a) the Australian Defence Organisation must comply with regulation 4.60A;
 - (b) the Australian Defence Organisation must establish and maintain a system for registering plant designs that is consistent with the procedure for registration in regulations 4.49, 4.50, 4.51, 4.52, 4.53 and 4.54;
 - (c) the Australian Defence Organisation must keep a register recording how each item of plant to which the special licence relates is used;
 - (d) the system of registration of plant design established under paragraph (b) must be audited by the Australian Defence Organisation from time to time;
 - (e) the system of registration of plant design established under paragraph (b) may be audited by the Commission at a time agreed by Commission and the Australian Defence Organisation;

- (2) The licensee must not contravene a condition to which the special licence is subject.
- (3) If the Australian Defence Organisation contravenes a condition to which the special licence is subject, the Commission may, by written notice given to the licensee:
 - (a) cancel the special licence; or
 - (b) suspend the special licence for a period of up to 12 months; or
 - (c) vary the conditions of the special licence.

Note If a contravention relates to a particular item of plant, the Commission may vary the special licence to remove that item of plant from the licence under regulation 4.62A.

- (4) A notice under subregulation (3) must include the reasons for the Commission's decision to cancel, suspend or vary the conditions of the special licence.

4.60A Record of compliance with maintenance requirement for plant

- (1) For each period of 12 months that the licensee is licensed to operate an item of plant, the Australian Defence Organisation must keep a record of the details of any inspections, checks, tests, maintenance or cleaning that have been carried out for the item.

Regulation 4.61

Note Subregulation 4.15 (1) requires an employer to take all reasonably practicable steps to ensure that a risk to the health and safety of a relevant person arising from plant used by employees at work, or the associated systems of work, under the employer's control is eliminated or, if it is not reasonably practicable to eliminate the risk, minimised in accordance with Division 7. Paragraph 4.15 (2) (h) requires an employer to take all reasonably practicable steps to ensure that inspections, maintenance and cleaning are carried out having regard to procedures recommended for the plant by its designer or manufacturer, or developed for the plant by a competent person.

- (2) A record under subregulation (1):
 - (a) must be in the form (if any) approved by the Commission; and
 - (b) must include:
 - (i) the special licence number; and
 - (ii) the item's unique identifying number.
- (3) The licensee must, if the Commission asks the licensee for a copy of the record, give the Commission a copy of the record.

4.61 Cancellation or suspension of a special licence

If the Commission cancels or suspends a special licence, each of the joint licensees must apply for a licence under regulation 4.41 in order to operate plant referred to in subregulation 4.40 (1).

4.62 Variation of a special licence — application by licensee

- (1) This regulation applies if:
 - (a) plant that the licensee is licensed to operate is altered; or
 - (b) the name of the Department of Defence or the Australian Defence Force is changed; or
 - (c) plant is decommissioned or disposed of.
- (2) The licensee must, not later than 21 days after becoming aware of an event mentioned in subregulation (1), apply to the Commission in writing, using the form (if any) approved by the Commission, for a variation of the special licence.

Regulation 4.62

- Occupational Health and Safety (Safety Standards)
-
- Regulations 1994

Regulation 4.62A

- (8) If the Commission varies the special licence, the licensee must return the original licence to the Commission.

4.62A Variation of special licence — contravention of condition relating to particular item of plant

- (1) This regulation applies if:
- (a) the licensee contravenes a condition to which the special licence is subject; and
 - (b) the contravention relates to a particular item of plant.
- (2) The Commission may vary the special licence to remove the item of plant from the licence.
- (3) If the Commission varies a special licence under subregulation (2), the Commission must give the licensee a notice setting out:
- (a) each item of plant that the licensee is licensed to operate; and
 - (b) the unique identifying number for each item of plant that the licensee is licensed to operate; and
 - (c) the amount of the fee to be paid, and the date by which the fee must be paid; and
 - (d) the reasons for the Commission's decision to vary the special licence.
- (4) For paragraph (3) (c), the amount of the fee is the amount that the Commission estimates to be the cost of varying the licence.
- (5) If the Commission varies the special licence, the licensee must return the original licence to the Commission.

4.62B Transitional

- (1) This regulation applies to:
- (a) a special licence granted to the Australian Defence Organisation prior to 1 July 2005; and
 - (b) the renewal of that special licence.

- (2) The conditions to which the licence is subject are the conditions that were set out in regulation 4.60 as in force before 1 July 2005.

Note Regulation 4.60A does not apply to a special licence granted to the Australian Defence Organisation prior to 1 July 2005, or to the renewal of such a licence.

Division 9 Review of decisions

4.63 Review of decisions

Application under the *Administrative Appeals Tribunal Act 1975* may be made to the Administrative Appeals Tribunal for review of the following decisions of the Commission:

- (a) a decision under paragraph 4.40A (4) (a) not to give an exemption to an employer;
- (b) a decision under subregulation 4.40B (1) to make an exemption given under paragraph 4.40A (4) (a) subject to a condition;
- (c) a decision under paragraph 4.40B (3) (a) to add or vary a condition to an exemption given under paragraph 4.40A (4) (a);
- (d) a decision under paragraph 4.40B (3) (b) to revoke a condition to an exemption given under paragraph 4.40A (4) (a);
- (e) a decision under paragraph 4.40C (2) (a), (b), (c) or (d) to cancel an exemption;
- (f) a decision under paragraph 4.43 (1) (b) to refuse to grant a licence;
- (g) a decision under paragraph 4.43 (2) (b) to refuse to renew a licence;
- (h) a decision under subregulation 4.45 (3) to cancel, suspend or vary a licence;
- (i) a decision under paragraph 4.46 (3) (b) to refuse to vary a licence;
- (j) a decision under paragraph 4.52 (1) (b) to refuse to register a plant design;

Regulation 4.64

- (k) a decision under subregulation 4.53 (3) to vary the conditions of a licence as a consequence of a breach of a condition of a design registration.

Division 10 Miscellaneous

4.64 Annual report of the Commission

The Commission must include in its annual report to the Minister, under section 75 of the Act, particulars of any licence granted by the Commission under Division 8 during the financial year to which the annual report relates.

4.65 Record-keeping by the Commission

In relation to the exercise of the Commission's powers under Division 8, the Commission must keep records of:

- (a) applications made for the grant of licences; and
- (b) refusals of applications; and
- (c) licences granted; and
- (d) conditions to which licences are subject; and
- (e) expiration of licences; and
- (f) suspension of licences; and
- (g) cancellation of licences.

Part 5 Manual handling

Division 1 Introduction

5.01 Object of Part 5

The object of this Part is:

- (a) to prevent the occurrence of injury, and reduce the severity of injuries, resulting from manual handling tasks; and
- (b) to require employers to identify, assess and control risks relating to manual handling tasks.

Note The regulations in this Part should be read with:

- (a) the *Approved Code of Practice for Manual Handling* as in force on 30 September 1995; and
- (b) the *Approved Code of Practice for the Prevention of Occupational Overuse Syndrome* as in force on 30 September 1995.

Division 2 Duties of an employer

5.02 Duties of an employer — general

Employees and other persons at a workplace

- (1) An employer that controls a workplace must ensure that:
 - (a) the plant and the containers used at the workplace are designed, constructed and maintained to be without risk to health and safety when manually handled; and
 - (b) the work systems involving manual handling carried out at the workplace are designed to be without risk to health and safety for the purposes of manual handling; and
 - (c) the working environment of the workplace is designed to allow the safe performance of manual handling tasks.

Penalty: 10 penalty units.

Notes

Subregulation 5.02 (1) addresses an employer's duties in relation to employees, contractors and other persons at a **workplace** within the

Regulation 5.03

meaning of subsection 5 (1) of the Act. Subregulation 5.02 (2) addresses an employer's duties relating to employees who are *at work* within the meaning of subsection 5 (3) of the Act.

Plant is defined in subsection 5 (1) of the Act to include any machinery, equipment or tool, and any component thereof.

Employees at work

- (2) An employer under whose control an employee performs work must ensure that:
- (a) the plant and the containers used by the employee are designed, constructed and maintained to be without risk to health and safety when manually handled; and
 - (b) the work systems involving manual handling carried out by the employee are designed to be without risk to health and safety for the purposes of manual handling; and
 - (c) the working environment of a place at which the employee performs work is designed to allow the safe performance of manual handling tasks.

Penalty: 10 penalty units.

- (3) It is a defence to a prosecution for an offence against subregulation (1) or (2) if the employer complied with the subregulation as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (3) (see section 13.3 of the *Criminal Code*).

5.03 Duties of an employer — risk assessment

- (1) An employer must ensure that:
- (a) a manual handling task that is likely to be a risk to health and safety is examined; and
 - (b) the risk is assessed in accordance with subregulation (2).

Penalty: 10 penalty units.

- (2) The employer must take into account as many of the following matters as are relevant in assessing a risk:
- (a) the actions and movements involved in the task;

- (b) the layout of:
 - (i) the workplace at which the task is carried out; or
 - (ii) the place, other than a workplace, at which the task is carried out;
- (c) the layout of the workstation at which the task is carried out;
- (d) the posture and position that must be taken by each individual involved in carrying out the task;
- (e) the duration of the task;
- (f) the frequency with which the task is carried out;
- (g) the location of each load involved in the task;
- (h) the distance that a load is moved as part of the task;
- (i) the weight involved in the task;
- (j) the force required to carry out the task;
- (k) the characteristics of each load involved in the task;
- (l) the characteristics of any plant that is used in the course of carrying out the task;
- (m) the organisation of work at:
 - (i) the workplace at which the task is carried out; or
 - (ii) the place, other than a workplace, at which the task is carried out;
- (n) the work environment of:
 - (i) the workplace at which the task is carried out; or
 - (ii) the place, other than a workplace, at which the task is carried out;
- (o) the skills and experience of each individual involved in carrying out the task;
- (p) the age of each individual involved in carrying out the task;
- (q) the clothing worn by each individual involved in carrying out the task;
- (r) the special needs of each individual involved in carrying out the task;

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- (s) any other matter that is considered relevant following consultations required under the Act or these Regulations.

Penalty: 10 penalty units.

- (3) Strict liability applies to the physical element in paragraph (2) (s) that the consultations are required under the Act or these Regulations.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

5.04 Duties of an employer — risk control

- (1) An employer must ensure that all risks to health and safety relating to carrying out a manual handling task are controlled in accordance with this regulation.

Penalty: 10 penalty units.

- (1A) It is a defence to a prosecution for an offence against subregulation (1) if the employer complied with the subregulation as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (1A) (see section 13.3 of the *Criminal Code*).

- (2) The employer must:
- (a) subject to subregulation (4) — redesign the task:
 - (i) to eliminate or minimise the risk associated with each risk factor assessed under regulation 5.03; or
 - (ii) if it is not practicable to eliminate or minimise an assessed risk factor — to control the risk factor; and
 - (b) provide appropriate training to employees involved in carrying out the task, including training in safe manual handling techniques.

Penalty: 10 penalty units.

- (3) If the redesign of a task is reasonably practicable, but cannot be implemented within a reasonable time after a risk is identified, the employer must, as soon as practicable after identifying the risk, and until the task has been redesigned:
- (a) implement as many of the following measures as are appropriate to control the risk factors:

- (i) the provision of mechanical aids to manual handling;
- (ii) the provision of personal protective equipment; and
- (iii) manual handling by team lifting; and
- (b) provide appropriate training to employees to give effect to each measure implemented under paragraph (a).

Penalty: 10 penalty units.

- (4) If it is not reasonably practicable for an employer to redesign a task, the employer must undertake the actions referred to in paragraphs (3) (a) and (b).

Penalty: 10 penalty units.

Division 3 Duties of an employee

5.05 Duties of an employee — use of training

- (1) An employee who has been given training in safe manual handling techniques in accordance with paragraph 5.04 (2) (b) must carry out manual handling tasks in accordance with the training.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in subregulation (1) that the training in safe manual handling techniques is in accordance with paragraph 5.04 (2) (b).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (1B) It is a defence to a prosecution for an offence against subregulation (1) if the employee complied with the subregulation as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (1B) (see section 13.3 of the *Criminal Code*).

- (2) An employee who has been given training to give effect to a measure implemented under subregulation 5.04 (3) or (4) must carry out manual handling tasks in accordance with the training.

Penalty: 10 penalty units.

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- (3) Strict liability applies to the physical element in subregulation (2) that the training is to give effect to a measure implemented under subregulation 5.04 (3) or (4).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (4) It is a defence to a prosecution for an offence against subregulation (2) if the employer complied with the subregulation as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (4) (see section 13.3 of the *Criminal Code*).

Part 6 Hazardous substances

Division 1 Introduction

6.01 Objects of Part

The object of this Part is to minimise the risk to the health of persons due to exposure to hazardous substances:

- (a) by ensuring that hazardous substances used at work are supplied to a person with:
 - (i) labels; and
 - (ii) Material Safety Data Sheets; and
- (b) by providing for:
 - (i) the assessment of the risk of exposure to hazardous substances; and
 - (ii) the control of exposure to hazardous substances; and
 - (iii) the training of employees who could be exposed to hazardous substances at work on the nature of the hazard and the level of risk posed by the hazardous substance, and the means of assessing and controlling exposure to the substance; and
- (ba) by limiting the circumstances under which the use of chrysotile may be exempted; and
- (bc) by encouraging research into, and development of, alternatives to the use of chrysotile; and
- (c) by ensuring that emergency services and Comcare have access to relevant information about hazardous substances used at work; and
- (d) by ensuring that relevant information included in NICNAS summary reports is given to employers.

Note **Hazardous substance** is defined in regulation 6.03.

6.02 Application of Part

- (1) Subject to subregulations (2), (3) and (4), this Part applies:
 - (a) to all hazardous substances; and

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- (b) to all workplaces at which hazardous substances are used;
and
 - (c) in relation to all persons who have the potential to be
exposed to hazardous substances.
- (2) This Part does not apply to the following substances:
- (a) a prescribed substance within the meaning of the
Environment Protection (Nuclear Codes) Act 1978;
 - (b) an infectious substance.
- (3) This Part does not apply to the following substances if the
substances are used in circumstances that are not related to
carrying out a work process:
- (a) personal use products;
 - (b) food within the meaning of the *Food Standards Australia
New Zealand Act 1991*.
- (4) This Part does not apply to a substance that is being transported
in accordance with the requirements set out in any of the
following documents:
- (a) the ADG Code; or
 - (b) the *International Maritime Dangerous Goods Code*,
published by the International Maritime Organization;
 - (c) the *Technical Instructions for the Safe Transport of
Dangerous Goods*, published by the International Civil
Aviation Authority;
 - (d) the *Dangerous Goods Regulations*, published by the
International Air Transport Association.

6.03 Definitions for Part

In this Part, unless the contrary intention appears:

article means a solid object:

- (a) that is produced with a specific shape, design or surface;
and
- (b) that is used for a purpose that depends, wholly or partly,
on that shape, design or surface; and

- (c) the chemical composition and physical state of which:
 - (i) do not change when the object is used for that purpose; or
 - (ii) change only when the object is used for that purpose.

biological monitoring means the measurement and evaluation of a hazardous substance, or its metabolites, in the body tissue, fluids or exhaled air of an employee.

blood-lead level means the concentration of lead in whole blood expressed in micromoles per litre ($\mu\text{mol/L}$) or micrograms per decilitre ($\mu\text{g/dL}$).

bona fide research:

- (a) means a systematic, investigative or experimental activity conducted for the purpose of:
 - (i) acquiring new knowledge; or
 - (ii) creating new or improved materials, products, devices, processes or services; or
 - (iii) analysis to identify the kind or quantities of ingredients in a substance; and
- (b) in relation to asbestos — includes an activity conducted for the purpose of preparing an item containing asbestos for display in a museum or other historical displays.

chemical name, in relation to a substance, means the recognised chemical name of the substance that is used generally in scientific and technical texts.

container:

- (a) means an object in, or by which, a substance is, or has been, wholly or partly contained or packed, whether or not the object is empty, partly filled or completely filled; and
- (b) does not include a tank or a bulk storage container within the meaning of the ADG Code.

generic name, in relation to a substance, means a name that describes the category or group of chemicals that includes the substance.

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hazardous substance means a substance:

- (a) that is described in the Hazardous Substances Information System, as in force on 10 March 2005; or

Note The Hazardous Substances Information System is available online at <http://www.nohsc.gov.au/applications/hsis>.

- (b) that has been determined to be a hazardous substance by its manufacturer, in writing and in accordance with the Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (2004) 3rd edition]; or
- (c) that is a scheduled carcinogenic substance.

health surveillance means the monitoring of an employee, including the use of biological monitoring, to identify changes (if any) in the employee's health due to exposure to a hazardous substance, but does not include the monitoring of atmospheric contaminants.

inorganic lead substance means:

- (a) lead metal; or
- (b) an inorganic lead compound; or
- (c) a lead salt of an organic acid.

in situ, in relation to a product that contains asbestos, means that, at the time the use of the form of asbestos in the product is prohibited under regulation 6.16, the product is fixed or installed:

- (a) in:
 - (i) a building or any other structure that forms a workplace; or
 - (ii) a plant, a vehicle or any other thing that is for use at a workplace; and
- (b) in a way that does not constitute a risk to users until the asbestos contained in the product is disturbed.

lead-risk job means a work activity or sequence of work activities in which the blood-lead level of an employee might reasonably be expected to rise, or does rise, above the lower of the following blood lead levels:

- (a) 1.45 $\mu\text{mol} / \text{L}$ (30 $\mu\text{g} / \text{dL}$);
- (b) the removal level prescribed in relation to the employee.

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NICNAS summary report means a summary report within the meaning of the Industrial Chemicals (Notification and Assessment) Act 1989.

product name, in relation to a hazardous substance, means the brand name, trade name, code name or code number given to the substance by the supplier of the substance.

removal level has the same meaning as in the Approved Code of Practice on the Control and Safe Use of Inorganic Lead in Commonwealth Employment, as approved by the Minister on 3 March 1999 and as in force on 7 May 1999.

retail warehouse operator means a person who operates a warehouse in which unopened packaged goods that are intended for retail sale are held.

risk phrase means a word, or series of words:

- (a) that describes the hazards of a substance; and
- (b) that is set out in the Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (2004) 3rd edition].

risk to health means the likelihood that a substance will cause harm to health in the circumstances of its use.

safety phrase means a word, or series of words:

- (a) that describes the procedures for the safe handling, storage or use of personal protective equipment in connection with a substance; and
- (b) that is set out in the Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (2004) 3rd edition].

scheduled carcinogenic substance means a substance mentioned in column 2 of Schedule 1A.

substance:

- (a) includes a chemical entity, composite material, mixture or formulation; and
- (b) other than in relation to an article that contains asbestos — does not include an article.

substance name means:

- (a) for a substance that is referred to in the ADG Code, the shipping name, assigned to the substance in the ADG Code, that meets the classification criteria described in the ADG Code; and

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- (b) for a substance referred to in the Standard for the Uniform Scheduling of Drugs and Poisons (also known as SUSDP), published by the National Health and Medical Research Council — the name given to the substance in that document; and
- (c) for any other substance — the chemical name of the substance.

type I ingredient, in relation to a hazardous substance, means an ingredient:

- (a) that:
 - (i) is referred to, in the Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (2004) 3rd edition], as:
 - (A) carcinogenic; or
 - (B) mutagenic; or
 - (C) a substance toxic to reproduction; or
 - (D) a skin or respiratory sensitiser; or
 - (E) corrosive; or
 - (F) toxic; or
 - (G) very toxic; or
 - (H) a harmful substance that can cause irreversible effects after acute exposure; or
 - (I) a harmful substance that can cause serious damage to health after repeated or prolonged exposure; or
 - (ii) is referred to in the Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC:1003 (1995)]; and
- (b) that is present in the hazardous substance in a quantity that exceeds the lowest relevant concentration cut-off level set out in the Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (2004) 3rd edition].

type II ingredient, in relation to a hazardous substance, means an ingredient:

- (a) that is referred to, in the Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (2004) 3rd edition], as a harmful substance without any of the additional

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descriptions referred to in subparagraph (a) (i) of the definition of type I ingredient; and

- (b) that is present in the hazardous substance in a quantity that exceeds the lowest relevant concentration cut-off level set out in that document.

type III ingredient, in relation to a hazardous substance, means an ingredient other than a type I ingredient or a type II ingredient.

**Division 2 Duties of a manufacturer, and a
supplier, of a hazardous
substance for the Commonwealth**

Note The effect of subsection 18 (3) of the Act is that a person who imports a substance that the person has not manufactured must, if the manufacturer does not have a place of business in Australia at the time of the importation, be taken to be the manufacturer of the substance.

**6.04 Determination that a substance is a hazardous
substance**

- (1) If a manufacturer of a substance knows, or ought reasonably to expect, that the substance will be used by employees at work, the manufacturer must determine, in writing and as soon as practicable after commencing to manufacture the substance:
 - (a) whether the substance is included in the Hazardous Substances Information System, as in force on 10 March 2005; and

Note The Hazardous Substances Information System is available online at <http://www.nohsc.gov.au/applications/hsis>.

- (b) if the substance is not included in that List — whether the substance is a hazardous substance in accordance with the Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (2004) 3rd edition].

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in paragraph (1) (a) that the substance is included in the Hazardous Substances Information System, as in force on 10 March 2005.

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- (1B) Strict liability applies to the physical element in paragraph (1) (b) that the substance is a hazardous substance in accordance with the Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (2004) 3rd edition].

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) The manufacturer must keep a determination for the period during which the manufacturer manufactures the relevant substance.

Penalty: 5 penalty units.

- (3) An offence under subregulation (2) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

6.05 Material Safety Data Sheets: Manufacturer's duties

- (1) A manufacturer of a hazardous substance that the manufacturer knows, or ought reasonably to expect, will be used by employees at work must prepare an MSDS for the substance before the substance is supplied to the employer of the employees.

Penalty: 10 penalty units.

Note The purpose of an MSDS is to provide the information needed to allow the safe handling of hazardous substances used at work. The MSDS for a substance describes its identity, relevant health hazard information, precautions for use and safe handling information.

- (2) An MSDS must be in accordance with the National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (2003)].

- (3) The manufacturer must:

- (a) review an MSDS as often as is necessary to ensure that the Sheet contains current information and is accurate in all material respects; and
- (b) revise the MSDS if necessary.

Penalty: 10 penalty units.

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- (4) In spite of subregulation (3), the manufacturer must review an MSDS:
- (a) at least once in the period of 5 years commencing on the day on which the substance is supplied to the employer; and
 - (b) at least once in each subsequent period of 5 years; to ensure that the MSDS contains current information and is accurate in all material respects.

Penalty: 10 penalty units.

6.06 Material Safety Data Sheets: Supplier's duties

- (1) Subject to subregulation (2), a supplier of a hazardous substance that the supplier knows, or ought reasonably to expect, will be used by employees at work must give a copy of the current MSDS for the substance to the employer of the employees on the first occasion that the substance is supplied, and at any later time on request.

Penalty: 10 penalty units.

- (2) Subregulation (1) does not apply if:
- (a) the supplier supplies the hazardous substance to an employer that is a retailer, or a retail warehouse operator, in a consumer package that holds:
 - (i) less than 30 kilograms of the substance; or
 - (ii) less than 30 litres of the substance; and
 - (b) the supplier knows, or ought reasonably to expect, that the consumer package is intended by the employer to be for retail sale; and
 - (c) the supplier knows, or ought reasonably to expect, that the employer does not intend to open the consumer package on the employer's premises.

6.07 Labelling of hazardous substances [see Note 2]

- (1) A supplier of a hazardous substance that the supplier knows, or ought reasonably to expect, will be used by employees at work must ensure that, at the time of supply:

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- (a) each container in which the hazardous substance is supplied is appropriately labelled in accordance with the National Code of Practice for the Labelling of Workplace Hazardous Substances [NOHSC:2012 (1994)]; and
- (b) the label:
 - (i) clearly identifies the hazardous substance; and
 - (ii) provides details of the Australian supplier; and
 - (iii) discloses information relating to each ingredient to the extent prescribed by regulation 6.08; and
 - (iv) provides the substance's risk and safety phrases and any relevant health and safety information about the substance that is reasonably practicable for the supplier to provide.

Penalty: 10 penalty units.

Note The manner in which a container is to be labelled is set out in the National Code of Practice for the Labelling of Workplace Hazardous Substances [NOHSC:2012 (1994)].

- (2) Strict liability applies to the physical element in paragraph (1)(a) that the container is labelled in accordance with the National Code of Practice for the Labelling of Workplace Hazardous Substances [NOHSC:2012 (1994)].
- (3) Strict liability applies to the physical element in subparagraph (1)(b)(iii) that the information on the label is disclosed to the extent prescribed by regulation 6.08.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

6.08 Ingredient disclosure: MSDS and labels

A manufacturer of a hazardous substance must disclose ingredients and prepare labels that relate to hazardous substances in accordance with the National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (2003)].

Regulation 6.09

6.09 Disclosure by manufacturer of chemical identity of an ingredient — general

- (1) Subject to subregulation (4), if:
 - (a) an MSDS, or a label, relating to a hazardous substance used at work does not disclose the name of a particular ingredient of the substance in accordance with regulation 6.08; and
 - (b) an employer, or a person authorised by the employer, asks the manufacturer to tell the employer the name of the ingredient because the information is necessary to provide for, or to protect, the health of a person who could be exposed to the hazardous substance; and
 - (c) there is no medical emergency, at the time of the request, involving the use of the hazardous substance at work;the manufacturer of the substance must tell the employer the chemical name of the ingredient, in accordance with this regulation, no later than 30 days after the day on which the employer made the request.

Penalty: 10 penalty units.
- (2) Before the manufacturer tells the employer the chemical name of the ingredient, the manufacturer may ask the employer:
 - (a) to make the request in writing; and
 - (b) to set out, in writing, the reason for making the request.
- (3) Before the manufacturer tells the employer the chemical name of the ingredient, the manufacturer may tell the employer that it is a condition of telling the employer the name of the ingredient that the employer gives the manufacturer an undertaking, in writing, that the employer will use the information only for the purpose for which it was provided.
- (4) The manufacturer is not required to tell the employer the chemical name of the ingredient if:
 - (a) the manufacturer is not satisfied that the employer needs the chemical name of the ingredient to give an employee adequate protection against exposure to the relevant substance; and

Regulation 6.10

- (b) the disclosure of the chemical name of the ingredient would result in significant commercial harm to the manufacturer; and
 - (c) if the manufacturer asks the employer to comply with subregulation (2) or (3) — the employer does not comply with the request.
- (5) If the employer gives the manufacturer an undertaking that the employer will use the information only for the purpose for which it was provided, the employer must not use the information for any other purpose.

Penalty: 10 penalty units.

- (6) If the manufacturer refuses the employer's request, the manufacturer must, no later than 30 days after the employer made the request:
- (a) give the employer, in writing, the reasons for the refusal; and
 - (b) give the employer as much information as is necessary to provide for, or to protect, the health of an employee, or a person at or near a workplace, who could be exposed to the hazardous substance without disclosing the chemical identity of the substance.

Penalty: 10 penalty units.

6.10 Disclosure by manufacturer of chemical identity of an ingredient — emergency

If:

- (a) a medical emergency exists involving the use of a hazardous substance at work; and
- (b) an employer asks the manufacturer of the ingredient for the chemical name of an ingredient of the substance for the purpose of providing proper emergency or first aid treatment;

the manufacturer must tell the employer, or a person authorised by the employer, the chemical name of the ingredient.

Penalty: 10 penalty units.

Regulation 6.12

6.11 Provision of information by a supplier

A supplier of a hazardous substance that the supplier knows, or ought reasonably to expect, will be used by employees at work must provide to an employer, on request:

- (a) a NICNAS summary report that relates to the condition of the relevant hazardous substance at the time of supply; and
- (b) information concerning the condition of the substance at the time of supply that will assist in the safe use of the relevant hazardous substance, being information additional to the information contained in an MSDS relating to the substance.

Penalty: 10 penalty units.

**Division 3 Duties of an employer in relation
to the use of hazardous
substances**

Notes

An employer's duty may arise because the employer is a manufacturer or supplier of hazardous substances or acts in another capacity referred to in this Part.

Hazardous substances produced by employers, such as by-products, wastes, emissions and manufactured substances, are covered by the requirements of this Division. They must be recorded in the register and as part of risk assessments, training, risk control, atmospheric monitoring and health surveillance carried out under the Division. It is not mandatory for an employer to produce an MSDS for these substances unless it is intended that they are to be supplied outside the employer's workplace. Employers should make other relevant information available to employees for these substances.

6.12 Use of Material Safety Data Sheets

Note The use of MSDS will allow assessment of the risks of hazardous substances and enable any necessary controls to be established. Further guidance on the use of MSDS can be found in the National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC:2007 (1994)].

Regulation 6.12

- (1) Subject to subregulation (3), if a hazardous substance is to be supplied to an employer, the employer must obtain an MSDS for the substance from the supplier no later than the time at which the substance is first supplied to the employer.

Penalty: 10 penalty units.

- (2) Subject to subregulation (3), if an MSDS for a hazardous substance is given to an employer by a supplier, the employer must ensure that the MSDS is readily accessible to each employee who could be exposed to the hazardous substance.

Penalty: 10 penalty units.

- (3) The employer is not required to comply with subregulations (1) and (2) if:

- (a) the hazardous substance is supplied to an employer that is a retailer, or a retail warehouse operator, in a consumer package that holds:
- (i) less than 30 kilograms of the substance; or
 - (ii) less than 30 litres of the substance; and
- (b) the employer intends the consumer package to be for retail sale; and
- (c) the employer does not intend to open the consumer package on the employer's premises.

- (4) Subject to subregulation (5), if an MSDS for a hazardous substance is given to an employer by a supplier, the employer must ensure that the information in each copy of the MSDS under the employer's control is not altered.

Penalty: 10 penalty units.

- (4A) It is a defence to a prosecution for an offence against subregulation (4) if the employer complied with the subregulation as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (4A) (see section 13.3 of the *Criminal Code*).

- (5) The employer may change the appearance of an MSDS for the following purposes only:

Regulation 6.13

- (a) to make the format of the MSDS consistent with the format described in the National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (2003)];
- (b) to allow the MSDS to be prepared for dissemination by electronic means;
- (c) to allow the employer to attach to the MSDS additional information that is marked clearly as not forming part of the information given by the supplier;
- (d) to translate the MSDS into a language other than the language in which the MSDS was given to the employer.

6.13 Use of labels

Note The purpose of labels is to ensure that the contents of a container used for hazardous substances can be readily identified by product name and to draw the attention of a person who is handling the substance to any significant hazards involved.

- (1) An employer must:
 - (a) ensure that each container which holds a hazardous substance used at work, including a container supplied to or produced at a workplace, is appropriately labelled in accordance with regulation 6.07; and
 - (b) ensure that a person does not remove, deface, modify or alter the label.

Penalty: 10 penalty units

- (1A) Strict liability applies to the physical element in paragraph (1) (a) that the container is labelled in accordance with regulation 6.07.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (1B) It is a defence to a prosecution for an offence against subregulation (1) if the employer complied with the subregulation as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (1B) (see section 13.3 of the *Criminal Code*).

Regulation 6.14

- (2) If a hazardous substance is decanted, and is not used immediately, the employer must ensure that the container into which the substance is decanted is labelled with the substance's product name and the appropriate risk and safety phrases.

Penalty: 10 penalty units.

- (3) Subject to subregulation (4), an employer must ensure that a container that contains a hazardous substance is labelled correctly for the purposes of these Regulations until:
- (a) the substance is removed from the container; and
 - (b) the container is cleaned to the extent that it no longer contains the hazardous substance.

Penalty: 10 penalty units.

- (3A) Strict liability applies to the physical element in subregulation (3) that the container is labelled correctly for the purposes of these Regulations.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (4) If:
- (a) a hazardous substance is decanted into a container; and
 - (b) the hazardous substance is used immediately after being decanted; and
 - (c) the employer ensures that the container is cleaned to the extent that it no longer contains the hazardous substance;
- the employer is not required to comply with subregulation (3).

6.14 Register of hazardous substances

Note A register provides, at a minimum, a listing of all hazardous substances used at work together with their MSDS. It may also include notations on the completion of assessments, assessment reports, monitoring results and details of instruction and training.

A register is a source of information and a tool to manage substances at work.

- (1) An employer must ensure that a register is kept and maintained, at each workplace, for hazardous substances that are used at work.

Penalty: 10 penalty units.

Regulation 6.15

- (2) Subject to subregulation (3), the employer must ensure that the register includes at least the following information:
- (a) a list of all hazardous substances used at the workplace;
 - (b) a copy of the MSDS required, under these Regulations, for each hazardous substance.

Penalty: 10 penalty units.

- (2A) Strict liability applies to the physical element in paragraph (2) (b) that the copy of the MSDS is required under these Regulations.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) The employer is not required to comply with subregulation (2) in relation to a hazardous substance if:
- (a) the hazardous substance is supplied to an employer that is a retailer, or a retail warehouse operator, in a consumer package that holds:
 - (i) less than 30 kilograms of the substance; or
 - (ii) less than 30 litres of the substance; and
 - (b) the employer intends the consumer package to be for retail sale; and
 - (c) the employer does not intend to open the consumer package on the employer's premises.
- (4) The employer must ensure that the register is readily accessible by all persons who could be exposed to a hazardous substance.

Penalty: 10 penalty units.

6.15 Provision of information about enclosed hazardous substances

If a hazardous substance is contained in an enclosed system (including, for example, a pipe, a piping system, a process vessel or a reactor vessel), the employer that controls the enclosed system must ensure that:

- (a) the existence of the hazardous substance is disclosed to all persons who could be exposed to the hazardous substance; and

Regulation 6.16

- (b) the hazardous substance is identified clearly to those persons.

Penalty: 10 penalty units.

6.16 Prohibition on uses of certain hazardous substances

An employer must ensure that a hazardous substance referred to in column 2 of an item in Schedule 1 is not used at work in any circumstance other than a circumstance specified in column 3 of the item.

Penalty: 10 penalty units.

6.16A Exemption from regulation 6.16

- (1) Regulation 6.16 does not apply to an employer in relation to a hazardous substance mentioned in Part 2 of Schedule 1 (other than chrysotile) if the Commission exempts the employer from the application of the regulation in relation to the substance.
- (2) Regulation 6.16 does not apply to an employer in relation to a use of chrysotile if the Commission exempts the employer from the application of the regulation in relation to that use.
- (3) An employer seeking an exemption must apply for the exemption in accordance with Schedule 1B.
- (4) The Commission may exempt an employer only in accordance with Schedule 1B.

Note For further information about the exemption process, see *Guidance on the application, assessment and approval process for exemptions from prohibitions on hazardous substances with carcinogenic properties*, published by the Commission.

6.16D Review of decisions

Application under the *Administrative Appeals Tribunal Act 1975* may be made to the Administrative Appeals Tribunal for review of the following decisions of the Commission:

- (a) a decision, under any of the following provisions of Schedule 1B, to refuse to grant an exemption:
 - (i) paragraph 2.02 (1) (b);

Regulation 6.17

- (ii) paragraph 3.04 (1) (b);
 - (iii) paragraph 3.08 (1) (b);
- (b) a decision, under subparagraph 3.08 (1) (a) (ii) of Schedule 1B, to grant a partial exemption;
- (c) a decision, under any of the following provisions of Schedule 1B, to make an exemption subject to conditions:
 - (i) subclause 2.03 (1);
 - (ii) subclause 3.05 (2);
 - (iii) subclause 3.09 (2);
- (d) a decision, under any of the following provisions of Schedule 1B, to add a condition to, or vary or revoke a condition of, an exemption:
 - (i) subclause 2.03 (2);
 - (ii) subclause 3.05 (3);
 - (iii) subclause 3.09 (3);
- (e) a decision, under any of the following provisions of Schedule 1B, to cancel an exemption:
 - (i) paragraph 2.04 (2) (a);
 - (ii) paragraph 3.06 (2) (a);
 - (iii) paragraph 3.10 (2) (a).

6.17 Risk assessment for hazardous substances

Note The purpose of an assessment is to enable decisions to be made about appropriate control measures, induction and training, monitoring and health surveillance commensurate with the level of risk that arises from use of a hazardous substance at work. Guidance on assessments can be found in the National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC:2007(1994)] and the Guidance Note for the Assessment of Health Risks Arising From the Use of Hazardous Substances in the Workplace [NOHSC:3017 (1994)].

- (1) An employer must ensure that an assessment is made, in accordance with this regulation, of the risks to health caused by work that involves potential exposure to a hazardous substance.

Penalty: 10 penalty units.

- (2) An assessment must include:
 - (a) the identification of each hazardous substance that is used in the course of work; and

Regulation 6.17

- (aa) if a job involves the use of an inorganic lead substance — a determination of whether the job is a lead-risk job; and
 - (b) an examination of the MSDS required, under these Regulations, for each hazardous substance; and
 - (c) if an MSDS cannot reasonably be obtained for examination — an examination of information, equivalent to the information that is required to be included in an MSDS, relating to:
 - (i) any hazard to health relating to the hazardous substance; and
 - (ii) the precautions to be followed in relation to the safe use and handling of the hazardous substance; and
 - (d) if the hazardous substance is kept in an unopened consumer package — an examination of each label that appears on the package; and
 - (e) the identification of any risk to health, arising from exposure to each hazardous substance that is identified, of which the employer knows, or that the employer ought reasonably to expect.
- (3) The employer may undertake a generic risk assessment of risks to health if:
- (a) the risk assessment is carried out only in relation to work:
 - (i) that is performed using the hazardous substance; and
 - (ii) for which the risk factors are identical in all cases; and
 - (b) the risk assessment is designed to identify any differences in the nature of work performed using the hazardous substance that could result in a change to the risk factors associated with the performance of the work; and
 - (c) it is not practicable for the employer to undertake a separate risk assessment for each workplace at which the hazardous substance is used.
- (4) If the employer decides there is not a significant risk to health from the use of a hazardous substance at work, the employer must ensure that:
- (a) the hazardous substance is included in the register referred to in subregulation 6.14 (1); and

Regulation 6.17

- (b) the register is noted to indicate compliance with the requirements referred to in subregulation (2).

Penalty: 10 penalty units.

- (5) If an employer decides that there is a significant risk to health from the use of a particular hazardous substance at work, the employer must ensure that:
 - (a) regulations 6.19, 6.20 and 6.21 are complied with; and
 - (b) a report on the assessment is prepared; and
 - (c) the register is amended to indicate compliance with the requirements of this Part.

Penalty: 10 penalty units.

Note Assessment reports should reflect the detail of the assessment including sufficient information to show why decisions about risks and precautions were made. Further guidance on deciding if the risk is significant can be found in the National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC:2007 (1994)] and the Guidance Note for the Assessment of Health Risks Arising from the Use of Hazardous Substances in the Workplace [NOHSC:3017 (1994)].

- (6) An employer must revise a risk assessment if:
 - (a) the employer knows, or ought reasonably to be expected to know, of evidence that the assessment is no longer valid; or
 - (b) there has been a significant change in the work to which the assessment relates.

Penalty: 10 penalty units.

- (7) In addition to subregulation (6), an employer must review a risk assessment:
 - (a) at least once in the period of 5 years commencing on the day on which the assessment is completed; and
 - (b) at least once in each subsequent period of 5 years.

Penalty: 10 penalty units.

Regulation 6.17A

- (8) An employer must ensure that a report prepared under this Regulation is readily accessible to an employee who could be exposed to a hazardous substance to which the report relates.

Penalty: 10 penalty units.

6.17A Exposure to scheduled carcinogenic substances

- (1) Subregulation (2) applies to an employee if, in the course of the employee's employment, the employee has been, or the employer reasonably suspects that the employee has been, exposed to a scheduled carcinogenic substance in, or in connection with, a circumstance mentioned in column 3 of Schedule 1A in relation to that substance.
- (1A) Strict liability applies to the following physical elements in subregulation (1):
- (a) that the carcinogenic substance is a scheduled carcinogenic substance;
 - (b) that the circumstance in relation to that substance is the circumstance mentioned in the relevant item in column 3 of Schedule 1A.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) On the termination of the employee's employment, the employer must provide the employee with a written statement that includes the following information:
- (a) the name of each scheduled carcinogenic substance to which the employee was, or was likely to have been, exposed;
 - (b) the period of known exposure to the substance;
 - (c) the period of likely exposure to the substance;
 - (d) a copy of any relevant assessment report;
 - (e) details of how and where the employee can obtain any relevant additional records;
 - (f) the advisability of having periodic health assessments and the types of tests that are relevant.

Penalty: 10 penalty units.

Regulation 6.18

- (3) If an employer reasonably suspects that an employee has been accidentally exposed to a scheduled carcinogenic substance, the employer must, as soon as practicable, notify the employee of that exposure.

Penalty: 10 penalty units.

- (4) Strict liability applies to the physical element in subregulation (3) that the carcinogenic substance is a scheduled carcinogenic substance.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

6.18 Instruction and training

An employer must ensure that:

- (a) employees who are likely to be exposed to a hazardous substance, and anyone supervising the employees, are trained and provided with information and instruction in:
- (i) the nature of the hazard associated with the substance, the process of risk assessment and the level of risk; and
 - (ii) the control procedures associated with the use of the hazardous substance; and
 - (iii) the need for, and proper use and maintenance of, measures to control risk; and
 - (iv) the use, fit, testing and storage of personal protective equipment, if personal protective equipment forms a part of the measures to control risk; and
- (b) the instruction and training are commensurate with the level of risk to health, caused by the hazardous substance, that is assessed.

Penalty: 10 penalty units.

Note Guidance on the key elements of an induction and training program can be found in the National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC:2007 (1994)].

Regulation 6.19

6.19 Risk control

Note Risk control should be carried out using the hierarchy of control measures listed in priority order in the National Code of Practice for Control of Workplace Hazardous Substances [NOHSC:2007 (1994)].

- (1) An employer must ensure that no employee at work is exposed to an airborne concentration of a hazardous substance, in the breathing zone of the employee, at a level that exceeds the appropriate exposure standard for the relevant period of time.

Penalty: 10 penalty units.

- (2) An employer must ensure, on the basis of a risk assessment carried out under regulation 6.17, that exposure to a hazardous substance is:

- (a) prevented; or
(b) if it is not reasonably practicable to prevent the exposure — adequately controlled in order to minimise the risks to health caused by the substance

Penalty: 10 penalty units.

- (2A) Strict liability applies to the physical element in subregulation (2) that the risk assessment is carried out under regulation 6.17.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) An employer must take all reasonably practicable steps to prevent or control exposure to a hazardous substance by measures other than the provision of personal protective equipment.

Penalty: 10 penalty units.

- (4) If measures undertaken in accordance with subregulation (3) do not prevent, or provide adequate control of, exposure of an employee to a hazardous substance, the employer must, in addition to taking the measures, make available to the employee suitable personal protective equipment that will adequately control the employee's exposure to the hazardous substance.

Penalty: 10 penalty units.

Regulation 6.20

- (5) An employer must ensure that engineering controls, safe work practices and personal protective equipment that are used to prevent or control exposure to a hazardous substance are properly maintained and used.

Penalty: 10 penalty units.

6.20 Atmospheric monitoring

Note Monitoring involves the use of valid and suitable techniques to derive a quantitative estimate of the exposure of employees to hazardous substances. It may also be used to determine the effectiveness of control measures. Further guidance on monitoring can be found in the National Code of Practice for Control of Workplace Hazardous Substances [NOHSC:2007 (1994)].

- (1) If a risk assessment carried out under regulation 6.17 indicates that atmospheric monitoring should be undertaken, the employer to whom the assessment relates must undertake appropriate monitoring in accordance with a suitable procedure.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in subregulation (1) that the risk assessment is carried out under regulation 6.17.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) The employer must ensure that the results of the atmospheric monitoring are recorded in the register referred to in subregulation 6.14 (1).

Penalty: 10 penalty units.

- (2A) Strict liability applies to the physical element in subregulation (2) that the register is referred to in subregulation 6.14 (1).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) The employer must ensure that:
- (a) an employee who has been, or could be, exposed to a hazardous substance that is subject to atmospheric monitoring is given the results of the monitoring; and

Regulation 6.21

- (b) the records of atmospheric monitoring are readily accessible to that employee at all reasonable times.

Penalty: 10 penalty units.

6.21 Health surveillance

Note Health surveillance can assist in minimising the risk to health from hazardous substances by confirming that the absorbed dose is below the acceptable level, by indicating biological effects requiring reduction of exposure and by collecting data to evaluate the effects of exposure. Further guidance on health surveillance can be found in the National Code of Practice for Control of Workplace Hazardous Substances [NOHSC:2007 (1994)] and in the Guidelines for Health Surveillance [NOHSC:7039 (1995)].

- (1) An employer must provide health surveillance of an employee who has been identified, during a risk assessment, as being exposed to a hazardous substance if:
- (a) there is a significant risk to the health of the employee from a hazardous substance listed in Schedule 2; or
 - (b) the employer believes, or ought reasonably to believe, that:
 - (i) the exposure of the employee to the substance has the effect that an identifiable disease or other effect on health may be related to the exposure; and
 - (ii) there is a reasonable likelihood that the disease or other effect on health may occur under the particular conditions of work; and
 - (iii) there are valid techniques for detecting an indication of the disease or other effect on health; or
 - (c) there is a valid biological monitoring procedure available and a reasonable likelihood that accepted values might be exceeded.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in paragraph (1) (a) that the hazardous substance is listed in Schedule 2.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

Regulation 6.21

- (2) The employer must ensure that:
- (a) the health surveillance is performed under the supervision of a legally qualified medical practitioner who is adequately trained in the requisite testing or medical examinations for the particular substance; and
 - (b) if there is a significant risk to the health of the employee from the substance — the health surveillance includes the relevant procedure referred to in column 3 of the item in Schedule 2; and
 - (c) the employer consults the employee on the selection of a medical practitioner to supervise the health surveillance.

Penalty: 10 penalty units.

- (2A) Strict liability applies to the physical element in paragraph (2) (b) that the relevant procedure is referred to in column 3 of the item in Schedule 2.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) The health surveillance must be undertaken at the expense of the employer.
- (4) If an employee undergoes health surveillance, the employer must ensure that:
- (a) the employee is notified of the results of the surveillance as soon as practicable; and
 - (b) the employee is given any necessary explanation of the results of the surveillance; and
 - (c) if the employee is working in a lead-risk job — on the termination of the employee's employment, the employee is given access to the results of the health surveillance; and
 - (d) Comcare is notified of any adverse result detected in health surveillance that is consistent with exposure to the relevant hazardous substance.

Penalty: 10 penalty units.

- (5) If an employer is advised by a medical practitioner of the need for remedial action following the health surveillance of an employee, the employer must, as soon as practicable:

Regulation 6.22

- (a) revise any assessment of the employee's exposure to the hazardous substance; and
- (b) take the steps that are necessary to comply with the requirements of these Regulations.

Penalty: 10 penalty units.

(6) An employer must:

- (a) ensure that records obtained by the employer as a result of health surveillance are kept as confidential records; and
- (b) ensure that the written consent of the employee is obtained before the records are given or shown to a person (other than the employer or the employee) who is entitled to have access to the records.

Penalty: 5 penalty units.

- (7) It is a defence to a prosecution for an offence against paragraph (6) (b) if the employer complied with the paragraph as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (7) (see section 13.3 of the *Criminal Code*).

6.22 Record keeping

- (1) If an assessment report, prepared for the purposes of this Part, indicates a need for, or contains the results of, atmospheric monitoring or health surveillance, the employer to whom the report relates must keep the report:
- (a) in a suitable form; and
 - (b) for at least 30 years from the date of the last entry in the report.

Penalty: 5 penalty units.

- (2) If an assessment report, prepared for the purposes of this Part, does not indicate a need for atmospheric monitoring or health surveillance, the employer to whom the report relates must keep the report:
- (a) in a suitable form; and

Regulation 6.22

- (b) for at least 5 years from the date of the last entry in the report.

Penalty: 5 penalty units.

- (2A) If an assessment report, prepared for the purposes of this Part, identifies an employee as likely to have been exposed, in the course of the employee's employment, to a scheduled carcinogenic substance in, or in connection with, a circumstance mentioned in column 3 of Schedule 1A in relation to that substance, the employer to whom the report relates must:

- (a) keep a record of the full name, date of birth and address of each employee who has been identified as a result of the report; and
- (b) keep the report for at least 30 years from the date of the last entry in the report.

Penalty: 5 penalty units.

- (3) If a document includes details of instruction and training given by an employer to an employee for the purposes of this Part, the employer must keep the document:

- (a) in a suitable form; and
- (b) for at least 5 years from the date of the last entry in the report.

Penalty: 5 penalty units.

- (4) If an employer that keeps a record referred to in subregulation (1), (2) or (2A) ceases operations in the State or Territory in which the record was created, the employer must give the record to Comcare.

Penalty: 5 penalty units.

- (5) An offence against subregulation (1), (2), (2A), (3) or (4) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

Regulation 6.23

6.23 Emergency services

- (1) An employer must ensure that all relevant records, relating to hazardous substances, that are kept by the employer under this Part are readily accessible by the following persons:
- (a) an emergency service;
 - (b) Comcare;
 - (c) an investigator acting in the course of his or her duties.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element in subregulation (1) that the records are kept by the employer under this Part.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

Division 4 Employees' duties in relation to hazardous substances

6.24 Duties of employees

An employee must report to his or her employer, as soon as practicable, any matter of which the employee is aware that may affect the employer's compliance with the provisions of this Part.

Penalty: 10 penalty units.

Part 7 Confined spaces

7.01 Objects of Part 7

The object of this Part is to ensure that:

- (a) manufacturers of confined spaces:
 - (i) eliminate the need to enter the confined spaces; or
 - (ii) if it is not reasonably practicable to eliminate the need to enter the confined space, minimise the need to enter the confined spaces; and
- (b) employers in control of confined spaces:
 - (i) eliminate risks to persons who must enter or work in the confined spaces; or
 - (ii) if it is not reasonably practicable to eliminate those risks, minimise the risks.

7.02 Interpretation of Part 7

In this Part, unless the contrary intention appears:

confined space means an enclosed, or partly enclosed, space:

- (a) that is at atmospheric pressure while it is occupied; and
- (b) that is not intended, or designed, primarily as a place of work;

Note A confined space may also:

- (a) have a restricted means of entry and exit; or
- (b) have an atmosphere that contains potentially harmful levels of contaminants; or
- (c) have an atmosphere that does not have safe levels of oxygen; or
- (d) cause engulfment; or
- (e) be enclosed only on 3 sides.

contaminant means any dust, fume, mist, vapour, gas or other substance, in liquid or solid form, the presence of which may be harmful to health and safety.

Regulation 7.03

flammable range means the range of concentration, in air, of flammable contaminant in which explosion may occur on ignition.

LEL, in relation to a flammable contaminant, means the concentration of the contaminant in air below which the propagation of a flame does not occur on contact with a source of ignition.

Note The initials ***LEL*** stand for Lower Explosive Limit.

purging means the method by which a contaminant is displaced from a confined space.

safe oxygen level means:

- (a) a minimum oxygen content in air of 19.5% by volume under normal atmospheric pressure; and
- (b) a maximum oxygen content in air of 23.5% by volume under normal atmospheric pressure.

stand-by person means a competent person who:

- (a) is assigned to remain on the outside of, and in close proximity to, a confined space; and
- (b) is able, if practicable, to observe each person in the confined space; and
- (c) is able, if practicable, to be in continuous communication with each person in the confined space; and
- (d) is able to initiate rescue procedures for persons in the confined space; and
- (e) is able to operate and monitor equipment used to ensure safety during entry to, and the performance of work in, the confined space.

7.03 Manufacture of a confined space

A manufacturer of a confined space that the manufacturer knows, or ought reasonably to expect, will be used by employees at work must:

- (a) take all reasonably practicable steps to ensure that the design of the space eliminates the need for persons to enter the confined space; and

Regulation 7.05

- (b) if entry to the confined space may be required, ensure that the confined space is provided with safe means of entry and exit.

Penalty: 10 penalty units.

Note The effect of subsection 18 (3) of the Act is that a person who imports a confined space that the person has not manufactured may, in certain circumstances, be taken to be the manufacturer of the confined space.

7.04 Modification of a confined space

- (1) An employer that modifies a confined space must ensure that the modification does not detrimentally affect the safe means of entry into, and exit from, the space.

Penalty: 10 penalty units.

- (2) A manufacturer that modifies a confined space that the manufacturer knows, or ought reasonably to expect, will be used by employees at work must ensure that the modification does not detrimentally affect the safe means of entry into, and exit from, the space.

Penalty: 10 penalty units.

- (3) An installer that modifies a confined space in a workplace for the use of employees at work must ensure that the modification does not detrimentally affect the safe means of entry into, and exit from, the space.

Penalty: 10 penalty units.

7.05 Hazard identification and risk assessment

- (1) If work is to be carried out under the control of an employer, the employer must identify:
 - (a) each confined space associated with the performance of the work; and
 - (b) any hazards associated with working in the confined space.

Penalty: 10 penalty units.

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- (2) If work that is to be carried out under the control of an employer involves entry to a confined space, the employer must ensure that a risk assessment is undertaken by a competent person before the work first commences.

Penalty: 10 penalty units.

- (3) The risk assessment must include an assessment of the following matters:
- (a) the nature of the confined space;
 - (b) the work that is to be carried out, including whether it is necessary to enter the confined space to carry out the work;
 - (c) the method by which the work may be carried out;
 - (d) the risks associated with:
 - (i) the method of work selected; and
 - (ii) the plant to be used; and
 - (iii) any potentially hazardous condition that may exist inside the confined space;
 - (e) the need for emergency and rescue procedures.
- (4) The employer may undertake a generic risk assessment of confined spaces if:
- (a) the risk assessment is carried out only in relation to spaces:
 - (i) that are of the same kind; and
 - (ii) in which the same kind of work is carried out; and
 - (iii) for which the risk factors are identical; and
 - (b) the risk assessment is designed to identify any differences in the condition or location of the confined spaces, or the work carried out in them, that could result in a change to the risk factors associated with working in the confined spaces; and
 - (c) it is not practicable for the employer to undertake a separate risk assessment for each of the confined spaces.

Regulation 7.06

- (5) The employer must ensure that a risk assessment is reviewed for each confined space identified in the assessment on each occasion that work carried out under the employer's control involves entry to the space.

Penalty: 10 penalty units.

- (6) For the purposes of subregulation (5), a generic review of risk assessments may be undertaken if:
- (a) the review relates to confined spaces:
 - (i) that are of the same kind; and
 - (ii) in which the same kind of work is carried out; and
 - (iii) for which the risk factors are identical; and
 - (b) it is not practicable to undertake a separate review for each of the confined spaces.

- (7) An employer to whom a risk assessment relates must ensure that the assessment is revised, before a person is allowed to enter a confined space to which the assessment applies, if the employer knows, or ought reasonably to know, of evidence that the assessment is no longer valid.

Penalty: 10 penalty units.

- (8) If it is practicable to set out the risk assessment in writing before the work to which the assessment relates first commences, the employer must ensure that the risk assessment is set out in writing.

Penalty: 10 penalty units.

7.06 Risk control

- (1) If a risk assessment undertaken under subregulation 7.05 (2) (or a revised risk assessment) indicates a risk to health or safety arising from work involving entry to a confined space that is under the control of an employer, the employer must:
- (a) eliminate the risk; or

Regulation 7.06

- (b) if it is not reasonably practicable to eliminate the risk, minimise the risk.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in subregulation (1) that the risk assessment is undertaken under subregulation 7.05 (2).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (2) An employer must take all reasonably practicable steps to ensure that, before a person enters a confined space that is under the employer's control:
 - (a) the confined space has a safe oxygen level; and
 - (b) any atmospheric contaminant in the confined space is reduced to below the relevant exposure standard identified in the document entitled *Exposure Standards for Atmospheric Contaminants in the Occupational Environment*, published by Worksafe Australia; and
 - (c) the confined space is free from extremes of temperature; and
 - (d) the concentration of any flammable contaminant in the atmosphere of the confined space is less than 5% of the LEL of the contaminant; and
 - (e) appropriate steps are taken to control any risk associated with the presence of any vermin; and
 - (f) all potentially hazardous services, including process services, normally connected to the confined space are positively isolated in order to prevent:
 - (i) the introduction of any material, contaminant, agent or condition harmful to a person in the confined space; and
 - (ii) the activation or energising of any equipment or service which may pose a risk to the health or safety of a person in the confined space.

Penalty: 10 penalty units.

Regulation 7.07

- (2A) Strict liability applies to the physical element in paragraph (2) (b) that the exposure standard is identified in the document entitled Exposure Standards for Atmospheric Contaminants in the Occupational Environment, published by Worksafe Australia.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) If the atmospheric monitoring of a confined space is required to be carried out as a result of a risk assessment undertaken under subregulation 7.05 (2), the employer must ensure that the monitoring is carried out in a manner that is consistent with the risk assessment.

Penalty: 10 penalty units.

- (4) If a confined space must be cleared of contaminants in order to comply with subregulation (1), the employer must ensure that:
- (a) the contaminants are removed with the use of a suitable purging agent; and
 - (b) purging and ventilation are not carried out using pure oxygen, or a gas mixture which has oxygen in a concentration greater than 21% by volume.

Penalty: 10 penalty units.

- (5) An employer must ensure that:
- (a) before a person enters a confined space that is under the control of the employer; and
 - (b) while a person is in the confined space; appropriate signs and, if reasonably practicable, protective barriers are erected to prevent persons who are not involved in work in or near the confined space from entering the area defined by the signs and barriers.

Penalty: 10 penalty units.

7.07 Risk control — provision of equipment

- (1) An employer must ensure that a person does not enter a confined space if:
- (a) the confined space is under the control of the employer; and

Regulation 7.07

- (b) it is not reasonably practicable to provide a safe oxygen level in the confined space; and
- (c) the person is not equipped with suitable personal protective equipment, including, if necessary air-supplied respiratory equipment.

Penalty: 10 penalty units.

- (2) An employer must ensure that a person does not enter a confined space if:
 - (a) the confined space is under the control of the employer; and
 - (b) atmospheric contaminants in the confined space cannot be reduced to safe levels; and
 - (c) the person is not equipped with suitable respiratory protective equipment.

Penalty: 10 penalty units.

- (3) If:
 - (a) a need to enter a confined space that is under the control of an employer is identified; and
 - (b) an appropriate risk assessment is undertaken under subregulation 7.05 (2);the employer must provide equipment that is readily accessible and appropriate to any hazard identified by the risk assessment.

Penalty: 10 penalty units.

- (3A) Strict liability applies to the physical element in paragraph (3) (b) that the risk assessment is undertaken under subregulation 7.05 (2).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (4) If a need to enter a confined space that is under the control of an employer is identified before a risk assessment is undertaken under subregulation 7.05 (2), the employer must:
 - (a) ensure that no person enters the confined space without at least 1 stand-by person being present outside the space at the time of entry and at all times at which the space is occupied; and

Regulation 7.08

- (b) provide equipment that is readily accessible and appropriate to any hazard likely to be encountered in the confined space.

Penalty: 10 penalty units.

- (4A) Strict liability applies to the physical element in subregulation (4) that the risk assessment is undertaken under subregulation 7.05 (2).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (5) If an employer provides equipment under this Regulation, the employer must ensure that:
 - (a) the equipment is selected and, if necessary, fitted to suit the person who is to use it; and
 - (b) the equipment is maintained in a proper working condition.

Penalty: 10 penalty units.

- (6) Strict liability applies to the physical element in subregulation (5) that the equipment is provided under this regulation.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

7.08 Use of entry permits to control access to a confined space

- (1) If an employer is satisfied that work in a confined space that is under the employer's control can be carried out in a safe manner, the employer:
 - (a) must give written approval to enter the confined space by issuing an entry permit that names the person; and
 - (b) must not allow a person to enter the confined space unless the person is named on an entry permit; and
 - (c) must give a person named in an entry permit a copy of the permit before the person enters the confined space.

Penalty: 10 penalty units.

Regulation 7.09

- (1A) It is a defence to a prosecution for an offence against paragraph (1) (c) if the employer complied with the paragraph as far as reasonably practicable.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (1A) (see section 13.3 of the *Criminal Code*).

- (2) The employer must ensure that the entry permit specifies any precautions or instructions necessary for safe entry to the confined space and the performance of the work, taking into consideration, the hazards identified in the risk assessment (if any) undertaken under subregulation 7.05 (2).

Penalty: 10 penalty units.

- (2A) Strict liability applies to the physical element in subregulation (2) that the risk assessment (if any) is undertaken under subregulation 7.05 (2).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (3) The employer must ensure that each person who is required to carry out the work described in the entry permit is informed of, and understands, the contents of the entry permit before the person enters the confined space to which the permit relates.

Penalty: 10 penalty units.

- (4) The employer must:
- (a) acknowledge, in writing, that the work in the confined space has been completed; and
 - (b) ensure that all persons involved in the work have left the confined space;
- before the confined space is returned to normal use.

Penalty: 10 penalty units.

7.09 Control of fire and explosion risk

- (1) If the concentration of flammable contaminant in the atmosphere of a confined space that is under the control of an employer is found to be between 5% and 10% of the LEL of the contaminant, the employer must ensure that:
- (a) the confined space is evacuated; or

Regulation 7.10

- (b) a continuously monitoring, and suitably calibrated, flammable gas detector is used in the confined space at all times while a person is present in the confined space.

Penalty: 10 penalty units.

- (2) If the concentration of flammable contaminant in the atmosphere of a confined space that is under the control of an employer is found to be 10% or more of the LEL of the contaminant, the employer must ensure that the confined space is evacuated.

Penalty: 10 penalty units.

- (3) An employer must ensure that no work is carried out within a confined space that is under the control of the employer, or on the outside surface of a confined space, if the work or any plant is likely to cause or create:
 - (a) a risk to the health or safety of a person in the confined space; or
 - (b) a risk of fire or explosion.

Penalty: 10 penalty units.

7.10 Rescue arrangements

- (1) If a risk assessment undertaken under subregulation 7.05 (2) (or a revised risk assessment) indicates a risk to health or safety, the employer to whom the assessment relates must ensure that no person enters the relevant confined space without at least 1 stand-by person being present outside the space for the duration of the work carried out in the space.

Penalty: 10 penalty units.

- (1A) Strict liability applies to the physical element in subregulation (1) that the risk assessment (if any) is undertaken under subregulation 7.05 (2).

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

Regulation 7.11

- (2) The employer must ensure:
- (a) that the openings for entry to and exit from the confined space are of adequate size to allow the rescue of all persons who may enter the confined space; and
 - (b) either:
 - (i) that the openings for entry to and exit from the confined space are not obstructed by fittings or equipment that could impede the rescue of persons; or
 - (ii) if compliance with subparagraph (i) is not reasonably practicable, that a suitable alternative means of rescue is provided.

Penalty: 10 penalty units.

- (3) The employer must ensure that appropriate rescue and first-aid procedures relating to the confined space are planned, established and rehearsed by employees who are involved in carrying out work in a confined space.

Penalty: 10 penalty units.

7.11 Instruction and training

- (1) An employer must provide suitable and adequate training, for each person who is required to work in or on a confined space that is under the control of the employer, in all relevant activities that are related to:
- (a) entering the confined space; or
 - (b) working in, or on the outside surface of, the confined space.
- Penalty: 10 penalty units.
- (2) The persons to whom the employer must provide the training include each employee who:
- (a) is required to carry out work in or on a confined space that is under the control of the employer; or
 - (b) undertakes a risk assessment of a confined space; or
 - (c) issues an entry permit; or

Regulation 7.12

- (d) designs or lays out a workplace that incorporates, or could incorporate, a confined space; or
 - (e) manages or supervises persons working in or near a confined space; or
 - (f) maintains equipment used for or during work in a confined space; or
 - (g) purchases, distributes or maintains personal protective equipment for use in a confined space; or
 - (h) is on stand-by during the performance of work in a confined space; or
 - (i) is involved in a rescue or first-aid procedure involving work in a confined space.
- (3) The training must include training in the following matters, to the extent that they are relevant to the performance of the particular work and the duties of the person who is being trained:
- (a) the hazards associated with confined spaces;
 - (b) risk assessment procedures;
 - (c) control measures for confined spaces;
 - (d) the selection, use, fit and maintenance of safety equipment.

7.12 Record keeping

- (1) If a risk assessment undertaken under subregulation 7.05 (2) is set out in writing, the employer to whom the assessment relates must ensure that the assessment is retained for a period of 5 years.

Penalty: 5 penalty units.

- (2) An employer must keep a copy of an entry permit issued under paragraph 7.08 (1) (a) for a period of at least 3 months after the permit is issued.

Penalty: 5 penalty units.

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- (3) An employer must keep a record of the training provided to an employee under regulation 7.11 for the period of the employee's employment.

Penalty: 5 penalty units.

- (4) An employer must, on request, make a record referred to in subregulation (1), (2) or (3) available to:
- (a) the employee to whom the record relates; or
 - (b) an investigator.

Penalty: 5 penalty units.

- (5) If:
- (a) an employee has worked in a confined space to which a record referred to in subregulation (1), (2) or (3) relates; and
 - (b) health surveillance of the employee is required under Part 6 of these Regulations for a period longer than the period stated in the relevant subregulation;
- the employer must retain the record for the period of the health surveillance.

Penalty: 5 penalty units.

- (6) An offence against subregulation (1), (2), (3), (4), or (5) is an offence of strict liability.

Note 1 For **strict liability**, see section 6.1 of the Criminal Code.

Note 2 The following Australian Standards provide guidance on the subject matter of this Part:

- (a) AS 1715: Selection, Use and Maintenance of Respiratory Protective Devices;
- (b) AS 1716: Respiratory Protective Devices.

Note 3 AS 2865, Safe Working in a Confined Space, is an approved code of practice under section 70 of the Act.

Part 8 Storage and handling of dangerous goods

Division 8.1 Introduction

8.01 Objects of Part 8

The object of this Part is to protect the health and safety of persons from hazards arising from the storage and handling of dangerous goods at a workplace by:

- (a) ensuring that:
 - (i) hazards associated with the storage and handling of dangerous goods are identified; and
 - (ii) risks resulting from the hazards are assessed and controlled; and
- (b) ensuring that the hazards are eliminated, or, if that is not reasonably practicable, the risks arising from the hazards are reduced, as far as practicable; and
- (c) requiring the provision of relevant information and training; and
- (d) ensuring that the Commission is notified in writing if, in respect of dangerous goods other than explosives:
 - (i) such goods are stored or handled in a quantity that exceeds the manifest quantity mentioned in Schedule 7 in respect of goods of that kind; or
 - (ii) a pipeline is to be used for the transport of such goods; and
- (da) ensuring that the Commission is notified in writing in respect of explosives to which regulation 8.44A applies; and
- (e) ensuring that emergency services and the Commission have access to relevant information concerning dangerous goods.

Note For the definition of **dangerous goods**, see subregulation 8.04 (3).

Regulation 8.02

8.02 Application of Part 8 to dangerous goods other than explosives

- (1) Subject to subregulation (2), this Part applies in relation to:
- (a) the storage and handling, at a workplace, of dangerous goods except, as provided by regulation 8.02A, explosives; and
 - (b) a pipeline for the transport of dangerous goods other than explosives.

Note Regulation 8.02A sets out the application of this Part to explosives.

- (2) This Part does not apply to:
- (a) goods, stored or handled at a workplace, that a relevant Competent Authority determines are not dangerous goods; or
 - (b) dangerous goods that are being transported in accordance with:
 - (i) the ADG Code; or
 - (ii) the Technical Instructions for the Safe Transport of Dangerous Goods by Air, published by the International Civil Aviation Organization, as in force on 1 May 2006; or
 - (iii) the International Maritime Dangerous Goods Code, published by the International Maritime Organisation, as in force on 1 May 2006; or
 - (iv) the Dangerous Goods Regulations, published by the International Air Transport Association, as in force on 1 May 2006; or
 - (c) dangerous goods that:
 - (i) are necessary for the propulsion of a vehicle, ship or other mobile plant, appliance or device; or
 - (ii) are in the propulsion system of the vehicle, ship or other mobile plant, appliance or device; or
 - (d) dangerous goods that:
 - (i) are part of, or are necessary for the operation of, the equipment or accessories of a vehicle, ship or other mobile plant, appliance or device; or
 - (ii) are in the operating system for the equipment or accessories; or

Regulation 8.02A

- (e) dangerous goods in any of the following Classes:
 - (i) Class 1 (Explosives);
 - (ii) Subclass 6.2 (Infectious substances);
 - (iii) Class 7 (Radioactive material); or
- (f) asbestos.

Note 1 Division 1 of Part 2 of the Act imposes general duties on employers, employees, manufacturers, suppliers and persons erecting or installing plant in a workplace.

Note 2 The Technical Instructions for the Safe Transport of Dangerous Goods by Air can be purchased from the International Civil Aviation Organization — see www.icao.int/.

Note 3 The International Maritime Dangerous Goods Code can be purchased from the International Maritime Organization — see www.imo.org/home.asp.

Note 4 The Dangerous Goods Regulations can be purchased from the International Air Transport Association — see www.iata.org/index.htm.

- (3) This Part applies to a contractor of an employer, supplier or manufacturer in the same way that it applies to the employer, supplier or manufacturer.

8.02A Application of Part 8 to explosives

- (1) Subject to subregulation (3), the provisions of this Part mentioned in subregulation (2) apply in relation to the storage and handling, at a workplace, of explosives.

Note Regulation 8.02 sets out the application of this Part to dangerous goods other than explosives.

- (2) The provisions are:
 - (a) regulation 8.04; and
 - (b) regulations 8.10, 8.12 and 8.13; and
 - (c) regulations 8.15, 8.16 and 8.17, 8.26, 8.27, 8.35, 8.36, 8.37, 8.40, 8.44A, 8.44B, 8.44C, 8.57, 8.58 and 8.67.
- (3) This Part does not apply in relation to any of the following:
 - (a) the defence employing authority;
 - (b) explosives that are part of an Australian Federal Police operation for bomb detection or bomb disposal;

Regulation 8.03

- (c) explosives that:
 - (i) are part of, or are necessary for the operation of, the equipment or any of the accessories of a vehicle, ship or other mobile plant, appliance or device; or
 - (ii) are in the operating system for the equipment or such accessory; or
- (d) explosives that are being transported in accordance with:
 - (i) the Australian Code for the Transport of Explosives by Road and Rail, Second Edition, published in March 2000 by the Department of Transport and Regional Services; or
 - (ii) the Technical Instructions for the Safe Transport of Dangerous Goods by Air, published by the International Civil Aviation Organization, as in force on 1 May 2006; or
 - (iii) the International Maritime Dangerous Goods Code, published by the International Maritime Organisation, as in force on 1 May 2006; or
 - (iv) the Dangerous Goods Regulations, published by the International Air Transport Association, as in force on 1 May 2006.

8.03 Substances with unknown physical properties

- (1) A person may supply a substance, the physical properties of which are unknown, only for the purposes of bona fide research.
- (2) A person who supplies a substance in accordance with subregulation (1) is exempt from the requirements of Divisions 8.2 to 8.5 of this Part in relation to the substance only while the physical properties of the substance are unknown.
- (3) In this regulation:

bona fide research means a systematic, investigative or experimental activity conducted for the purpose of:

 - (a) acquiring new knowledge; or
 - (b) creating new or improved materials, products, devices, processes or services; or

Regulation 8.04

- (c) analysis to identify the kind or quantities of ingredients in a substance.

substance:

- (a) includes a chemical entity, composite material, mixture or formulation; and
(b) does not include an article.

Note 1 A person to whom this regulation applies continues to owe a general duty of care in relation to the safe manufacture and development of a substance mentioned in this regulation — see section 18 of the Act.

Note 2 A defendant bears an evidential burden in relation to the matter mentioned in regulation 8.03 (see section 13.3 of the *Criminal Code*).

8.04 Definitions for Part 8

- (1) In this Part:

AS 1940-2004 means AS 1940-2004 ‘The storage and handling of flammable and combustible liquids’.

Note AS 1940-2004 is available for purchase from SAI Global Limited — see www.saiglobal.com.au.

bulk means:

- (a) for dangerous goods other than solid dangerous goods — a quantity of the dangerous goods in a bulk container; or
(b) for solid dangerous goods not in a container — more than an undivided quantity of 400 kg of the dangerous goods.

bulk container means:

- (a) for dangerous goods, other than combustible liquids:
(i) for Class 2 dangerous goods — a container with a capacity greater than 500 L; or
(ii) for dangerous goods, other than Class 2 dangerous goods — a container with a capacity greater than 450 L and a net mass, when full, of at least 400 kg; or
(b) for combustible liquids — a container with a capacity greater than 450 L.

bulk storage container means a bulk container at a workplace that is intended to remain in one place and is for use for the storage of dangerous goods at the workplace.

Regulation 8.04

C1 combustible liquid means a combustible liquid with a flashpoint of more than 60.5°C but not more than 150°C.

C2 combustible liquid means a combustible liquid with a flashpoint of more than 150°C.

capacity:

- (a) for a class 2 cylinder — means the water capacity stamped on the cylinder; and
- (b) for any other container — means the total internal volume of the container at 15°C, expressed in litres or cubic metres.

Class, for dangerous goods, means a Class of dangerous goods mentioned in regulation 8.05.

Class label means a label mentioned in Chapter 7 of the ADG Code for a Class.

combustible liquid has the meaning given by AS 1940-2004.

Note On 1 May 2006, ***combustible liquid*** was defined in AS 1940-2004 as follows:

‘Any liquid, other than a flammable liquid, that has a flash point, and has a fire point less than its boiling point.’

‘NOTES:

1 The boiling point is that point at which it is no longer possible to achieve the rate of temperature rise required by ISO 2592 for the determination of fire point.

2 ISO 2592, IP 36 and ASTM D92 are technically equivalent test methods for the determination of flash and fire point by Cleveland open cup tester.’

compatible, for a substance, has the meaning given by subregulation (2).

Competent Authority means:

- (a) for the Commonwealth — a Competent Authority within the meaning of section 6 of the *Road Transport Reform (Dangerous Goods) Act 1995*; and
- (b) for New South Wales — a Competent Authority within the meaning of section 6 of the *Road and Rail Transport (Dangerous Goods) Act 1997* (NSW) as in force on 1 May 2006; and

Regulation 8.04

- (c) for Victoria — a Competent Authority within the meaning of the **Road Transport (Dangerous Goods) Act 1995** (Vic) as in force on 1 May 2006; and
- (d) for Queensland — the chief executive mentioned in regulation 13 of the *Transport Operations (Road Use Management — Dangerous Goods) Regulations 1998* (Qld) as in force on 1 May 2006; and
- (e) for Western Australia — a Competent Authority within the meaning of section 3 of the *Dangerous Goods (Transport) Act 1998* (WA) as in force on 1 May 2006; and
- (f) for South Australia — a Competent Authority within the meaning of the *Dangerous Substances Act 1979* (SA) as in force on 1 May 2006; and
- (g) for Tasmania — a Competent Authority within the meaning of section 3 of the *Dangerous Goods Act 1998* (Tas) as in force on 1 May 2006; and
- (h) for the Northern Territory — the Minister mentioned in section 13 of the *Dangerous Goods Act 1980* (NT) as in force on 1 May 2006.

container means a thing by, or in, which dangerous goods are wholly or partly contained, and includes any components or materials necessary for the thing's containment function to be carried out.

control temperature, for dangerous goods, means the maximum temperature, mentioned in the ADG Code, at which the dangerous goods can be safely stored and handled.

dangerous goods has the meaning given by subregulation (3).

dangerous goods in transit has the meaning given by subregulation (5).

dangerous occurrence has the meaning given by regulation 3 of the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*.

explosive means a substance or mixture of substances that:

- (a) are listed in Appendix 2 to the Australian Code for the Transport of Explosives by Road and Rail, Second Edition, published in March 2000 by the Department of Transport and Regional Services; or

Regulation 8.04

- (b) meet the criteria for Class 1 dangerous goods in Chapter 2 of the ADG Code .

fire risk dangerous goods means dangerous goods of Class 2.1, 3, 4 or 5, or Subsidiary Risk 2.1, 3, 4 or 5, that burn readily or support combustion.

free from dangerous goods, for an object, has the meaning given by subregulation (6).

goods too dangerous to be transported means goods that:

- (a) are named in Appendix 5 to the ADG Code; or
(b) are determined by a relevant Competent Authority to be goods too dangerous to be transported.

handling, for dangerous goods, includes:

- (a) moving the dangerous goods within a workplace or within a pipework or pipeline; and
(b) manufacturing, processing, using, treating, dispensing, packing, supplying, transferring, loading and unloading, making harmless, destroying and disposing of the dangerous goods.

hazardous area has the meaning given by AS/NZS 2430.3.1:2004 'Classification of hazardous areas — General'.

Note 1 On 1 May 2006, ***hazardous area*** was defined in AS/NZS 2430.3.1:2004 as follows:

'An area in which an explosive atmosphere is present, or may be expected to be present, in quantities such as to require special precautions for the construction, installation and use of potential ignition sources.

NOTES:

1 For the purpose of this Standard, an area is regarded as a three-dimensional region or space.

2 Examples of potential ignition sources are electrical equipment, naked flames, sparks from grinding and welding operations, and hot surfaces.'

Note 2 AS/NZS 2430.3.1:2004 is available for purchase from SAI Global Limited – see www.saiglobal.com.au.

Hazchem code has the meaning given by clause 1.1.3 of the ADG Code.

Note On 1 May 2006, ***Hazchem code*** was defined in clause 1.1.3 of the ADG Code for a load of dangerous goods as 'the Hazchem code derived for those goods under Appendix 4 of the ADG Code'.

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ignition source means a source of energy sufficient to ignite a flammable atmosphere, including a naked flame, exposed incandescent material, an electrical welding arc, a mechanical or static spark, and electrical or mechanical equipment not specifically designed to be used in a flammable atmosphere.

intermediate bulk container means a rigid or flexible bulk packaging for the transport of dangerous goods, that:

- (a) has a capacity of not more than:
 - (i) for a composite, fibreboard, flexible, rigid plastic or wooden container for transporting a solid of Packing Group I — 1 500 L; and
 - (ii) for a metal container for transporting a solid of Packing Group I — 3 000 L; and
 - (iii) for a container for transporting a solid or liquid of Packing Group II or III — 3 000 L; and
- (b) is designed for mechanical handling; and
- (c) is resistant to the stresses produced in usual handling and transport.

package means dangerous goods and their packaging.

packaged dangerous goods means dangerous goods in a container that has:

- (a) for dangerous goods, other than combustible liquids:
 - (i) for Class 2 dangerous goods — a capacity of up to 500 L; or
 - (ii) for dangerous goods, other than Class 2 dangerous goods — a capacity of up to 450 L and a net mass, when full, of up to 400 kg; or
- (b) for combustible liquids — a capacity of up to 450 L.

packaging means a container in which dangerous goods are received or held, and includes anything that allows the container to receive or hold the dangerous goods, or to be closed.

packing group, of dangerous goods, is a reference to the packing group to which the dangerous goods are assigned under subregulation (7).

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pipeline means pipework that:

- (a) begins or ends in a workplace at the nearest fluid or slurry control point (along the axis of the pipeline) to the boundary of the workplace; and
- (b) crosses the boundary of a Commonwealth workplace.

pipework means a pipe, or an assembly of pipes, pipe fittings, valves and pipe accessories, used to transport dangerous goods within or outside a workplace.

product name, for dangerous goods, means the brand name or trade name given to the dangerous goods by the supplier of the dangerous goods.

proper shipping name has the meaning given by clause 1.1.3 of the ADG Code.

Note On 1 May 2006, clause 1.1.3 of the ADG Code defined ***proper shipping name*** as having the meaning given in clause 2.2.1 of that Code.

protected place means any of the following:

- (a) a dwelling, place of worship, public building, school or college, hospital, child-care facility or theatre;
- (b) a factory, workshop, office, store, warehouse, shop, building or yard in which people who are not directly involved with the storage and handling of dangerous goods are working;
- (c) a ship lying in a permanent berthing facility.

relevant Competent Authority, for an employer, means:

- (a) a Competent Authority within the meaning of section 6 of the *Road Transport Reform (Dangerous Goods) Act 1995*; and
- (b) a Competent Authority in the State or Territory in which the employer operates.

Subsidiary Risk, of dangerous goods, is a reference to the Subsidiary Risk to which the dangerous goods are assigned under subregulation (8).

Subsidiary Risk label means a label mentioned in Chapter 7 of the ADG Code for a particular Subsidiary Risk.

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tank means a bulk container, other than an intermediate bulk container, that is used or is designed to be used to transport, store or handle dangerous goods in the form of a gas or a liquid in bulk, and includes any equipment that forms part of the container.

transfer, in relation to dangerous goods, means move the dangerous goods from one container to another, or from one place to another, and includes pumping, dispensing or decanting the dangerous goods.

underground tank means a tank that is wholly or partly buried in a place in the ground and is intended to remain in that place.

UN number, for dangerous goods, means:

- (a) the substance identification number shown in Column 1 of Appendix 1 to the ADG Code for the dangerous goods; or
- (b) the number assigned to the dangerous goods by the UN Committee of Experts in the Transport of Dangerous Goods, published in the United Nations Recommendations on the Transport of Dangerous Goods.

Note The United Nations Recommendations on the Transport of Dangerous Goods are available on the internet at www.unece.org/trans/danger/publi/unrec/mr_nature_e.html.

- (2) Two or more substances are **compatible** if the substances will not react together to:
 - (a) cause a fire, explosion, harmful reaction or the evolution of flammable, corrosive or toxic vapours; or
 - (b) cause a dangerous occurrence; or
 - (c) substantially increase the potential of the combined substances to cause a dangerous occurrence.
- (3) **Dangerous goods** are goods that:
 - (a) are named in column 2 of Appendix 2 to the ADG Code; or
 - (b) meet the criteria in Chapter 2 of the ADG Code; or
 - (c) are determined by a relevant Competent Authority to be dangerous goods; or
 - (d) are C1 combustible liquids; or

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- (e) are C2 combustible liquids, if stored and handled with fire risk dangerous goods (within the meaning of subregulation (4)); or
- (f) are explosives; or
- (g) are goods too dangerous to be transported.

Note On 1 May 2006, the definition of 'dangerous goods' in the ADG Code did not include C1 and C2 combustible liquids.

- (4) C2 combustible liquids are ***stored and handled with fire risk dangerous goods*** if the storage and handling of the C2 combustible liquids are not separated, by distance or barriers, from the storage and handling of fire risk dangerous goods so that if a reasonably foreseeable incident involving the C2 combustible liquids or the fire risk dangerous goods occurs, the C2 combustible liquids and the fire risk dangerous goods will come into contact.
- (5) ***Dangerous goods in transit*** are dangerous goods that:
 - (a) are supplied to a workplace in a container that is not opened at the workplace; and
 - (b) are not used at the workplace; and
 - (c) remain at the workplace:
 - (i) in the case of explosives — for no longer than 24 hours; or
 - (ii) in any other case — for no longer than 5 days.
- (6) An object is free from dangerous goods if:
 - (a) for an object that last held a gas or volatile liquid — the concentration of gas or vapour in the atmosphere of the object is less than the concentration mentioned in the National Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC:3008 (1995)]; or
 - (b) for an object that last held dangerous goods of Class 2.1 or 3 or of Subsidiary Risk 3 — the concentration of those dangerous goods or their vapours in the atmosphere of the object is less than 5% of the lower explosive limit for the dangerous goods when sampled at ambient temperature; or

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- (c) for an object that last held a non-volatile liquid or solid — the object has been thoroughly cleaned.

Note NOHSC:3008 (1995) is available on the NOHSC website, www.nohsc.gov.au/OHSInformation/NOHSCPublications/#1.

- (7) Dangerous goods are assigned to a ***packing group*** if the dangerous goods:
 - (a) are assigned to the packing group in column 5 of Appendix 2 to the ADG Code; or
 - (b) are assigned to the packing group in a Special Provision of the ADG Code applying to the dangerous goods; or
 - (c) satisfy the criteria in column 9 of Appendix 2 to the ADG Code for assignment to the packing group; or
 - (d) are determined by a relevant Competent Authority to be assigned to the packing group.
- (8) Dangerous goods are assigned a ***Subsidiary Risk*** if the dangerous goods:
 - (a) are assigned the Subsidiary Risk in column 4 in Appendix 2 to the ADG Code; or
 - (b) are assigned the Subsidiary Risk in a Special Provision of the ADG Code applying to the dangerous goods; or
 - (c) satisfy the criteria in column 9 in Appendix 2 to the ADG Code for assignment of the Subsidiary Risk; or
 - (d) are determined by a relevant Competent Authority to be dangerous goods assigned the Subsidiary Risk.

Note Part 10 also contains definitions of terms that are used in this Part.

8.05 Classes of dangerous goods

The Classes of dangerous goods are set out in the following table.

Note Dangerous goods are classified according to the most significant risk presented by the dangerous goods, determined in accordance with the criteria set out in Chapter 2 of the ADG Code.

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Item	Class	Subclass	Description of dangerous goods and subclasses (if any)
1	1		Explosives
2	2		Gases
3		2.1	Flammable gases
4		2.2	Non-flammable, non-toxic gases
5		2.3	Toxic gases
6	3		Flammable liquids
7	4		Flammable solids, substances liable to spontaneous combustion and substances that in contact with water emit flammable gases
8		4.1	Flammable solids
9		4.2	Substances liable to spontaneous combustion
10		4.3	Substances that in contact with water emit flammable gases
11	5		Oxidizing substances and organic peroxides
12		5.1	Oxidizing substances
13		5.2	Organic peroxides
14	6		Toxic and infectious substances
15		6.1	Toxic substances
16		6.2	Infectious substances
17	7		Radioactive material
18	8		Corrosive substances
19	9		Miscellaneous substances and articles

8.06 Inconsistency between this Part and codes etc

(1) In this regulation:

instrument means a code, standard or rule (made in or outside Australia) about the storage and handling of dangerous goods.

- (2) If an instrument is applied or adopted by, or is incorporated in, this Part and the instrument is inconsistent with this Part, this Part prevails to the extent of the inconsistency.

8.07 Determinations in relation to dangerous goods taken to be regulations

- (1) A determination, as in force on 1 May 2006, by the Competent Authority under regulation 1.18 of the *Road Transport Reform (Dangerous Goods) Regulations 1997* is taken to be a regulation under this Part.
- (2) A determination, as in force on 1 May 2006, by a Competent Authority under the following legislation is taken to be a regulation under this Part:
- (a) the *Road Transport Reform (Dangerous Goods) Regulations 1997*, applied as regulations by the *Road and Rail Transport (Dangerous Goods) (Road) Regulation 1998* (NSW) as in force on 1 May 2006;
 - (b) the regulations in force under Part 2 of the *Road Transport Reform (Dangerous Goods) Act 1995* applied as a law of Victoria under the **Road Transport (Dangerous Goods) Act 1995** (Vic) as in force on 1 May 2006;
 - (c) the *Dangerous Goods (Transport) (General) Regulations 1999* (WA) as in force on 1 May 2006;
 - (d) the *Road Transport Reform (Dangerous Goods) (South Australia) Regulations 1998* (SA) as in force on 1 May 2006;
 - (e) the *Dangerous Goods (Road and Rail Transport) Regulations 1998* (Tas) as in force on 1 May 2006.
- Note* For the *Road Transport Reform (Dangerous Goods) (South Australia) Regulations 1998* (SA), see regulation 10 of the *Dangerous Substances Regulations 2002* (SA).
- (3) A determination, as in force on 1 May 2006, by the chief executive under section 13 of the *Transport Operations (Road Use Management — Dangerous Goods) Regulation 1998* (Qld) as in force on 1 May 2006, is taken to be a regulation under this Part.

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- (4) A declaration by the Minister, as in force on 1 May 2006, under section 13 of the *Dangerous Goods Act* (NT) as in force on 1 May 2006, is taken to be a regulation under this Part.

8.08 Quantities of dangerous goods

For this Part:

- (a) a reference to a quantity of packaged dangerous goods or combustible liquids is taken to be a reference to:
 - (i) for non-liquid dangerous goods (other than Class 2 dangerous goods) — the net mass in kilograms of the dangerous goods in the container; and
 - (ii) for liquid dangerous goods (other than Class 2 dangerous goods) or combustible liquids — the net capacity of the container; and
 - (iii) for Class 2 dangerous goods — the total capacity of the container; and
- (b) a reference to a quantity of dangerous goods or combustible liquids in bulk, being dangerous goods or combustible liquids held in a tank, is taken to be a reference to:
 - (i) for dangerous goods (other than Class 2 dangerous goods) or combustible liquids — the net mass in kilograms that the tank is designed to hold; and
 - (ii) for Class 2 dangerous goods — the total capacity of the tank; and
- (c) a reference to a quantity of any other dangerous goods is taken to be a reference to the net quantity of the dangerous goods that is dangerous goods.

Division 8.2 Duties of manufacturers, suppliers and installers

Note The effect of subsection 18 (3) of the Act is that a person who imports into Australia a substance that the person has not manufactured must, if the person does not have a place of business in Australia at the time of the importation, be taken to be the manufacturer of the substance.

Subdivision 8.2.1 Duties of manufacturers of dangerous goods

8.09 Determination whether goods are dangerous goods

- (1) A manufacturer of goods commits an offence if the manufacturer:
 - (a) is reckless with respect to whether the goods will be used by employees at a workplace; and
 - (b) does not, in writing and as soon as practicable after beginning to manufacture the goods, determine whether the goods are dangerous goods.

Penalty: 10 penalty units.

- (2) A determination under subregulation (1) must be made in accordance with:
 - (a) for goods other than liquids — the criteria in Chapter 2 of the ADG Code; and
 - (b) for liquids — AS 1940-2004.

Penalty: 10 penalty units.

- (3) Strict liability applies to the physical element in subregulation (2) that the goods are dangerous goods in accordance with the ADG Code or AS 1940-2004.
- (4) The manufacturer must keep the determination, or a copy of the determination, for the period during which the manufacturer manufactures the goods.

Penalty: 5 penalty units.

- (5) An offence against subregulation (4) is an offence of strict liability.
- (6) A manufacturer who manufactures dangerous goods must ensure that the dangerous goods are classified:
 - (a) for dangerous goods listed in Appendix 2 of the ADG Code — in accordance with the ADG Code; or

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- (b) for any other dangerous goods — in accordance with the criteria in Chapter 2 of the ADG Code.

Penalty: 10 penalty units.

- (7) Strict liability applies to the physical element in subregulation (6) that the dangerous goods are classified in accordance with the ADG Code.

8.10 Material Safety Data Sheets

- (1) Subject to subregulations (2) and (4), a manufacturer of dangerous goods commits an offence if the manufacturer:
 - (a) is reckless with respect to whether the dangerous goods will be used by employees at a workplace; and
 - (b) does not prepare an MSDS for the dangerous goods before the dangerous goods are supplied to the employer of the employees.

Penalty: 10 penalty units.

Note 1 The purpose of an MSDS is to provide the information needed to allow the safe storage and handling of dangerous goods used at a workplace. The MSDS for particular dangerous goods describes its identity, relevant health hazard information, precautions for use and safe storage and handling information.

Note 2 Guidance on the preparation and use of an MSDS can be obtained from the National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (2003)]. The National Code of Practice is available on the Internet at www.nohsc.gov.au/default.asp.

- (2) An MSDS must be prepared in accordance with the National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (2003)].

Note The National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (2003)] is available on the Internet at www.nohsc.gov.au/default.asp.

- (3) Subject to subregulation (4), a manufacturer of dangerous goods commits an offence if the manufacturer:
 - (a) is reckless with respect to whether the dangerous goods will be used by employees at a workplace; and

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- (b) does not give a copy of the current MSDS for the dangerous goods to a supplier who supplies the dangerous goods to the employer of the employees:
 - (i) before the dangerous goods are first supplied by the supplier to the employer; and
 - (ii) at any later time on request by the supplier.

Penalty: 10 penalty units.

- (4) Subregulations (1), (2) and (3) do not apply to the supply of C1 combustible liquids or C2 combustible liquids.
- (5) The manufacturer must:
 - (a) review an MSDS:
 - (i) within 5 years after the MSDS is first issued, and afterwards at intervals of not more than 5 years; and
 - (ii) as often as is necessary to ensure that the MSDS contains current information and is accurate in all significant details; and
 - (b) if the MSDS does not contain current information or is not accurate in all significant details — revise the MSDS so that it contains current information and is accurate in all significant details.

Penalty: 10 penalty units.

- (6) The MSDS must include the name of each ingredient of the dangerous goods.
- (7) If the identity of an ingredient of the dangerous goods is commercially confidential, the manufacturer may use the generic name for the ingredient in the MSDS.
- (8) However, if:
 - (a) the manufacturer considers that giving the generic name of the ingredient would cause commercial disadvantage; and
 - (b) the ingredient is not dangerous goods; and
 - (c) the ingredient does not have a known synergistic effect;the manufacturer may include a statement in the MSDS to the effect that the ingredient is an ingredient determined not to be dangerous goods.

Regulation 8.11

- (9) Despite subregulations (7) and (8), if there is a medical emergency involving the dangerous goods, the manufacturer must disclose the name of the ingredient.

Note Regulation 6.05 provides for manufacturer's duties in relation to MSDS for hazardous substances.

Subdivision 8.2.2 Duties of suppliers of dangerous goods

8.11 Containment, packaging and labelling of dangerous goods

- (1) A manufacturer of dangerous goods commits an offence if the manufacturer:
- (a) supplies dangerous goods; and
 - (b) is reckless with respect to whether the dangerous goods will be used by employees at a workplace; and
 - (c) does not ensure that the dangerous goods:
 - (i) are contained, packaged and labelled in accordance with the ADG Code; and
 - (ii) are labelled with any other information that is necessary to protect the health and safety of employees.

Penalty: 10 penalty units.

Note Chapter 3 of the ADG Code deals with containment, packaging and labelling requirements.

- (2) A person who is not a manufacturer of dangerous goods commits an offence if the person:
- (a) supplies dangerous goods; and
 - (b) is reckless with respect to whether the dangerous goods will be used by employees at a workplace; and
 - (c) does not ensure that the dangerous goods are contained, packaged and labelled in accordance with subregulation (1).

Penalty: 10 penalty units.

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- (3) Subregulation (2) does not apply to a retailer in relation to the supply of packaged dangerous goods in a container provided by the purchaser if the retailer ensures that, as far as practicable, the container:
 - (a) is of a material that will not react adversely with the dangerous goods; and
 - (b) is constructed in a manner that will contain the dangerous goods; and
 - (c) is not damaged; and
 - (d) is clearly marked with the name of the dangerous goods; and
 - (e) cannot be mistakenly identified as containing foodstuffs.
- (4) Strict liability applies to the physical element in subregulation (2) that the dangerous goods are contained, packaged and labelled in accordance with subregulation (1).
- (5) A person commits an offence if the person:
 - (a) fills, allows to be filled or causes to be filled with Class 2 dangerous goods a cylinder, disposable container or aerosol container; and
 - (b) is reckless with respect to whether the dangerous goods will be used by employees at a workplace; and
 - (c) does not ensure that the cylinder or container complies with the ADG Code.

Penalty: 10 penalty units.

Note Paragraph 3.8.2 and Appendix 2 of the ADG Code deal with containers and cylinders for Class 2 dangerous goods.

8.12 Material Safety Data Sheets

- (1) A supplier of dangerous goods commits an offence if the supplier:
 - (a) supplies dangerous goods to an employer; and
 - (b) is reckless with respect to whether the dangerous goods will be used by employees at a workplace; and

Regulation 8.13

- (c) does not give a copy of the current MSDS for the dangerous goods to the employer for the workplace:
 - (i) the first time the dangerous goods are supplied to the employer; and
 - (ii) at any later time, if the employer asks the supplier for the current MSDS for the dangerous goods.

Penalty: 10 penalty units.

- (2) This regulation does not apply in relation to the supply by a retailer to a purchaser of packaged dangerous goods that are consumer packages.

8.13 Additional information

- (1) A person who receives dangerous goods from a supplier may ask the supplier for information that is:
 - (a) relevant to the safe storage and handling of the dangerous goods; and
 - (b) not contained in the MSDS for the dangerous goods.
- (2) A supplier who receives a request under subregulation (1) must give the information to the person, if the information that is available to the supplier at the time the request is received:
 - (a) relates to the storage and handling of the dangerous goods; and
 - (b) is additional to the information contained in the MSDS for the dangerous goods.

Penalty: 10 penalty units.

Subdivision 8.2.3 Duties of suppliers or installers of plant or structures

8.14 Supply or installation of plant or structures

- (1) A person who supplies or installs plant or a structure commits an offence if the person:
 - (a) is reckless with respect to whether the plant or structure will be used by employees at a workplace for the storage or handling of dangerous goods; and

Regulation 8.14

- (b) does not ensure that:
 - (i) the plant or structure is suitable for use, and able to be used safely, with the dangerous goods; and
 - (ii) the plant or structure conforms with the design for that plant or structure; and
 - (iii) if the plant or a structure is designed to be operated in a fixed position — unintentional movement of the plant or structure is prevented; and
 - (iv) the employer is given information:
 - (A) relating to the installation, testing, commissioning, use, inspection, maintenance, repair, decommissioning and disposal of the plant or structure, to the extent that this is necessary for the plant or structure to be used for its intended purposes; and
 - (B) explaining how the plant or structure should be operated and maintained; and
 - (C) stating any conditions or specifications that must be complied with to ensure the safety and health of employees when the plant or structure is in operation.

Penalty: 10 penalty units.

- (2) A person who has supplied or installed plant or a structure commits an offence if the person:
 - (a) is reckless with respect to whether the plant or structure will be used by employees at a workplace for the storage or handling of dangerous goods; and
 - (b) does not ensure that, as far as practicable, the employer is given any information that becomes available about the plant or structure that is relevant to its use for that purpose.

Penalty: 10 penalty units.

Regulation 8.15

Division 8.3 Duties of employers

Subdivision 8.3.1 Hazard identification and risk assessment

Note Part 6 applies to hazardous substances (within the meaning of that Part). If goods that are dangerous goods are also a hazardous substance, both Part 6 and this Part must be complied with in relation to the goods.

8.15 Hazard identification

- (1) An employer must ensure that any hazard associated with the storage or handling of dangerous goods at the workplace is identified, to the extent practicable having regard to the state of knowledge of the hazard.

Penalty: 10 penalty units.

- (2) Without limiting subregulation (1), the employer must ensure that, in identifying a hazard, the following are considered:
- (a) the chemical and physical properties of the dangerous goods, including physical state, viscosity, vapour pressure, chemical energy, particle size, solubility, electrical conductivity, reactivity, combustion products and concentration;
 - (b) the chemical and physical reaction between the dangerous goods and any things or substances with which the dangerous goods may come into contact at the workplace;
 - (c) any manufacturing, transfer or transport process at the workplace involving the dangerous goods, including:
 - (i) the temperatures and pressures to which the dangerous goods are subjected; and
 - (ii) physical processes (for example, separation, mixing and absorption); and
 - (iii) changes of state and processes involving chemical reaction;
 - (d) the structures, plant (including the characteristics of the materials used in the plant), systems of work and activities that are used in the storage or handling of the dangerous goods at the workplace;

Regulation 8.16

- (e) the structures, plant (including the characteristics of the materials used in the plant), systems of work and activities that are not used in the storage or handling of the dangerous goods at the workplace but that could interact with the dangerous goods at the workplace;
 - (f) any information about the hazardous properties inherent in the dangerous goods, including information in any MSDS for the dangerous goods available to the employer;
 - (g) the kind and characteristics of incidents associated with the dangerous goods, including incidents affecting the structures or plant used to store or handle the dangerous goods;
 - (h) the location of the dangerous goods at the workplace;
 - (i) the effects (if any) of environmental conditions (for example vegetation, moisture, rain, wind, pollution, flooding, lightning, heat and cold) on the dangerous goods.
- (3) The employer must ensure that a record of each hazard identified is kept.

Penalty: 10 penalty units.

8.16 Risk assessment

- (1) If a hazard associated with the storage or handling of dangerous goods at the workplace is identified under regulation 8.15, the employer must ensure that any risks associated with the hazard are assessed.

Penalty: 10 penalty units.

- (2) Without limiting subregulation (1), the employer must ensure that, when a risk is being assessed, the following are considered:
- (a) the matters mentioned in subregulation 8.15 (2);
 - (b) the consequences, within and outside the workplace, of any incident that could occur because of the storage or handling of the dangerous goods.

Regulation 8.17

- (3) The employer must ensure that the assessment is reviewed:
- (a) within 5 years after the assessment is carried out, and afterwards at intervals of not more than 5 years; and
 - (b) as soon as practicable after any change in circumstances such that the assessment is no longer valid.

Penalty: 10 penalty units.

- (4) The employer must ensure that:
- (a) a record is kept of each assessment and review; and
 - (b) a copy of the record is kept while the assessment is current or being reviewed; and
 - (c) on request by Comcare, Comcare is given a copy of the record.

Penalty: 10 penalty units.

- (5) An offence against subregulation (4) is an offence of strict liability.

Subdivision 8.3.2 Risk control

8.17 Control of risk

- (1) An employer must ensure that any risk associated with the storage or handling of dangerous goods at a workplace is:
- (a) eliminated; or
 - (b) if it is not practicable to eliminate the risk — reduced as far as practicable.

Penalty: 10 penalty units.

- (2) Subject to subregulation (3), the employer must ensure that the risk is eliminated or reduced by:
- (a) eliminating the use of the dangerous goods; or
 - (b) using other dangerous goods that have a lower risk than the original dangerous goods; or
 - (c) reducing, as far as practicable, the quantity of dangerous goods that are stored or handled at the workplace.

Regulation 8.17

- (3) If it is not practicable to reduce the risk in accordance with subregulation (2), the employer must ensure that appropriate engineering controls and systems of work are used to reduce the risk as far as practicable.
- (4) The employer must ensure that:
 - (a) control measures and safe systems of work are implemented, commissioned, supervised, inspected and maintained at the workplace for the purpose of ensuring that the employer retains control over the use of the dangerous goods; and
 - (b) if any breaches of this Part occur:
 - (i) action is taken as soon as practicable to address the breach; and
 - (ii) if a risk results from the breach — the risk is eliminated or, if this is not practicable, the risk is reduced as far as practicable; and
 - (c) employees are provided with appropriate personal protective clothing and equipment.

Penalty: 10 penalty units.

- (5) The employer must ensure that plant or a structure for the storage or handling of dangerous goods is designed, manufactured, installed, commissioned, operated, inspected, tested, maintained, repaired and decommissioned to eliminate any risks, or, if this is not practicable, to reduce any risks associated with the use of the plant or structure as far as practicable.

Penalty: 10 penalty units.

- (6) The employer must ensure that the plant (including the characteristics of the materials used in the plant), structures, activities, systems of work, substances or things that are not used for storage or handling of dangerous goods at the workplace do not affect the dangerous goods or the way in which the dangerous goods are stored or handled so as to increase any risks associated with the dangerous goods.

Penalty: 10 penalty units.

Regulation 8.18

- (7) The employer must ensure that a risk mentioned in subregulation (8) is:
- (a) eliminated; or
 - (b) if it is not reasonably practicable to eliminate the risk — reduced as far as practicable.

Penalty: 10 penalty units.

- (8) The risks are:
- (a) a risk to a person who is at or near a workplace under the employer's control, and who is not an employee or contractor of the employer, that results from the storage or handling of dangerous goods at the workplace; and
 - (b) a risk to plant, structures, processes, activities and systems of work used for storage or handling of dangerous goods at a workplace under the employer's control, that results from an action of a person who is not an employee or contractor of the employer and who has access to an area where dangerous goods are stored or handled.

8.18 Physical separation of dangerous goods from people, protected places and other property

An employer must ensure that any risk to:

- (a) a person at or near the workplace; or
- (b) a protected place or any other property at or outside the workplace;

resulting from a dangerous occurrence involving the storage or handling of dangerous goods at the workplace is eliminated, or, if this is not reasonably practicable, is reduced as far as practicable by separating the dangerous goods from the person, protected place or other property by distance or barriers, or both.

Penalty: 10 penalty units.

8.19 Separation of dangerous goods from incompatible substances

An employer must ensure that, as far as practicable, dangerous goods are stored or handled at the workplace in such a way as to prevent them:

- (a) interacting with goods that are not compatible with the dangerous goods; or
- (b) contaminating food, food packaging or personal use products.

Penalty: 10 penalty units.

8.20 Keeping dangerous goods stable etc

- (1) An employer must ensure that, as far as practicable, dangerous goods that are stored or handled at the workplace do not accidentally become unstable, decompose or change in such a way that:

- (a) the dangerous goods create a different hazard from the original hazard; or
- (b) any risk associated with the dangerous goods is increased.

Penalty: 10 penalty units.

- (2) Without limiting subregulation (1):

- (a) if the stability of the dangerous goods depends on the maintenance of the proportions of the substances that constitute the dangerous goods, including any ingredient that stabilises the dangerous goods, the employer must ensure that the proportions are maintained in accordance with the manufacturer's specifications; and
- (b) if a control temperature is specified for the dangerous goods in the ADG Code, the employer must ensure that the dangerous goods are kept at that temperature; and
- (c) if a control temperature is not specified for the dangerous goods in the ADG Code, the employer must ensure that the dangerous goods are kept at, below or above a temperature in accordance with the manufacturer's specifications.

Regulation 8.21

- (3) Subregulations (1) and (2) do not apply in relation to dangerous goods that are about to be used in a manufacturing process.

8.21 Impact protection — structures and plant

An employer must ensure that a structure or plant used for storage or handling dangerous goods at the workplace, and any pipework or equipment attached to the structure or plant, are:

- (a) appropriately located in the workplace; and
- (b) if necessary, fixed to a stable foundation;

to prevent damage from movement of the structure or plant or any attached pipework or equipment.

Penalty: 10 penalty units.

8.22 Impact protection — containers

An employer must ensure that, as far as reasonably practicable, a container at the workplace in which dangerous goods are stored, and any pipework or equipment attached to the container, are protected from damage resulting from an activity conducted at the workplace.

Penalty: 10 penalty units.

8.23 Spills and containment of dangerous goods

If a spill, leak or accidental release of dangerous goods occurs at a workplace, the employer must ensure that:

- (a) the spill, leak or release is confined, as far as practicable, within the workplace; and
- (b) immediate action is taken to assess and control any risk resulting from the spill, leak or release; and
- (c) the dangerous goods are contained, cleaned up, disposed of or otherwise made safe, as soon as practicable after the spill, leak or release.

Penalty: 10 penalty units.

Regulation 8.25

8.24 Transfer of dangerous goods

An employer must ensure that any risk associated with the transfer of dangerous goods to, from, or within, the workplace, is eliminated, or, if this is not practicable, is reduced as far as practicable, having regard to the need to:

- (a) avoid spillage or overflow; and
- (b) reduce static electricity; and
- (c) reduce vapour generation; and
- (d) ensure that transfer fittings are compatible; and
- (e) avoid sources of ignition; and
- (f) ensure that associated plant and equipment is free from dangerous goods.

Penalty: 10 penalty units.

Note The expression *free from dangerous goods* is defined in subregulation 8.04 (6).

8.25 Fire protection

- (1) An employer must ensure that:
 - (a) the workplace is provided with fire protection and fire fighting equipment that is designed and constructed for use in relation to the kinds and quantities of dangerous goods that are stored or handled at the workplace, and the conditions under which the dangerous goods are stored and handled at the workplace, having regard to:
 - (i) the fireload of the dangerous goods; and
 - (ii) the compatibility of the dangerous goods with other goods; and
 - (iii) things that may cause or exacerbate a fire involving the dangerous goods; and
 - (iv) other workplaces, premises or a protected place near the employer's workplace; and
 - (b) the fire protection and fire fighting equipment are installed, tested and maintained in accordance with the manufacturer's specifications.

Penalty: 10 penalty units.

Regulation 8.26

Example for subparagraph (1) (a) (iii)

Things that could cause or exacerbate a fire involving dangerous goods include:

- environmental conditions such as vegetation, moisture, rain, wind, pollution, flooding, lightning, heat and cold
- vehicles
- non-dangerous goods.

(2) If the fire protection or fire fighting equipment becomes ineffective, the employer must ensure that:

- (a) any risk resulting from the loss of effective fire protection or fire fighting equipment is assessed as soon as practicable; and
- (b) if necessary:
 - (i) alternative fire protection or fire fighting equipment is provided to maintain an appropriate level of protection; or
 - (ii) action is taken to eliminate, as far as practicable, any risk associated with the storage or handling of dangerous goods; or
 - (iii) action is taken, as soon as practicable, to ensure that the fire protection or fire fighting equipment is effective.

Penalty: 10 penalty units.

8.26 Emergency procedures

An employer must ensure that:

- (a) a procedure for dealing with any emergency that may arise in connection with the storage or handling of dangerous goods at the workplace is:
 - (i) developed, implemented and maintained; and
 - (ii) communicated to relevant persons at the workplace who may be affected by, or who may respond to, an emergency; and
- (b) appropriate equipment is available:
 - (i) for use in dealing with an emergency; and

Regulation 8.27

- (ii) for containing and cleaning up incidents that it is reasonable to foresee may occur in an emergency.

Penalty: 10 penalty units.

8.27 Emergency plans

- (1) This regulation applies to an employer in relation to dangerous goods stored or handled at a workplace of the employer if:
 - (a) the goods are of a Class mentioned in column 2 of an item of Schedule 7, and their total quantity is more than the manifest quantity mentioned in column 5 of that item; or
 - (b) the goods are explosives, and their total quantity is a notifiable quantity under subregulation 8.44A (1).
- (2) The employer must ensure that:
 - (a) an emergency plan for dealing with any emergency that may arise in connection with the storage or handling of dangerous goods at the workplace is:
 - (i) developed, implemented and maintained; and
 - (ii) communicated to employees at the workplace who may be affected by, or who may respond to, an emergency; and
 - (b) appropriate equipment is available:
 - (i) for use in dealing with an emergency; and
 - (ii) for containing and cleaning up incidents that it is reasonable to foresee may occur in an emergency; and
 - (c) appropriate material, such as absorbents and neutralisers, is available for use in dealing with an emergency.

Penalty: 10 penalty units.

- (3) The employer must ensure that the emergency plan mentioned in subregulation (2) is:
 - (a) communicated to persons at premises adjacent to the workplace who may be affected by an emergency; and
 - (b) given to emergency services.

Penalty: 10 penalty units.

Regulation 8.28

- (4) The employer must review the emergency plan:
- (a) within 5 years after the plan is developed, and afterwards at intervals of not more than 5 years; and
 - (b) if there is a change in circumstances at the workplace.

Penalty: 10 penalty units.

Note Examples of when an emergency plan requires review can be found in the Approved Code of Practice for the Storage and Handling of Dangerous Goods as in force on 15 March 2007.

- (5) In developing or reviewing the emergency plan, the employer must:
- (a) give a copy of the plan to the emergency services; and
 - (b) if an emergency service provides written advice to the employer about the plan — have regard to that written advice.

Penalty: 10 penalty units.

8.28 Elimination of ignition sources in hazardous areas

An employer must ensure that:

- (a) as far as practicable, there are no ignition sources in a hazardous area at the workplace; or
- (b) if it is not practicable to remove an ignition source from a hazardous area, any risk resulting from the ignition source is controlled.

Penalty: 10 penalty units.

8.29 Safety equipment for controlling risks

If equipment is necessary for the control of a risk in relation to the storage or handling of dangerous goods in a workplace, the employer must ensure that the equipment is:

- (a) available to relevant persons; and
- (b) maintained in accordance with the manufacturer's specifications.

Penalty: 10 penalty units.

Regulation 8.33

8.30 Control of hazardous atmosphere

An employer must ensure that any risk to a person's health or safety associated with any atmospheric conditions arising from the storage or handling of dangerous goods is eliminated, or, if this is not practicable, reduced as far as practicable.

Penalty: 10 penalty units.

8.31 Provision of suitable lighting

- (1) An employer must ensure that sufficient and appropriate lighting is provided at a workplace at which dangerous goods are stored or handled.

Penalty: 10 penalty units.

- (2) The lighting must be such that relevant persons are able:
- (a) to safely enter, leave and move in, the workplace; and
 - (b) to work safely in an area of the workplace where dangerous goods are stored or handled.

8.32 Visitor information and supervision

An employer must ensure that a visitor to the workplace who is likely to be affected by the storage or handling of dangerous goods at the workplace is given appropriate information and is supervised appropriately.

Penalty: 10 penalty units.

8.33 Prevention of unauthorised access

An employer at a workplace at which dangerous goods are stored or handled must ensure that, as far as practicable, unauthorised access to the workplace is prevented.

Penalty: 10 penalty units.

Regulation 8.34

8.34 Disposal etc of plant, equipment and containers

If plant, pipework, equipment or a container at a workplace is no longer intended to be used for the storage or handling of dangerous goods, or is to be disposed of, the employer must ensure that the plant, pipework, equipment or container is:

- (a) as far as practicable, free from dangerous goods; or
- (b) otherwise made safe.

Penalty: 10 penalty units.

Note The expression *free from dangerous goods* is defined in subregulation 8.04 (6).

Subdivision 8.3.3 Provision of information

8.35 Provision of information for health and safety procedures

- (1) An employer must ensure that information that is necessary for the development and implementation of safety procedures for the storage or handling of dangerous goods at the workplace is:
 - (a) obtained; and
 - (b) communicated and made available to relevant persons at the workplace.

Penalty: 10 penalty units.

Note Under subsection 16 (1) of the Act, an employer must take all reasonably practicable steps to protect the health and safety at work of the employer's employees. Under paragraph 16 (2) (e) of the Act, an employer breaches subsection 16 (1) of the Act if the employer fails to take all reasonably practicable steps to provide to the employees, in appropriate languages, the information, instruction, training and supervision necessary to enable them to perform their work in a manner that is safe and without risk to their health.

- (2) If the information is communicated in the form of safety signs that warn a relevant person about a hazard or about the relevant person's responsibilities, the employer must ensure that the signs are displayed in a prominent position as close as practicable to the hazard.

Penalty: 10 penalty units.

Regulation 8.36

- (3) If safety procedures for the storage or handling of dangerous goods are developed and implemented, the employer must ensure that the procedures are maintained.

8.36 Material Safety Data Sheets

- (1) Subject to subregulation (3), if dangerous goods are supplied to a workplace for storage or handling, the employer must ensure that an MSDS for the dangerous goods:
- (a) is obtained:
 - (i) before, or at the time of, the first supply of dangerous goods of that kind to the workplace; or
 - (ii) if it is not possible to obtain the MSDS at, or before, that time — as soon as practicable after the dangerous goods are supplied; and
 - (b) is accessible to all employees, emergency services employees and visitors to the workplace; and
 - (c) is not changed (other than, in the case of an MSDS provided by an overseas supplier, by being re-formatted).

Penalty: 10 penalty units.

- (2) Subject to subregulation (3), if an employee whose duties involve storing or handling dangerous goods asks for an MSDS for the dangerous goods, the employer must ensure that the MSDS is given to the employee.

Penalty: 10 penalty units.

- (3) The employer is not required to comply with subregulations (1) and (2) in relation to dangerous goods if:
- (a) the dangerous goods are stored or handled as dangerous goods in transit; or
 - (b) the employer is a retailer, and the dangerous goods are supplied as packaged dangerous goods in the form of a consumer package that:
 - (i) is intended for supply for use at another workplace; and
 - (ii) is not intended to be opened at the workplace, other than for taking a sample or tinting paint.

Regulation 8.37

- (4) However, an employer must ensure that information about the health and safety aspects of dangerous goods to which subregulation (3) applies is available and accessible to any employee whose duties involve storing or handling the dangerous goods.

Penalty: 10 penalty units.

8.37 Availability of risk assessment records

If an assessment or review in relation to a risk associated with any hazard identified with the storage or handling of dangerous goods at a workplace has been prepared under regulation 8.16, the employer must ensure that a copy of the record, or the most recent assessment, is readily available:

- (a) to any employee who is likely to be exposed to the risk associated with the dangerous goods; and
- (b) to each health and safety representative at the workplace.

Penalty: 10 penalty units.

8.38 Information for operators of plant and structures

An employer must ensure that a person who operates, has access to, maintains, repairs, inspects, or tests plant or a structure that is used for the storage or handling of dangerous goods is given information about the plant or structure that is necessary for the person to carry out his or her duties safely.

Penalty: 10 penalty units.

8.39 Register of manifest quantities and site plan

- (1) This regulation applies to an employer if:
- (a) dangerous goods or combustible liquids of a kind mentioned in column 2 of an item of Schedule 7 are stored or handled at the workplace; and
 - (b) the total quantity of any of the dangerous goods or combustible liquids is more than the manifest quantity mentioned in column 5 of that item.

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- (2) The employer must ensure that:
- (a) a register (the *register of manifest quantities*) complying with subregulation (3) is prepared in relation to the dangerous goods or combustible liquids; and
 - (b) the register is located, within the workplace, in a place decided in consultation with emergency services; and
 - (c) the register is readily accessible to Comcare or to emergency services; and
 - (d) within 7 days of any significant change in any of the information mentioned in subregulation (3), (5) or (6) — the register is revised to take account of the change.

Penalty: 10 penalty units.

- (3) For paragraph (2) (a), the register of manifest quantities must include the following:
- (a) the date when the register was prepared;
 - (b) the employer's name and the address of the workplace;
 - (c) contact details for 2 people who may be contacted if there is an emergency;
 - (d) the location and kind of storage of:
 - (i) dangerous goods; and
 - (ii) combustible liquids stored with fire risk dangerous goods, if the combustible liquids are:
 - (A) in bulk; or
 - (B) packaged combustible liquids in a total quantity of more than 1 000 kg or 1 000 L in a storage area; and
 - (iii) C1 combustible liquids stored or handled in isolation from dangerous goods;
 - (e) the Class and, if appropriate, packing group of the dangerous goods and combustible liquids stored or handled at the workplace;
 - (f) for bulk containers — the number and capacity of each container stored or handled at the workplace;

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- (g) for each Class of dangerous goods and combustible liquids stored or handled at the workplace in packages and containers:
 - (i) the current total quantity of those dangerous goods and combustible liquids; or
 - (ii) the maximum and average quantities of those dangerous goods and combustible liquids;
 - (h) for dangerous goods of Class 2.3, dangerous goods of packing group I, and dangerous goods in bulk (other than dangerous goods stored or handled at the workplace in intermediate bulk containers) — the proper shipping name, or the product name and UN number, for the dangerous goods;
 - (i) a site plan of the workplace complying with subregulations (5) and (6).
- (4) For dangerous goods in transit, the information mentioned in paragraphs (3) (e), (f), (g) and (h) may be provided in the form of dangerous goods shipping documents that comply with the ADG Code.
- Note* Chapter 11 of the ADG Code deals with dangerous goods shipping documents.
- (5) For paragraph (3) (i), the site plan of the workplace must indicate the location at the workplace of the following:
- (a) essential services, including fire services and isolation points for fuel and power;
 - (b) the register of manifest quantities prepared under subregulation (2);
 - (c) the main entrance and other entry points;
 - (d) each Class of dangerous goods;
 - (e) combustible liquids stored and handled with fire risk dangerous goods, if the combustible liquids are:
 - (i) in bulk; or
 - (ii) packaged combustible liquids in a total quantity of more than 1 000 kg or 1 000 L in a storage area;
 - (f) C1 combustible liquids stored and handled in isolation from dangerous goods;

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- (g) dangerous goods in transit (if any);
 - (h) each storage area, and how each storage area is identified;
 - (i) manufacturing and process areas;
 - (j) drains.
- (6) For paragraph (3) (i), the site plan of the workplace must include a description of the nature of any adjoining or adjacent sites or workplaces.

8.40 Investigating and recording of dangerous occurrences

- (1) An employer must ensure that a system for investigating and recording dangerous occurrences is:
 - (a) established and maintained; and
 - (b) communicated to persons likely to be affected by such occurrences.
- (2) The employer must ensure that, if an occurrence that is a dangerous occurrence occurs:
 - (a) the occurrence is investigated; and
 - (b) the occurrence is reported to each person:
 - (i) who is responsible for taking corrective action in relation to the occurrence; and
 - (ii) who was affected by the occurrence; and
 - (c) a record of the occurrence is made and is kept for the life of the workplace; and
 - (d) the record is made available, on request, to Comcare.
- (3) The employer must ensure that, if a dangerous occurrence occurs and corrective action is necessary:
 - (a) action is taken immediately after the occurrence:
 - (i) to assess and control any risk; and
 - (ii) to make the workplace safe as far as practicable; and
 - (b) only persons essential to carrying out the corrective action are present; and

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- (c) the health and safety of each person who carries out the corrective action is protected as far as practicable.

Note 1 Reporting of dangerous occurrences must be done in accordance with section 68 of the Act and Part 5 of the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*.

Note 2 For the meaning of dangerous occurrence, see subsection 5 (1) of the Act and regulation 3 of the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*.

Subdivision 8.3.4 Notification of storage and handling of dangerous goods other than explosives

8.41 Employers other than defence employing authority

- (1) This regulation applies to an employer, other than the defence employing authority, if:
- (a) dangerous goods of a kind mentioned in column 2 of an item of Schedule 7 are stored or handled at the workplace; and
 - (b) the total quantity of any of the dangerous goods is more than the manifest quantity mentioned in column 5 of that item.
- (2) The employer must ensure that:
- (a) if, on 1 May 2006, manifest quantities of dangerous goods are stored or handled at the workplace, the Commission is notified, before 1 August 2006, of the following matters:
 - (i) the name of the employer who owns or operates the workplace where the dangerous goods are stored or handled;
 - (ii) the name and title of a contact person for the workplace;
 - (iii) details of each Class of dangerous goods stored or handled at the workplace that exceeds the manifest quantity for that Class of dangerous goods;
 - (iv) the maximum quantities of the dangerous goods stored or handled at the workplace;
 - (v) the location of the dangerous goods at the workplace; and

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- (b) if, after 1 May 2006, dangerous goods are to be stored or handled at the workplace, the Commission is notified, before the dangerous goods are stored or handled at the workplace, of the following matters:
 - (i) the name of the employer who owns or operates the workplace where the dangerous goods are to be stored or handled;
 - (ii) the name and title of a contact person for the workplace;
 - (iii) details of each Class of dangerous goods to be stored or handled at the workplace that exceeds the manifest quantity for that Class of dangerous goods;
 - (iv) the maximum quantities of the dangerous goods to be stored or handled at the workplace;
 - (v) the proposed location of the dangerous goods at the workplace; and
- (c) The Commission is further notified:
 - (i) at the end of each period of 2 years after the first notice is given under paragraph (a) or (b) of the matters mentioned in that paragraph; and
 - (ii) if there is a significant increase or decrease in the manifest quantity of dangerous goods at the workplace — before, or as soon as practicable after, the change in the manifest quantity of the dangerous goods; and
 - (iii) if there is a change in the name or title of the contact person for the workplace; and
 - (iv) if manifest quantities of dangerous goods are no longer stored or handled at the workplace; and
- (d) any information relevant to the storage or handling of dangerous goods requested by the Commission is provided to Comcare.

Penalty: 10 penalty units.

Regulation 8.42

8.42 Defence employing authority

- (1) This regulation applies to the defence employing authority if:
 - (a) dangerous goods of a kind mentioned in column 2 of an item of Schedule 7 are stored or handled at a workplace controlled by the Australian Defence Organisation; and
 - (b) the total quantity of any of the dangerous goods is more than the manifest quantity mentioned in column 5 of that item.
- (2) If, on 1 May 2006, manifest quantities of dangerous goods are stored or handled at a workplace controlled by the Australian Defence Organisation, the defence employing authority must ensure that, before 1 August 2006, the Commission is given a notice that includes the following matters:
 - (a) contact details of the person to be contacted for any inquiries in relation to the dangerous goods;
 - (b) the number of sites where manifest quantities of dangerous goods are stored or handled;
 - (c) a summary of the safety arrangements developed by the Australian Defence Organisation to ensure the safe storage and handling of manifest quantities of the dangerous goods at the workplace.

Penalty: 10 penalty units.

- (3) The defence employing agency must ensure that the Commission is given a further notice, including the matters mentioned in subregulation (2), at the end of each period of 12 months after the first notice is given under subregulation (2).

Penalty: 10 penalty units.

8.43 Form of notices

A notice under this Subdivision must be:

- (a) in writing; and
- (b) in a form approved by the Commission.

8.44 Comcare to acknowledge receipt of notice

The Commission must acknowledge receipt of a notice under this Subdivision within 3 months after receiving the notice.

Subdivision 8.3.4A Notification of storage and handling of explosives

8.44A Commission notification

- (1) This regulation applies in relation to a volume of explosives, of which the net explosive quantity (that is, the quantity exclusive of non-explosive components) is greater than 2 kilograms (a *notifiable quantity*).
- (2) An employer must ensure that:
 - (a) if, at the commencement of this regulation, a notifiable quantity of explosives is stored or handled at a workplace of the employer, the Commission is notified, within 3 months, of the following information:
 - (i) the name of the employer;
 - (ii) the name and title of a contact person for the workplace;
 - (iii) details of each subclass of explosives stored or handled at the workplace;
 - (iv) details of each kind of licence held by the employer under a State or Territory law that relates to storage or handling of explosives;
 - (v) the maximum quantities of explosives stored or handled at the workplace; and
 - (b) if, after 3 months following the commencement of this regulation, a notifiable quantity of explosives is to be stored or handled at the workplace, the Commission is notified, before the storage or handling occurs, of the following information:
 - (i) the name of the employer;
 - (ii) the name and title of a contact person for the workplace;

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- (iii) details of each subclass of explosives to be stored or handled at the workplace;
 - (iv) details of each kind of licence held by the employer under a State or Territory law that relates to storage or handling of explosives;
 - (v) the maximum quantities of explosives to be stored or handled at the workplace; and
 - (c) the Commission is notified:
 - (i) at intervals of 2 years after notice is given under paragraph (a) or (b) — of the information mentioned in that paragraph, current at the date of the notice; and
 - (ii) if there is a significant increase or decrease in the maximum quantities of explosives stored or handled at the workplace; and
 - (iii) if there is a change to a licence held by the employer under a State or Territory law that relates to storage or handling of explosives; and
 - (iv) if there is a change of contact person for the workplace; and
 - (v) if explosives are no longer stored or handled at the workplace; and
 - (d) any information relevant to the storage or handling of explosives that is requested by the Commission is provided to the Commission.
- (3) For subparagraph (2) (b) (iii):
- subclass*, in relation to explosives, has the same meaning as it has in the Australian Explosives Code, 2nd Edition, published by the Department of Transport and Regional Services in March 2000.

8.44B Form of notices

A notice under this Subdivision must be:

- (a) in writing; and
- (b) in a form approved by the Commission.

8.44C Commission to acknowledge receipt of notice

The Commission must acknowledge receipt of a notice under this Subdivision within 3 months after receiving the notice.

Subdivision 8.3.5 Marking and identification of containers

8.45 Marking and identification of containers — dangerous goods received by employer

- (1) An employer commits an offence if:
 - (a) the employer receives dangerous goods; and
 - (b) the marking for the container in which the dangerous goods are supplied does not comply with the ADG Code; and
 - (c) the employer is reckless with respect to whether the marking for the container complies with the ADG Code; and
 - (d) the employer:
 - (i) accepts the dangerous goods; and
 - (ii) does not ensure that the container is marked in accordance with the ADG Code.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element that the container is marked in accordance with the ADG Code.

Note Chapter 7 of the ADG Code deals with marking of packages.

8.46 Marking and identification of containers at the workplace

- (1) An employer must ensure that:
 - (a) a container at the workplace that is marked for use for particular dangerous goods is used only for those dangerous goods; and

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- (b) the marking on a container of dangerous goods is maintained while the dangerous goods are at the workplace.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element that the dangerous goods are marked in accordance with this regulation.

8.47 Containers for short-term storage of dangerous goods not required to be marked

Despite regulations 8.45 and 8.46, an employer is not required to mark a container into which dangerous goods are to be transferred if:

- (a) the dangerous goods are to be used immediately after the dangerous goods are transferred into the container; and
- (b) the container is to be made free from dangerous goods immediately after the dangerous goods have been used.

Penalty: 10 penalty units.

Note The expression *free from dangerous goods* is defined in subregulation 8.04 (6).

Subdivision 8.3.6 Placards — bulk dangerous goods and HAZCHEM

8.48 Placarding of bulk dangerous goods received by employer

- (1) An employer commits an offence if:
 - (a) the employer receives bulk dangerous goods; and
 - (b) the placard for the dangerous goods does not comply with the ADG Code; and
 - (c) the employer is reckless with respect to whether the placard for the dangerous goods does not comply with the ADG Code; and
 - (d) the employer:
 - (i) accepts the dangerous goods; and

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- (ii) does not ensure that the dangerous goods are placarded in accordance with the ADG Code.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element that the bulk dangerous goods are placarded in accordance with the ADG Code.

Note Chapter 7 of the ADG Code deals with placarding of dangerous goods.

8.49 Bulk dangerous goods placard — dangerous goods stored in bulk

- (1) An employer for a workplace where dangerous goods are stored in bulk must ensure that a bulk dangerous goods placard (being a placard that complies with item 1 of Schedule 8) is displayed in a prominent location on, or as close as practicable to, the bulk storage.

Penalty: 10 penalty units.

- (2) An employer for a workplace where C1 combustible liquids are stored in bulk must ensure that a C1 combustible liquids placard (being a placard that complies with item 2 of Schedule 8) is displayed in a prominent location on, or as close as practicable to, the bulk storage.

Penalty: 10 penalty units.

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.
- (4) This regulation does not apply in relation to:
 - (a) dangerous goods in bulk in an intermediate bulk container or in a bulk container intended for transport; or
 - (b) C1 combustible liquids that are:
 - (i) in a quantity of not more than 10 000 L; and
 - (ii) isolated from other dangerous goods; or
 - (c) Class 2.1 or Class 3 dangerous goods or C1 combustible liquids that are stored in an underground tank at a service station.

Regulation 8.50

8.50 HAZCHEM outer warning placards — quantity of dangerous goods or combustible liquids exceeds placarding quantity

- (1) This regulation applies to an employer if:
 - (a) dangerous goods mentioned in column 2 of an item of Schedule 7 are stored or handled at the workplace; and
 - (b) the total quantity of the dangerous goods is more than the placarding quantity mentioned in column 4 of that item.
- (2) The employer must ensure that a HAZCHEM outer warning placard (being a placard that complies with item 4 of Schedule 8) is positioned at each entrance to the workplace through which emergency services could, in an emergency, gain entry to the workplace.

Penalty: 10 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

Subdivision 8.3.7 Other placards — quantity of packaged dangerous goods or combustible liquids exceeds placarding quantity

8.51 Application

- (1) This Subdivision applies to an employer if:
 - (a) packaged dangerous goods mentioned in an item of Schedule 7 are stored or handled at the workplace; and
 - (b) the total quantity of the packaged dangerous goods is greater than the placarding quantity mentioned in column 4 of the item.
- (2) This Subdivision does not apply to liquefied petroleum gas stored in cylinders outside a building if the cylinders are connected by piping to gas-consuming appliances inside the building.

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8.52 Placards — general

- (1) The employer must ensure that a placard in accordance with this regulation is displayed at the workplace.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

- (3) If:

- (a) packaged dangerous goods of a Class or Subclass mentioned in any of items 1 to 20 of Schedule 7 are stored or handled at the workplace; and
- (b) the total quantity of the dangerous goods is greater than the placarding quantity mentioned in column 4 of that item;

the placard must display a Class label for that Class of dangerous goods.

- (4) If:

- (a) there is more than 1 Class of dangerous goods in the packaged dangerous goods; and
- (b) 2 or more Classes of dangerous goods in the packaged dangerous goods have the same Subsidiary Risk; and
- (c) the total quantity of dangerous goods that have the same Subsidiary Risk is greater than 1 000 kg or L;

the placard must display a Class label for each Class of dangerous goods of that Subsidiary Risk.

- (5) If:

- (a) packaged dangerous goods of a Class or Subclass mentioned in item 21 or 22 of Schedule 7 are stored or handled at the workplace; and
- (b) the total quantity of the dangerous goods is greater than the placarding quantity mentioned in column 4 of the item;

the placard must display a Class label for each Class of dangerous goods the quantity of which is greater than half of the placarding quantity mentioned in Schedule 7 for that Class.

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- (6) The placard must display a Class 3 Class label if:
 - (a) dangerous goods mentioned in item 24 of Schedule 7 are stored or handled at the workplace; and
 - (b) the total quantity of the dangerous goods is greater than the placarding quantity mentioned in column 4 of that item.
- (7) The placard must display a mixed Class label if:
 - (a) mixed Classes of dangerous goods mentioned in item 21 or 22 of Schedule 7 are stored or handled at the workplace; and
 - (b) the total quantity of the mixed Classes of dangerous goods is greater than the placarding quantity mentioned in the applicable item; and
 - (c) a Class label for the dangerous goods is not otherwise required under this regulation.

8.53 Placard for goods too dangerous to be transported

- (1) The employer must ensure that a placard for goods too dangerous to be transported (being a placard that complies with item 5 of Schedule 8) is displayed at the workplace if:
 - (a) dangerous goods mentioned in column 2 of item 23 of Schedule 7 are stored or handled at the workplace; and
 - (b) the total quantity of the dangerous goods is more than the placarding quantity mentioned in column 4 of that item.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

8.54 Placard for C1 combustible liquids

- (1) The employer must ensure that a C1 combustible liquids placard (being a placard that complies with item 2 of Schedule 8) is displayed at the workplace if:
 - (a) C1 combustible liquids of a Class mentioned in column 2 of item 25, 26 or 27 of Schedule 7 are stored or handled at the workplace in isolation from dangerous goods; and

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- (b) the total quantity of the packaged C1 combustible liquids is more than the placarding quantity mentioned in column 4 of the applicable item.

Penalty: 10 penalty units.

- (2) An offence against subregulation (1) is an offence of strict liability.

8.55 Location of placards

- (1) The employer must ensure that a placard required in relation to dangerous goods and combustible liquids under this Subdivision is displayed:
 - (a) as close as practicable to the main entrance to the building in which the dangerous goods or combustible liquids are stored; and
 - (b) as close as practicable to each outside storage area at the workplace where the dangerous goods or combustible liquids are stored or handled; and
 - (c) either:
 - (i) as close as practicable to the dangerous goods or combustible liquids; or
 - (ii) as close as practicable to each entrance to the workplace.
- (2) The employer must ensure that the placard is clearly visible from each normal approach to the workplace.

Subdivision 8.3.8 Accuracy of placards

8.56 Accuracy of placards

An employer must ensure that a placard required under Subdivision 8.3.6 or 8.3.7 for dangerous goods stored or handled at the workplace is:

- (a) accurate; and
- (b) revised as soon as practicable if there is a change to the Class or quantity of the dangerous goods.

Penalty: 10 penalty units.

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Subdivision 8.3.9 Employers' duties to employees

8.57 Consultation

An employer must consult an employee who is likely to be affected by the storage or handling of dangerous goods at the workplace about the following matters:

- (a) induction;
- (b) training;
- (c) provision of information;
- (d) supervision;
- (e) hazard identification;
- (f) risk assessment;
- (g) risk control;
- (h) any proposed changes in relation to the storage or handling of dangerous goods at the workplace that are likely to affect the safety or health of the employee.

Penalty: 10 penalty units.

8.58 Induction, training and supervision

- (1) An employer must ensure that an employee whose duties involve the storage or handling of dangerous goods at the workplace (including an employee whose duties involve the use of plant or a structure used for the storage or handling of dangerous goods) is given induction, information, training and supervision that:
 - (a) is in a language that is appropriate for the employee; and
 - (b) is appropriate for each risk associated with the employee's duties; and
 - (c) includes instruction relating to the following matters:
 - (i) the nature of the hazards and properties of the dangerous goods;
 - (ii) the processes for identifying, assessing and controlling each risk associated with the employee's duties;
 - (iii) the use and maintenance of measures for the control of each risk;

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- (iv) safety systems (if any) and the systems of work that relate to the storage and handling of the dangerous goods;
- (v) the safe management of, and safe conduct in, the workplace;
- (vi) the effective operation of the emergency plans for the workplace;
- (vii) the equipment that may be required for use in an emergency;
- (viii) the proper use, fitting and maintenance of personal protection equipment.

Penalty: 10 penalty units.

- (2) The employer must ensure that a record of the induction and training activities is made and is kept for at least 5 years.

Penalty: 10 penalty units.

- (3) An offence against subregulation (2) is an offence of strict liability.

Subdivision 8.3.10 Miscellaneous

8.59 Register of and information about dangerous goods — all employers

- (1) An employer must ensure that a register is kept and maintained:
 - (a) listing each of the dangerous goods stored or handled at the workplace; and
 - (b) including the MSDS for each of the dangerous goods stored or handled at the workplace for which this Part requires an MSDS; and
 - (c) in such a way that it is readily accessible to an employee.

Note Regulations 8.10 and 8.12 require an MSDS for dangerous goods.

Penalty: 10 penalty units.

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- (2) Subregulation (1) does not apply in relation to:

- (a) dangerous goods contained in a package of a size that, under the ADG Code, does not have to be marked; or
- (b) dangerous goods in transit.

Note Chapter 7 of the ADG Code deals with packages of a size that do not have to be marked.

- (3) An employer must ensure that information about the health and safety aspects of dangerous goods in transit is readily accessible to an employee.

Penalty: 10 penalty units.

- (4) Strict liability applies to the physical element in paragraph (1) (b) that the MSDS is required under this Part.

8.60 Registers of information — defence employing authority

- (1) The defence employing authority must ensure that a register of the following information is kept and maintained in relation to a pipeline owned or operated by the Australian Defence Organisation:

- (a) the location and specifications of the pipeline;
- (b) details of each Class of dangerous goods to be transferred through the pipeline;
- (c) the maximum quantities of the dangerous goods to be transferred through the pipeline each calendar year.

Penalty: 10 penalty units.

- (2) The defence employing authority must ensure that a register of the following information is kept and maintained in relation to dangerous goods of which manifest quantities are stored or handled at a workplace controlled by the Australian Defence Organisation:

- (a) details of each Class of dangerous goods stored or handled at the workplace that exceeds the manifest quantity for that Class of dangerous goods;
- (b) the maximum quantities of the dangerous goods stored or handled at the workplace;

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- (c) the location of the workplace.

Penalty: 10 penalty units.

- (3) If requested by Comcare, the defence employing authority must allow an investigator access to a register maintained under this regulation if the investigator has a security clearance at the level considered appropriate by the defence employing authority.

Penalty: 10 penalty units.

- (4) In this regulation:

security clearance means a clearance that enables a person to have access to secure information.

8.61 Confidentiality of information

- (1) The Commission and Comcare must protect the confidentiality of information given to the Commission or Comcare by an employer in control of manifest quantities of dangerous goods if the Commission or Comcare is satisfied that:

- (a) protecting the confidentiality of the information will not compromise the safety of any person, property or the built or natural environment; or
(b) the information is national security information.

- (2) In subregulation (1):

national security information means information affecting the defence, security, international relations or law enforcement interests of Australia.

Division 8.4 Duties in relation to pipelines

8.62 Duty of employer who builds, owns or operates a pipeline

- (1) This regulation applies to an employer who builds, owns or operates a pipeline.

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- (2) The employer must ensure that:
- (a) the pipeline is designed, manufactured, installed, commissioned, operated, maintained and decommissioned so that a risk associated with the pipeline:
 - (i) is eliminated; or
 - (ii) if it is not practicable to eliminate the risk, the risk is reduced as far as practicable; and
 - (b) as far as practicable, activities, structures, equipment or substances that do not form part of the pipeline do not affect the dangerous goods or the pipeline in a manner that increases risk; and
 - (c) controls are put in place to reduce, as far as practicable, a risk to or from the pipeline and its contents:
 - (i) at a workplace associated with the pipeline; and
 - (ii) at an area associated with the pipeline to which the public have access; and
 - (d) controls are put in place to ensure that, as far as practicable:
 - (i) unintentional movement of the pipeline is prevented; and
 - (ii) the pipeline is sound and is fit for the purpose for which it is designed; and
 - (iii) emergency shutdown devices are fitted to the pipeline; and
 - (iv) any maintenance work carried out on the pipeline does not contribute to or cause a dangerous occurrence.

8.63 Notification in relation to pipelines — employers other than defence employing authority

- (1) This regulation applies to an employer, other than the defence employing authority, who operates, or who will operate, a pipeline.
- (2) The employer must ensure that:
- (a) if, on 1 May 2006, the employer is operating a pipeline — the Commission is notified, before 1 August 2006, of the following matters:

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- (i) the name of the employer who owns or operates the pipeline;
 - (ii) the name and title of a contact person for the pipeline;
 - (iii) the specifications and location of the pipeline;
 - (iv) details of each Class of dangerous goods being transferred through the pipeline;
 - (v) the maximum quantities of dangerous goods being transferred through the pipeline each calendar year;
 - (vi) whether current procedures for operating, maintaining, renewing and relaying the pipeline are in place;
 - (vii) whether current procedures for responding to an emergency relating to the pipeline are in place; and
- (b) if the employer intends to begin operating a pipeline after 1 May 2006 — the Commission is notified, before the date on which the employer intends to begin operating the pipeline, of the details mentioned in paragraph (a); and
- (c) if the employer intends to make a change to a matter mentioned in subparagraphs (a) (i) to (v) — the Commission is notified of the change before the change is made; and
- (d) the Commission is further notified at the end of each period of 2 years after the first notice is given under paragraph (a) or (b) of the matters mentioned in paragraph (a); and
- (e) if the employer intends to remove, decommission, close or abandon all or part of the pipeline — the Commission is notified of the intended removal, decommissioning, closure or abandonment; and
- (f) any information relevant to the storage or handling of dangerous goods requested by the Commission is provided to the Commission.

Penalty: 10 penalty units.

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8.64 Notification in relation to pipelines — defence employing authority

- (1) This regulation applies if the Australian Defence Organisation builds, owns or operates a pipeline.
- (2) If, on 1 May 2006, the Australian Defence Organisation owns or is operating a pipeline through which dangerous goods are transferred, the defence employing authority must ensure that before 1 August 2006, the Commission is given a notice that includes the following matters:
 - (a) contact details of the person to be contacted for any inquiries in relation to the pipeline;
 - (b) the number of pipelines owned or operated by the Australian Defence Organisation through which dangerous goods are transferred;
 - (c) a summary of the safety arrangements developed by the Australian Defence Organisation to ensure the safe transfer of dangerous goods through the pipeline.

Penalty: 10 penalty units.

- (3) The defence employing agency must ensure that the Commission is given a further notice, including the matters mentioned in subregulation (2), at the end of each period of 12 months after the first notice is given under subregulation (2).

Penalty: 10 penalty units.

8.65 Form of notices

A notice under this Division must be:

- (a) in writing; and
- (b) in a form approved by the Commission.

8.66 Comcare to acknowledge receipt of notice

The Commission must acknowledge receipt of a notice under this Division within 3 months after receiving the notice.

Division 8.5 Duties of employees

8.67 Duties of employees

If an employee or contractor becomes aware of a matter that may affect the employer's ability to comply with this Part, the - employee or contractor must report the matter to the employer as soon as practicable after becoming aware of the matter.

Penalty: 10 penalty units.

Part 9 Major hazard facilities

Division 9.1 Preliminary

9.01 Object of Part 9

The object of this Part is to prevent the occurrence of major accidents at a facility that is a major hazard facility or a potential major hazard facility and, if a major accident occurs, to minimise its effect:

- (a) by requiring an employer in control of a potential major hazard facility to notify the facility to the Commission in accordance with regulation 9.06; and
- (b) by requiring an employer in control of a major hazard facility to:
 - (i) hold a licence to operate the major hazard facility, or a certificate of compliance in relation to the major hazard facility, in accordance with Division 9.3; and
 - (ii) identify, assess and control all hazards at the major hazard facility; and
 - (iii) implement measures to reduce the likelihood and effects of a major accident; and
 - (iv) give information to the Commission, a relevant person, and an at-risk community; and
 - (v) investigate all major accidents at the facility, and report them to the Commission in accordance with Subdivision A of Division 9.4; and
 - (vi) record the analysis of, and the lessons learnt from, the occurrence of a major accident, and to discuss that analysis and those lessons with employees, contractors and health and safety representatives.

9.02 Application of Part 9

This Part applies to a major hazard facility, or a potential major hazard facility, of which an employer is in control.

9.03 Definitions for Part 9

In this Part:

aggregate threshold quantity, in relation to 2 or more materials specified in Part 2 of Schedule 9, is the sum of the threshold quantity for each material.

approved assessor means a person, an organisation, or a statutory authority approved by the Commission under Division 9.6 to assess the safety report of a major hazard facility.

AS/NZS 2243.3:2002 means Australian Standard *AS/NZS 2243.3:2002: Safety in Laboratories: Microbiological aspects and containment facilities*, published on 9 January 2002, as amended by *AS/NZS 2243.3:2002/Amdt 1:2003* (published on 29 April 2003).

at-risk community means a community that is at risk of being directly affected by a major accident at a major hazard facility or a potential major hazard facility.

bridging licence means a licence that is taken to have been issued under regulation 9.30.

certificate of compliance means a certificate issued under paragraph 9.25 (5) (a).

dangerous goods has the same meaning as in subregulation 8.04 (3).

health and safety representative has the same meaning as in section 25 of the Act.

identified major hazard facility means a facility:

- (a) that is licensed, before the commencement of this Part, under an identified State or Territory law; and
- (b) the classification of which has not been revoked, by the Commission, under subparagraph 9.11 (1) (b) (i).

identified State or Territory law means the **Occupational Health and Safety (Major Hazard Facilities) Regulations 2000** of Victoria.

in control, in relation to an employer and a facility, means having responsibility for the day to day operations of the facility.

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major accident, in relation to a major hazard facility or a potential major hazard facility, means a sudden occurrence at the facility causing serious danger or harm to:

- (a) a relevant person; or
- (b) an at-risk community; or
- (c) property; or
- (d) the environment;

whether the danger or harm occurs immediately or at a later time.

Examples

- 1 A major emission of dangerous goods or hazardous substances from the facility.
- 2 A loss of containment of dangerous goods or a hazardous substance.
- 3 A fire or explosion.
- 4 A release of energy.

major hazard facility means:

- (a) a facility classified as a major hazard facility by the Commission under subparagraph 9.07 (1) (b) (i); or
- (b) an identified major hazard facility.

modification, in relation to a facility, means any of the following changes to the facility that significantly alters the risks associated with the facility:

- (a) a change to plant, a process, or a quantity of a material specified in Part 2 of Schedule 9;
- (b) the introduction of new plant, a new process, new material or a new operating procedure;
- (c) a change to the safety management system for the facility, in particular, a change in the organisation of the facility.

national security information means information the disclosure of which is likely to prejudice Australia's national security.

nuclear installation has the meaning given by section 13 of the *Australian Radiation Protection and Nuclear Safety Act 1998*.

occupational health and safety competency standards means the standards included in a training program developed for a major hazard facility under regulation 9.51.

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potential major hazard facility means a proposed or existing facility, other than an identified major hazard facility:

- (a) that is or will be:
 - (i) a nuclear installation; or
 - (ii) a prescribed radiation facility; or
 - (iii) a laboratory that deals with a biological agent that requires Physical Containment 3 or 4, within the meaning of AS/NZS 2243.3:2002; or
 - (iv) a facility at which an activity undertaken involves, or is likely to involve, temporarily or permanently, the processing, production, disposal, handling, use or storage of:
 - (A) a quantity of a material specified in Part 2 of Schedule 9 that equals or exceeds 10% of the threshold quantity for that material; or
 - (B) a quantity of 2 or more materials specified in Part 2 of Schedule 9 that equals or exceeds 10% of the aggregate threshold quantity for those materials; or
- (b) in relation to which a notification has been issued by the Commission under regulation 9.05.

prescribed radiation facility means a facility or installation prescribed by regulation 6 of the *Australian Radiation Protection and Nuclear Safety Regulations 1999*.

threshold quantity means, in relation to a material specified in an item in Part 2 of Schedule 9, the threshold quantity specified in column 4 of that item.

9.04 Interpretation – quantity equalling or exceeding aggregate threshold quantity

In this Part, a quantity of 2 or more materials specified in Part 2 of Schedule 9 equals or exceeds the aggregate threshold quantity for those materials if the result of the application of the aggregation formula in Part 4 of Schedule 9 in relation to those materials exceeds 1.

Division 9.2 Notification and classification of a potential major hazard facility

Subdivision A Notifications of potential major hazard facilities

9.05 Identification of potential major hazard facility — notification by Commission

- (1) If the Commission believes, on reasonable grounds, that an activity undertaken at an existing facility could cause a major accident, the Commission must give written notice of that belief to the employer in control of the facility.
- (2) If the Commission believes, on reasonable grounds, that an activity that is likely to be undertaken at a proposed facility once it is in operation could cause a major accident, the Commission must give written notice of that belief to the person that intends to be the employer in control of the facility.

9.06 Notification of potential major hazard facility

- (1) An employer in control of, or an employer that intends to be in control of, a potential major hazard facility must notify the Commission about the facility, in a form approved by the Commission.
- (2) Subject to subregulation (4), a notification given to the Commission under this regulation in relation to a facility that is an existing facility must include the following information:
 - (a) the name of the employer in control of the facility;
 - (b) the address or location of the facility;
 - (c) the name, title and contact details of a contact person for the facility;
 - (d) a description of the nature of the facility, including:
 - (i) whether the facility is:
 - (A) a nuclear installation; or
 - (B) a prescribed radiation facility; or

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- (C) a laboratory dealing with biological agents requiring Physical Containment 3 or 4 within the meaning of AS/NZS 2243.3:2002; and
- (ii) a description of general site activities;
- (e) whether an activity that is undertaken at the facility involves, or is likely to involve, temporarily or permanently, the processing, production, disposal, handling, use or storage of:
 - (i) a quantity of a material specified in Part 2 of Schedule 9 that equals or exceeds the threshold quantity for that material; or
 - (ii) a quantity of 2 or more materials specified in Part 2 of Schedule 9 that equals or exceeds the aggregate threshold quantity for those materials;
- (f) whether, in the opinion of the employer, an activity that is undertaken at the facility could cause a major accident;
- (g) the likely consequences of a major accident at the facility;
- (h) for each material present at the facility — the quantity in which the material is present;
- (i) if a material specified in an item in Part 2 of Schedule 9 is, or is likely to be, present at the facility in a quantity that is more than 2% of the threshold quantity for that material — sufficient information to identify the material, including, if applicable:
 - (i) the name of the material; and
 - (ii) the chemical name of the material; and
 - (iii) the Chemical Abstract Service (CAS) number for the material; and
 - (iv) any other name by which the material is known; and
 - (v) the molecular formula for the material; and
 - (vi) the maximum quantity in which the material is, or is likely to be, present at the facility; and
 - (vii) the maximum rate of production of the material undertaken at the facility.

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- (3) Subject to subregulation (4), a notification given to the Commission under this regulation in relation to a facility that is a proposed facility must include the following information:
- (a) the name of the employer that intends to be in control of the facility;
 - (b) the proposed address or location of the facility;
 - (c) if possible, the name, title and contact details of a contact person for the facility once it is in operation;
 - (d) a description of the proposed nature of the facility, including:
 - (i) whether the facility will be, or is likely to be:
 - (A) a nuclear installation; or
 - (B) a prescribed radiation facility; or
 - (C) a laboratory dealing with biological agents requiring Physical Containment 3 or 4 within the meaning of AS/NZS 2243.3:2002; and
 - (ii) a description of planned general site activities;
 - (e) whether an activity that will be, or that is likely to be, undertaken at the facility once it is in operation involves, or is likely to involve, temporarily or permanently, the processing, production, disposal, handling, use or storage of:
 - (i) a quantity of a material specified in Part 2 of Schedule 9 that will, or that is likely to, equal or exceed the threshold quantity for that material; or
 - (ii) a quantity of 2 or more materials specified in Part 2 of Schedule 9 that will, or that is likely to, equal or exceed the aggregate threshold quantity for those materials;
 - (f) whether, in the opinion of the employer, an activity that will be, or that is likely to be, undertaken at the facility once it is in operation could cause a major accident;
 - (g) the likely consequences of a major accident at the facility once it is in operation;
 - (h) for each material that will be, or that is likely to be, present at the facility once it is in operation — the quantity in which the material will be, or is likely to be, present;

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- (i) if a material specified in an item in Part 2 of Schedule 9 will be, or is likely to be, present at the facility once it is in operation in a quantity that is more than 2% of the threshold quantity for that material — sufficient information to identify the material, including, if applicable:
 - (i) the name of the material; and
 - (ii) the chemical name of the material; and
 - (iii) the Chemical Abstract Service (CAS) number for the material; and
 - (iv) any other name by which the material is known; and
 - (v) the molecular formula for the material; and
 - (vi) the maximum quantity in which the material will be, or is likely to be, present at the facility; and
 - (vii) the maximum rate of production of the material that will be, or that is likely to be, undertaken at the facility.
- (4) For subregulations (2) and (3), if information to be included in a notification is national security information, the employer may comply with the relevant subregulation by giving the Commission a summary, in a form approved by the Commission, of that information.
- (5) A notification must be given to the Commission:
 - (a) for a proposed potential major hazard facility — at least 3 months before operations begin at the facility; and
 - (b) for a potential major hazard facility that:
 - (i) is in existence before the commencement of this Part; and
 - (ii) is not a facility in relation to which a notification has been given by the Commission under regulation 9.05;within 3 months after the commencement of this Part; and
 - (c) for a facility:
 - (i) that is not a proposed potential major hazard facility; and
 - (ii) in relation to which a notification has been given by the Commission under regulation 9.05;

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- within 3 months after the notification is given; and
- (d) for a facility that:
- (i) is not a proposed potential major hazard facility; and
 - (ii) will become a potential major hazard facility because of a modification to the facility;
- at least 3 months before the modification becomes operative.

9.07 Consideration of notification

- (1) On receiving notification of a potential major hazard facility under regulation 9.06, the Commission must:
- (a) consider the information provided by the employer; and
 - (b) either:
 - (i) decide whether or not to classify the facility as a major hazard facility; or
 - (ii) ask the employer, by written notice, to give the Commission additional information necessary to assist it to decide whether or not to classify the facility as a major hazard facility.
- (2) If the Commission asks the employer to give it additional information:
- (a) the information must be given to the Commission within the period specified in the notice; and
 - (b) the Commission must not decide whether or not to classify the facility as a major hazard facility until the earlier of:
 - (i) the expiration of the period; and
 - (ii) the date the information is given to the Commission.
- (3) If the additional information is not provided within the period specified in the notice, the Commission may decide whether or not to classify the facility as a major hazard facility on the basis of the information about the facility that is available to the Commission.

Subdivision B Classification of potential major hazard facility

9.08 Classification as major hazard facility

- (1) In making a decision under subparagraph 9.07 (1) (b) (i), the Commission must classify a potential major hazard facility that is an existing facility as a major hazard facility if:
 - (a) an activity that is undertaken at the facility involves, or is likely to involve, temporarily or permanently, the processing, production, disposal, handling, use or storage of:
 - (i) a quantity of a material specified in Part 2 of Schedule 9 that equals or exceeds the threshold quantity for that material; or
 - (ii) a quantity of 2 or more materials specified in Part 2 of Schedule 9 that equals or exceeds the aggregate threshold quantity for those materials; or
 - (b) the facility is a nuclear installation; or
 - (c) the facility is a laboratory dealing with biological agents requiring Physical Containment 4, within the meaning of AS/NZS 2243.3:2002.
- (2) In making a decision under subparagraph 9.07 (1) (b) (i), the Commission may classify a potential major hazard facility that is an existing facility as a major hazard facility if, having regard to the information provided by the employer under regulations 9.06 and 9.07 (if any), the Commission is satisfied that an activity undertaken at the facility could cause a major accident.

Examples

Potential major hazard facilities that could be classified as a major hazard facility include the following:

- a prescribed radiation facility;
- a laboratory dealing with biological agents requiring Physical Containment 3 (within the meaning of AS/NZS 2243.3:2002);
- a facility at which a material specified in an item in Part 2 of Schedule 9 is present, or is likely to be present, in a quantity that is more than 10% of the threshold quantity for that material;

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- a facility at which 2 or more materials specified in Part 2 of Schedule 9 are present, or are likely to be present, in a quantity that is more than 10% of the aggregate threshold quantity for those materials;
- a facility at which large quantities of a dangerous good specified in Schedule 8 are present.

9.09 Notification of decision under subparagraph 9.07 (1) (b) (i)

- (1) The Commission must give an employer in control of, or an employer that intends to be in control of, a potential major hazard facility written notice of a decision to classify or to not classify the facility as a major hazard facility.
- (2) The notice must:
 - (a) subject to subregulation (3), be given to the employer within 6 months after the date when the employer gave the Commission notification under regulation 9.06; and
 - (b) state:
 - (i) the reasons for the Commission's decision; and
 - (ii) if the decision is to classify the facility as a major hazard facility — the employer's review rights under regulation 9.67.
- (3) If the Commission is likely to take more than 6 months to make a decision about whether to classify a potential major hazard facility as a major hazard facility, the Commission must tell the employer, by written notice, before the end of the 6 months, when the decision is likely to be made.
- (4) If the Commission gives an employer written notice under subsection (3), the Commission must decide whether or not to classify the potential major hazard facility as a major hazard facility by the date specified in the notice.

Subdivision C Revocation of classification of major hazard facility

Note For this Subdivision, an identified major hazard facility is taken to have been classified as a major hazard facility under subparagraph 9.07 (1) (b) (i) — see regulation 9.14.

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9.10 Application for revocation of classification of major hazard facility

- (1) An employer in control of a facility that has been classified as a major hazard facility by the Commission under subparagraph 9.07 (1) (b) (i) may apply to the Commission to have the classification revoked in any of the following circumstances:
 - (a) if, at the time the facility was classified, an activity at the facility involved, or was likely to involve, temporarily or permanently, the processing, production, disposal, handling, use or storage of a quantity mentioned in subparagraph 9.08 (1) (a) (i) or (ii) — any such activity has ceased, or will cease, to be undertaken at the facility;
 - (b) if, at the time the facility was classified, it was a nuclear installation — the facility has ceased, or will cease, to be a nuclear installation;
 - (c) if, at the time the facility was classified, it was a laboratory dealing with biological agents requiring Physical Containment 4, within the meaning of AS/NZS 2243.3:2002 — the facility has ceased, or will cease, to be such a laboratory;
 - (d) in any other case — if the employer is of the opinion that no activity undertaken at the facility could cause a major accident.
- (2) An application under this regulation must be made:
 - (a) in a form approved by the Commission; and
 - (b) not later than 6 months before the date on which the employer wishes the revocation to take effect.

9.11 Consideration of application for revocation of classification

- (1) On receiving an application under regulation 9.10, the Commission must:
 - (a) consider the information provided by the employer; and
 - (b) either:
 - (i) decide whether or not to revoke the classification of the facility as a major hazard facility; or

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- (ii) ask the employer, by written notice, to give the Commission additional information necessary to assist it to decide whether or not to revoke the classification.
- (2) If the Commission asks the employer to give it additional information:
 - (a) the information must be given to the Commission within the period specified in the notice; and
 - (b) the Commission must not decide whether or not to revoke the classification of the facility as a major hazard facility until the earlier of:
 - (i) the expiration of the period; and
 - (ii) the date the information is given to the Commission.
- (3) If the additional information is not provided within the period specified in the notice, the Commission may decide whether or not to revoke the classification of the facility as a major hazard facility on the basis of the information about the facility that is available to the Commission.

9.12 Revocation of classification as major hazard facility

In making a decision under subparagraph 9.11 (1) (b) (i), the Commission may revoke the classification of a facility as a major hazard facility if:

- (a) no activity undertaken at the facility involves, or is likely to involve, temporarily or permanently, the processing, production, disposal, handling, use or storage of:
 - (i) a quantity of a material specified in Part 2 of Schedule 9 that equals or exceeds the threshold quantity for that material; or
 - (ii) a quantity of 2 or more materials specified in Part 2 of Schedule 9 that equals or exceeds the aggregate threshold quantity for those materials; and
- (b) the facility is not a nuclear installation; and
- (c) the facility is not a laboratory dealing with biological agents requiring Physical Containment 4, within the meaning of AS/NZS 2243.3:2002; and

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- (d) the Commission is satisfied that no activity undertaken at the facility could cause a major accident.

9.13 Notification of decision under subparagraph 9.11 (1) (b) (i)

- (1) The Commission must give an employer that has made an application under regulation 9.10 written notice of a decision to revoke or to not revoke the classification of a facility as a major hazard facility.
- (2) The notice must:
- (a) be given to the employer within 6 months after the date when the employer made the application under regulation 9.10; and
 - (b) state:
 - (i) the reasons for the Commission's decision; and
 - (ii) if the decision is to refuse to revoke the classification of the facility as a major hazard facility — the employer's review rights under regulation 9.67.

Subdivision D Classification of identified major hazard facility

9.14 Identified major hazard facility taken to be classified under subparagraph 9.07 (1) (b) (i)

For Subdivision C of Division 9.2, an identified major hazard facility is taken to have been classified under subparagraph 9.07 (1) (b) (i).

Regulation 9.15

Division 9.3 Licence to operate a major hazard facility

Subdivision A Licensing scheme for employers in control of major hazard facilities

9.15 Definition for Subdivision A

In this Subdivision:

safety report means:

- (a) for:
 - (i) a facility classified as a major hazard facility under subparagraph 9.07 (1) (b) (i), other than a major hazard facility in relation to which a certificate of compliance is in force; or
 - (ii) an identified major hazard facility in relation to which a licence issued under this Subdivision is in force;
- a report prepared in accordance with regulation 9.47; and
- (b) for a major hazard facility in relation to which a certificate of compliance is in force — a report that deals with the kinds of matters specified in Schedule 9A and that is prepared in accordance with a condition of the certificate of compliance; and
- (c) for an identified major hazard facility in relation to which a bridging licence is in force — a report that deals with the kinds of matters specified in Schedule 9A and that is prepared in accordance with a condition of the bridging licence.

9.16 Licence to operate a major hazard facility

An employer in control of a major hazard facility must hold a licence, issued under regulation 9.20, to operate the facility, unless:

- (a) a bridging licence, or a certificate of compliance, is in force in relation to the employer and the facility; or

Regulation 9.18

- (b) the employer is exempt from this requirement under regulation 9.17.

9.17 Exemptions from licensing requirement

Period for making an application for a licence has not expired

- (1) Regulation 9.16 does not apply to an employer in control of a major hazard facility if:
 - (a) the employer has not made an application to the Commission for a licence in accordance with regulation 9.18; and
 - (b) the period within which the application must be made, worked out under regulation 9.19, has not expired.

Application for licence, certificate of compliance or transfer of licence or certificate of compliance made to Commission and not determined

- (2) Regulation 9.16 does not apply to an employer in control of a major hazard facility if:
 - (a) the employer has made an application to the Commission for:
 - (i) a licence, in accordance with regulation 9.18; or
 - (ii) a certificate of compliance, in accordance with regulation 9.25; or
 - (iii) the transfer of a licence (including a bridging licence) or a certificate of compliance, in accordance with regulation 9.34; and
 - (b) the Commission has not notified the employer whether the application has been granted or refused.

9.18 Application for licence

- (1) Subject to regulation 9.17, an employer in control of, or an employer that intends to be in control of, a major hazard facility must apply to the Commission for a licence to operate the facility.

Regulation 9.18

Note A licence issued under this Division will be in force for a specified period — see regulation 9.21. If an employer that holds a licence issued under this Division intends to continue to be in control of a major hazard facility after the expiration of the licence period, the employer must apply for a new licence — see subregulation 9.19 (1) for the timeframe for making an application for a new licence.

- (2) The application must:
- (a) be in writing, in a form approved by the Commission; and
 - (b) be accompanied by an executive summary, prepared in accordance with subregulation (3), of the assessment of the current safety report for the major hazard facility; and
 - (c) be made within the period worked out under regulation 9.19.
- (3) The executive summary of an assessment of the safety report must:
- (a) be prepared by an approved assessor; and
 - (b) include a brief description of how the major hazard facility complies with these Regulations and with the conditions of any licence (including a bridging licence) or certificate of compliance issued under this Division that is in force in relation to the employer and the facility; and
 - (c) for:
 - (i) a facility classified as a major hazard facility under subparagraph 9.07 (1) (b) (i), other than a major hazard facility in relation to which a certificate of compliance is in force; or
 - (ii) an identified major hazard facility in relation to which a licence issued under regulation 9.20 is in force;include a statement about whether the approved assessor is satisfied that the safety report complies with the requirements of regulation 9.47; and
 - (d) for a major hazard facility in relation to which a certificate of compliance is in force — include a statement about whether the approved assessor is satisfied that the safety report complies with the requirements (if any) for the safety report included in the certificate; and

Regulation 9.19

- (e) for an identified major hazard facility in relation to which a bridging licence is in force — include a statement about whether the approved assessor is satisfied that the safety report complies with the requirements (if any) for the safety report included in the bridging licence; and
 - (f) address the following matters:
 - (i) hazard identification for major hazards at the facility;
 - (ii) risk assessment for major hazards at the facility;
 - (iii) risk control for major hazards at the facility;
 - (iv) whether the employer has implemented an adequate safety management system;
 - (v) the development of the safety report; and
 - (g) include an assessment of the employer's ability to operate the major hazard facility in a safe manner; and
 - (h) include a statement about whether, in the approved assessor's opinion, the employer should be granted a licence and what conditions (if any) the grant of the licence should be subject to.
- (4) The employer must ensure that a copy of the safety report, and a copy of the assessment of the safety report, is available for inspection on request by an investigator.

9.19 Period for making an application for a licence

- (1) If an application for a licence is made under regulation 9.18 by an employer that holds a licence (including a bridging licence) or a certificate of compliance, issued or taken to be issued under this Division, in relation to the facility, the application must be made at least 6 months before the date on which the licence or certificate will cease to be in force.
- (2) If an application for a licence is made under regulation 9.18 by an employer whose application for the transfer of a licence issued under this Division (including a bridging licence) or a certificate of compliance has been refused under paragraph 9.35 (1) (b), the application under regulation 9.18 must be made by the end of 6 months after the date when the

Regulation 9.19

refusal decision was notified to the employer under subregulation 9.35 (5).

- (3) If subregulation (2) does not apply and an application for a licence is made under regulation 9.18 in relation to a facility that has been classified as a major hazard facility under subparagraph 9.07 (1) (b) (i) and by an employer (the ***second employer***) that has, or that will, take control of the facility from another employer (the ***first employer***), the application must be made, subject to subregulation (2), either:
- (a) by the later of:
 - (i) the end of 21 months after the date when the facility was classified as a major hazard facility; and
 - (ii) the end of 6 months after the second employer takes control of the facility; or
 - (b) if the second employer has applied, under subregulation 9.47 (5), for an extension of the period within which a safety report must be prepared — within the period approved by the Commission under subregulation 9.47 (7).

Note 1 See also regulation 9.72 for requirements in relation to a major hazard facility that an employer will take control of from another employer.

Note 2 If the employer applies for an extension of the period within which a safety report must be prepared, the Commission may ask the employer to submit a timetable for the preparation of the safety report to the Commission — see subregulation 9.47 (8).

- (4) If an application for a licence is made under regulation 9.18 in relation to an identified major hazard facility in relation to which a bridging licence is in force and by an employer (the ***second employer***) that has, or that will, take control of the facility from another employer (the ***first employer***), the application must, subject to subregulation (2), be made by the end of 6 months after the second employer takes control of the facility.

Note See also regulation 9.72 for requirements in relation to a major hazard facility that an employer will take control of from another employer.

Regulation 9.20

- (5) If an application for a licence is made under regulation 9.18 in relation to an identified major hazard facility in relation to which a licence issued under regulation 9.20 is in force and by an employer (the *second employer*) that has, or that will, take control of the facility from another employer (the *first employer*), the application must be made, subject to subregulation (2), either:
- (a) by the end of 6 months after the second employer takes control of the facility; or
 - (b) if the second employer has applied, under subregulation 9.47 (5), for an extension of the period within which a safety report must be prepared — within the period approved by the Commission under subregulation 9.47 (7).

Note 1 See also regulation 9.72 for requirements in relation to a major hazard facility that an employer will take control of from another employer.

Note 2 If the employer applies for an extension of the period within which a safety report must be prepared, the Commission may ask the employer to submit a timetable for the preparation of the safety report to the Commission — see subregulation 9.47 (8).

- (6) If subregulations (1) to (5) do not apply, an application for a licence made under regulation 9.18 must be made either:
- (a) within 21 months after the date when the facility was classified as a major hazard facility; or
 - (b) if the employer has applied, under subregulation 9.47 (5), for an extension of the period within which a safety report must be prepared — within the period approved by the Commission under subregulation 9.47 (7).

Note If the employer applies for an extension of the period within which a safety report must be prepared, the Commission may ask the employer to submit a timetable for the preparation of the safety report to the Commission — see subregulation 9.47 (8).

9.20 Issue of licence

- (1) On receiving an application from an employer for a licence under subregulation 9.18 (1), the Commission must:
- (a) issue a licence to the employer; or
 - (b) refuse to issue a licence to the employer; or

Regulation 9.20

- (c) ask the employer, by written notice, to give the Commission additional information necessary to assist it to decide whether to issue a licence to the employer.
- (2) If the Commission asks an employer to give the Commission additional information in relation to an application:
 - (a) the information must be given to the Commission within the period specified in the notice; and
 - (b) the Commission must not decide whether or not to issue a licence until the earlier of:
 - (i) the expiration of the period; and
 - (ii) the date the information is given to the Commission.
- (3) If the additional information is not provided within the period specified in the notice, the Commission may decide whether or not to issue a licence on the basis of the information about the facility and the employer that is available to the Commission.
- (4) The Commission may issue a licence if it is satisfied that:
 - (a) the current safety report for the major hazard facility has been prepared in accordance with:
 - (i) regulation 9.47; or
 - (ii) the conditions of any bridging licence or certificate of compliance that is in force in relation to the employer and the facility; and
 - (b) the assessment of the safety report has been undertaken by an approved assessor; and
 - (c) the employer has implemented an adequate safety management system; and
 - (d) the employer has the ability to operate the major hazard facility in a safe manner.
- (5) If the Commission refuses to issue the licence, the Commission must give the employer a written notice setting out:
 - (a) the reasons for the Commission's decision; and
 - (b) the employer's review rights under regulation 9.67.
- (6) A notice under subregulation (5) must be given within 6 months of receiving the employer's application for the licence.

Regulation 9.22

- (7) If the Commission decides to issue a licence to the employer, the licence must, subject to subregulations (8) and (9), be issued within 6 months of receiving the employer's application for the licence.
- (8) The Commission must give the employer written notice if a licence will be issued later than 6 months after receiving the employer's application for the licence.
- (9) If the Commission gives an employer written notice under subregulation (8), the licence must be issued within the period specified in the notice.

Note An application may be made under regulation 9.34 for the transfer of a licence issued under this regulation.

9.21 Period for which licence is in force

- (1) A licence issued under regulation 9.20 must specify:
 - (a) the date on which it takes effect; and
 - (b) the period for which it is to be in force.
- (2) The period for which the licence is to be in force must not be longer than 5 years from the date on which the licence takes effect.

9.22 Conditions of licence

- (1) A licence issued under regulation 9.20 is subject to the following conditions:
 - (a) the employer to whom the licence is issued must ensure that a copy of the licence is kept at the major hazard facility operated under the licence;
 - (b) the employer must ensure that the licence is available for inspection on request by an investigator, an employee, a contractor, a health and safety representative or a representative of emergency services;
 - (c) the employer must allow the Commission access to the facility for the purpose of assessing the employer's compliance with the conditions of the licence;
 - (d) any other condition specified by the Commission in the licence.

Regulation 9.23

- (2) The Commission may, by notice in writing given to the employer to whom the licence is issued:
 - (a) add a condition to the licence; or
 - (b) vary a condition specified in the licence; or
 - (c) revoke a condition specified in the licence.
- (3) An employer must comply with the conditions to which a licence is subject, including a condition that has been added or varied.
- (4) A notice given under subregulation (2) must state:
 - (a) the reasons for the Commission's decision; and
 - (b) the employer's review rights under regulation 9.67.

9.23 Suspension or cancellation of licence

- (1) The Commission may suspend or cancel a licence issued under regulation 9.20 if:
 - (a) the classification of the major hazard facility in relation to which the licence was issued is revoked under subparagraph 9.11 (1) (b) (i); or
 - (b) the Commission is satisfied that:
 - (i) the safety management system no longer provides a comprehensive and integrated management system for the prevention of major accidents at the major hazard facility; or
 - (ii) the employer has failed to comply with a condition of the licence; or
 - (iii) the employer no longer has the ability to operate the major hazard facility in a safe manner; or
 - (iv) the licence was issued on the basis of:
 - (A) the provision of false or misleading information; or
 - (B) a failure to disclose particular information; in the employer's application for the licence or under regulation 9.20.

Regulation 9.25

- (2) If the Commission decides to suspend or cancel an employer's licence under subregulation (1), the Commission must give the employer written notice of that decision.
- (3) A notice given under subregulation (2) must state:
 - (a) the date from which the licence is suspended or cancelled; and
 - (b) if the decision is to suspend the licence — the period for which the licence is suspended; and
 - (c) the reasons for the Commission's decision; and
 - (d) the employer's review rights under regulation 9.67.

**Subdivision B Certificate of compliance scheme for
employers in control of major hazard
facilities**

9.24 Definition for Subdivision B

In this Subdivision:

existing Commonwealth scheme means a law of the Commonwealth that has a direct effect or an indirect effect on occupational health and safety.

9.25 Application for certificate of compliance

- (1) An employer in control of, or an employer that intends to be in control of, a major hazard facility may apply for a certificate of compliance in relation to the facility if, at the time the application is made, operations at the facility are regulated by an existing Commonwealth scheme.
- (2) The application must:
 - (a) be in writing, in a form approved by the Commission; and
 - (b) be accompanied by:
 - (i) sufficient information to identify the existing Commonwealth scheme under which the major hazard facility is regulated; and
 - (ii) a copy of any licence, certificate or other instrument made or issued under the existing Commonwealth

Regulation 9.25

- scheme that imposes conditions on the operation of the facility; and
- (iii) a copy of any report (however described) that:
 - (A) relates to an incident at the facility that would, if this Part had applied in relation to the facility at the time of the incident, have been a major accident within the meaning of this Part; and
 - (B) was prepared under the existing Commonwealth scheme.
- (3) If the Commission asks an employer to give the Commission additional information in relation to an application:
 - (a) the information must be given to the Commission within the period specified in the notice; and
 - (b) the Commission must not decide whether or not to issue a certificate of compliance until the earlier of:
 - (i) the expiration of the period; and
 - (ii) the date the information is given to the Commission.
 - (4) If the additional information is not provided within the period specified in the notice, the Commission may decide whether or not to issue a certificate of compliance on the basis of the information about the facility and the employer that is available to the Commission.
 - (5) On receiving the application, the Commission must:
 - (a) issue a certificate of compliance in accordance with regulation 9.26; or
 - (b) refuse to issue the certificate; or
 - (c) ask the employer, by written notice, to give the Commission further information necessary to assist it to decide whether or not to issue a certificate of compliance.
 - (6) If the Commission refuses to issue a certificate of compliance, the Commission must give the employer a written notice setting out:
 - (a) the reasons for refusing to issue the certificate; and
 - (b) the employer's review rights under regulation 9.67.

Regulation 9.26

- (7) A notice under subregulation (6) must be given within 6 months of receiving the employer's application for the certificate of compliance.
- (8) If the Commission decides to issue a certificate of compliance, the certificate must, subject to subregulations (9) and (10), be issued within 6 months of receiving the employer's application for the certificate.
- (9) If the Commission is likely to take more than 6 months to issue a certificate of compliance, the Commission must tell the employer, by written notice, before the end of the 6 months, when the certificate is likely to be issued.
- (10) If the Commission gives an employer written notice under subregulation (9), the certificate of compliance must be issued by the date specified in the notice.

9.26 Issue of certificate of compliance

- (1) The Commission may issue a certificate of compliance to an employer in relation to a major hazard facility if the Commission is satisfied that:
 - (a) the existing Commonwealth scheme under which the facility is regulated is comparable to the scheme set out in this Part; and
 - (b) the employer has been complying with the existing Commonwealth scheme; and
 - (c) the employer's continued compliance with the existing Commonwealth scheme would satisfy the requirements of Subdivision B of Division 9.4.

Note An application may be made under regulation 9.34 for the transfer of a certificate issued under this regulation.

- (2) For subregulation (1), in determining whether the existing Commonwealth scheme is comparable to the scheme set out in this Part, the Commission must have regard to the requirements imposed in relation to the facility by or under the existing Commonwealth scheme, including, in particular, whether the employer in control of the facility is required to undertake, prepare or provide any of the following:
 - (a) hazard identification;

Regulation 9.27

- (b) risk assessment;
- (c) risk control by implementation of a safety management system;
- (d) a safety report (however described);
- (e) community information;
- (f) training and education;
- (g) emergency planning;
- (h) security planning.

9.27 Period for which certificate of compliance is in force

If the Commission issues a certificate of compliance under paragraph 9.25 (5) (a), the certificate of compliance must specify:

- (a) the date on which the certificate takes effect; and
- (b) the period for which the certificate is to be in force.

9.28 Conditions of certificate of compliance

- (1) A certificate of compliance is subject to the following conditions:
 - (a) if operations at the facility cease to be regulated by the existing Commonwealth scheme that applied in relation to the facility at the time the certificate was issued, the employer must, as soon as practicable after the existing Commonwealth scheme ceases to apply, give the Commission written notice of that fact;
 - (b) the employer to whom the certificate is issued must ensure that a copy of the certificate is kept at the major hazard facility operated under the certificate;
 - (c) the employer must ensure that the certificate is available for inspection on request by an investigator, an employee, a contractor, a health and safety representative or a representative of emergency services;
 - (d) the employer must allow the Commission access to the facility for the purpose of assessing the employer's compliance with the conditions of the certificate;
 - (e) any other condition specified by the Commission in the certificate of compliance.

Regulation 9.29

- (2) The Commission may, by notice in writing given to the employer to whom the certificate of compliance is issued:
 - (a) add a condition to the certificate of compliance; or
 - (b) vary a condition specified in the certificate of compliance; or
 - (c) revoke a condition specified in the certificate of compliance.
- (3) An employer must comply with the conditions to which a certificate of compliance is subject, including a condition that has been added or varied.
- (4) A notice given under subregulation (2) must state:
 - (a) the reasons for the Commission's decision; and
 - (b) the employer's review rights under regulation 9.67.

9.29 Suspension or cancellation of certificate of compliance

- (1) The Commission may suspend or cancel a certificate of compliance if:
 - (a) operations at the major hazard facility to which the certificate relates ceases to be regulated by the existing Commonwealth scheme that applied in relation to the facility at the time the certificate was issued; or
 - (b) the employer has failed to comply with a condition of the certificate of compliance; or
 - (c) the Commission is satisfied that the existing Commonwealth scheme that applied in relation to the facility at the time the certificate was issued is no longer comparable to the scheme set out in this Part; or
 - (d) the certificate was issued on the basis of:
 - (i) the provision of false or misleading information; or
 - (ii) a failure to disclose particular information;in the employer's application for the licence or under regulation 9.25; or
 - (e) the classification of the major hazard facility in relation to which the certificate was issued is revoked under subparagraph 9.11 (1) (b) (i).

Regulation 9.30

- (2) If the Commission decides to suspend or cancel a certificate of compliance under subregulation (1), the Commission must give the employer written notice of that decision.
- (3) A notice given under subregulation (2) must state:
 - (a) the date from which the certificate of compliance is suspended or cancelled; and
 - (b) if the decision is to suspend the certificate of compliance — the period for which the certificate is suspended; and
 - (c) the reasons for the Commission's decision; and
 - (d) the employer's review rights under regulation 9.67.

**Subdivision C Bridging licence scheme for employers
in control of identified major hazard
facilities**

**9.30 Bridging licence taken to be issued to employer in
control of identified major hazard facility**

An employer in control of a facility that is an identified major hazard facility is taken to have been issued with a bridging licence under this regulation.

Note An application may be made under regulation 9.34 for the transfer of a bridging licence that is taken to have been issued under this regulation.

9.31 Period for which bridging licence is in force

A bridging licence that is taken to have been issued under regulation 9.30:

- (a) takes effect on the day on which the definition of *identified major hazard facility* first applied to the facility; and
- (b) ends:
 - (i) at the end of 18 months after that day; or
 - (ii) if the Commission has determined, in writing, a longer period in relation to the licence — at the end of the period determined by the Commission.

9.32 Conditions of bridging licence

- (1) A bridging licence that is taken to have been issued under regulation 9.30 in relation to an identified major hazard facility is subject to the following conditions:
 - (a) the employer to whom the licence is taken to have been issued must comply, subject to subregulation (2), with any condition, duty or function that was imposed, in relation to the employer or the facility, by or under the identified State or Territory law to which the facility was subject immediately before the day on which this Part first applied to the employer in control of the facility;
 - (b) any other condition specified by the Commission in relation to the licence.
- (2) The Commission may, by notice in writing given to the employer:
 - (a) add a condition to the bridging licence; or
 - (b) vary a condition specified in relation to the bridging licence; or
 - (c) revoke a condition specified in relation to the bridging licence; or
 - (d) specify that the employer to whom the licence is taken to have been issued is not required to comply with a specified condition, duty or function mentioned in paragraph (1) (a); or
 - (e) specify the manner in which the employer to whom the licence is taken to have been issued is required to comply with a specified condition, duty or function mentioned in paragraph (1) (a).
- (3) An employer must comply with:
 - (a) the conditions to which a bridging licence is subject, including a condition that has been added or varied; and
 - (b) a notice given under subregulation (2).
- (4) A notice given under subregulation (2) must state:
 - (a) the reasons for the Commission's decision; and
 - (b) the employer's review rights under regulation 9.67.

Regulation 9.33

9.33 Powers, duties and functions under identified State or Territory laws

- (1) This regulation applies if:
 - (a) an identified State or Territory law confers a power, duty or function:
 - (i) on a State or Territory authority; and
 - (ii) in relation to a person or facility; and
 - (b) the power, duty or function does not relate to the conferral of judicial power; and
 - (c) the power, duty or function could have been exercised or performed by the State or Territory authority in relation to an employer in control of a facility that is an identified major hazard facility if the employer was not taken to have been issued with a bridging licence under regulation 9.30.
- (2) If the power, duty or function relates to the review of a decision:
 - (a) application may be made to the Administrative Appeals Tribunal for the exercise or performance of the power, duty or function in relation to the employer; and
 - (b) the Administrative Appeals Tribunal may exercise or perform the power, duty or function in relation to the employer in the same way, and on the same conditions, as the power, duty or function could have been exercised or performed by the State or Territory authority.
- (3) If the power, duty or function does not relate to the review of a decision:
 - (a) application may be made to the Commission for the exercise or performance of the power, duty or function in relation to the employer; and
 - (b) the Commission may exercise or perform the power, duty or function in relation to the employer in the same way, and on the same conditions, as the power, duty or function could have been exercised or performed by the State or Territory authority.

**Subdivision D Transfer of licence or certificate of
compliance between employers**

**9.34 Application for transfer of licence or certificate of
compliance**

- (1) If:
- (a) a licence issued under regulation 9.20, a bridging licence or a certificate of compliance is in force in relation to an employer (the *first employer*) and a major hazard facility; and
 - (b) the licence or certificate will be in force for at least 12 months; and
 - (c) another employer (the *second employer*) has taken, or will take, control of the major hazard facility from the first employer;

the second employer may apply to the Commission for the licence or certificate (as applicable) to be transferred to the second employer.

Note See also regulation 9.72 for requirements in relation to a major hazard facility that an employer will take control of from another employer.

- (2) The application must:
- (a) be in writing, in a form approved by the Commission; and
 - (b) be accompanied by a written assurance from the second employer that it will:
 - (i) comply with:
 - (A) this Part (to the extent to which it is applicable); and
 - (B) the conditions to which the licence or certificate of compliance is subject; and
 - (ii) take any other steps that are necessary to ensure the safe operation of the facility.
- (3) The application must be made by the end of 6 months after the second employer takes control of the facility.

Note The application may be made before the second employer takes control of the facility.

Regulation 9.35

9.35 Transfer of licence or certificate of compliance between employers

- (1) On receiving an application from an employer for the transfer of a licence or a certificate of compliance under subregulation 9.34, the Commission must:
 - (a) transfer the licence or certificate to the employer, including transferring the licence or certificate subject to a condition; or
 - (b) refuse to transfer the licence or certificate to the employer; or
 - (c) ask the employer, by written notice, to give the Commission additional information necessary to assist it to decide whether to transfer the licence or certificate to the employer.
- (2) If the Commission asks an employer to give the Commission additional information in relation to an application for a transfer:
 - (a) the information must be given to the Commission within the period specified in the notice; and
 - (b) the Commission must not decide whether or not to transfer the licence or certificate of compliance until the earlier of:
 - (i) the expiration of the period; and
 - (ii) the date the information is given to the Commission.
- (3) If the additional information is not provided within the period specified in the notice, the Commission may decide whether or not to transfer the licence or certificate of compliance (as applicable) on the basis of the information about the facility and the applicant that is available to the Commission.
- (4) The Commission may transfer a licence or a certificate of compliance if it is satisfied that the employer to whom the licence will be transferred has the ability to:
 - (a) comply with the conditions of the licence or certificate (as applicable); and
 - (b) operate the major hazard facility in a safe manner.

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- (5) If the Commission refuses to transfer a licence or a certificate of compliance, the Commission must give the employer a written notice setting out:
 - (a) the reasons for refusing to transfer the licence or certificate; and
 - (b) the employer's review rights under regulation 9.67.
- (6) A notice under subregulation (5) must be given within 6 months of receiving the employer's application for the transfer.
- (7) If the Commission decides to transfer a licence or a certificate of compliance to an employer, the licence or certificate must, subject to subregulations (8) and (9), be transferred within 6 months of receiving the employer's application for the transfer.
- (8) If the Commission is likely to take more than 6 months to transfer a licence or a certificate of compliance, the Commission must tell the employer, by written notice, before the end of the 6 months, when the transfer is likely to be made.
- (9) If the Commission gives an employer written notice under subregulation (8), the Commission must transfer the licence or certificate of compliance by the date specified in the notice.

9.36 Effect of transfer of licence or certificate of compliance

- (1) If the Commission decides to transfer a licence that was issued under regulation 9.20 to an employer under regulation 9.35, the transfer has effect as if:
 - (a) the licence had been issued to the employer under regulation 9.20; and
 - (b) if the transfer was made subject to a condition — the condition was imposed in relation to the licence under paragraph 9.22 (1) (d).
- (2) If the Commission decides to transfer a certificate of compliance to an employer under regulation 9.35, the transfer has effect as if:

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- (a) the certificate of compliance was issued to the employer under paragraph 9.25 (5) (a); and
 - (b) if the transfer was made subject to a condition — the condition was imposed in relation to the certificate under paragraph 9.28 (1) (e).
- (3) If the Commission decides to transfer a bridging licence to an employer under regulation 9.35, the transfer has effect as if:
- (a) the licence was taken to have been issued to the employer under regulation 9.30; and
 - (b) if the transfer was made subject to a condition — the condition was imposed in relation to the licence under paragraph 9.32 (1) (b).

Division 9.4 Duties of an employer

Subdivision A Duties applying to all employers

9.37 Application of Subdivision A

This Subdivision applies to an employer in control of a major hazard facility.

9.38 Reporting requirements in relation to major accidents at major hazard facilities

If a major accident occurs at a major hazard facility, the employer must give a report to the Commission:

- (a) within 6 weeks of the employer becoming aware of the major accident; or
- (b) if the Commission has determined a longer period within which a report in relation to a major accident must be provided — within that longer period.

Note The employer may also be required to notify the Commission of the major accident — see Part 5 of the *Occupational Health and Safety (Safety Arrangements) Regulations 1991* (formerly the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*).

Regulation 9.39

9.39 Form of reports about major accidents

A report about a major accident that is given under regulation 9.38 must include the following information, as far as reasonably practicable:

- (a) the name and business address of the employer;
- (b) the address of the major hazard facility;
- (c) the time and date of the accident;
- (d) a statement about whether:
 - (i) a licence (including a bridging licence) issued or taken to have been issued under Division 9.3, or a certificate of compliance, was in force in relation to the major hazard facility and the employer at the time of the major accident; and
 - (ii) if a licence or a certificate of compliance was not in force in relation to the major hazard facility or the employer at the time of the major accident — the employer has made an application under Division 9.3 for a licence or a certificate of compliance;
- (e) a description of the part of the major hazard facility where the major accident happened;
- (f) the nature of the major accident;
- (g) sufficient information to identify each material involved in the major accident;
- (h) the quantity of each material involved in the major accident;
- (i) the cause of the major accident;
- (j) the effects of the major accident, if any, on:
 - (i) persons; and
 - (ii) property; and
 - (iii) the built and natural environment;
- (k) the methods used to clean up or otherwise remedy the effects of the major accident;
- (l) the effectiveness of any emergency plans and emergency procedures that were in place for the major hazard facility;

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- (m) action that the employer has taken, or proposes to take, to prevent recurrence of a major accident of the same kind.

Note Comcare may publish a form to facilitate the preparation of a report under regulation 9.39.

9.40 Service of reports

A report that is to be given to the Commission under regulation 9.38 may:

- (a) be delivered in business hours to a Comcare office; or
- (b) be given by a message transmitted to a computer system known to be in use by the Commission, being a message that is:
 - (i) in a form compatible with the computer system; and
 - (ii) capable of being recorded by the computer system.

9.41 Records of major accidents

For section 69 of the Act ('records of accidents and dangerous occurrences'), an employer must retain a record of a report under regulation 9.38 for a period of 30 years.

Subdivision B Duties applying to an employer in control of certain major hazard facilities

9.42 Application of Subdivision B

- (1) This Subdivision applies to an employer in control of a facility classified as a major hazard facility by the Commission under subparagraph 9.07 (1) (b) (i), unless a certificate of compliance is in force in relation to the employer and the facility.
- (2) This Subdivision also applies to an employer in control of an identified major hazard facility if a licence issued under regulation 9.20 is in force in relation to the employer and the facility.

9.43 Hazard identification

The employer must identify, in consultation with employees, contractors (as far as is practicable) and health and safety representatives:

- (a) all reasonably foreseeable hazards at the major hazard facility that may cause a major accident; and
- (b) the kinds of major accidents that may occur at the major hazard facility, the likelihood of a major accident occurring and the likely consequences of a major accident.

9.44 Risk assessment

- (1) If a hazard or kind of major accident at the major hazard facility is identified under regulation 9.43, the employer must ensure that any risks associated with the hazard or major accident are assessed, in consultation with employees, contractors (as far as is practicable) and health and safety representatives.
- (2) The employer must ensure that the risk assessment is reviewed:
 - (a) within 5 years after the assessment is carried out, and afterwards at intervals of not more than 5 years; and
 - (b) before a modification is made to the major hazard facility that may significantly change a risk identified under regulation 9.43; and
 - (c) when developments in technical knowledge or the assessment of hazards and risks may affect the method at the major hazard facility for assessing hazards and risks; and
 - (d) if a major accident occurs at the major hazard facility.

9.45 Risk control

- (1) The employer must, in consultation with employees, contractors (as far as is practicable) and health and safety representatives, ensure that any risk associated with a hazard at the major hazard facility is:
 - (a) eliminated; or

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- (b) if it is not practicable to eliminate the risk — reduced as far as practicable.
- (2) The employer must:
 - (a) implement measures at the major hazard facility to minimise the likelihood of a major accident occurring; and
 - (b) implement measures to limit the consequences of a major accident if it occurs; and
 - (c) protect relevant persons, an at-risk community, and the built and natural environment surrounding the major hazard facility, by establishing an emergency plan and procedures in accordance with regulation 9.53.

9.46 Safety management system

- (1) The employer must prepare and implement a comprehensive and integrated system (a *safety management system*) for managing safety and preventing the occurrence of major accidents at the major hazard facility.
- (2) The safety management system must:
 - (a) be documented in writing; and
 - (b) provide for the following:
 - (i) the objectives of the safety management system;
 - (ii) the procedures that must be followed to achieve those objectives;
 - (iii) the performance standards that must be met by the safety management system;
 - (iv) the means of ensuring that relevant persons at the major hazard facility comply with the performance standards.

9.47 Safety report

- (1) The employer must prepare a safety report for the major hazard facility in accordance with subregulation (3):
 - (a) either:
 - (i) if the facility was classified as a major hazard facility under subparagraph 9.07 (1) (b) (i) — within

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15 months after the date on which the facility was classified; or

- (ii) if the facility is an identified major hazard facility — within the period determined by the Commission in relation to the facility; or
- (b) if the Commission has approved another period under subregulation (7) — within the period approved by the Commission.

Note 1 If the safety report is prepared by a person who is an approved assessor, the assessment of the safety report must be carried out by a different approved assessor, in accordance with subregulations 9.49 (4) and (5).

Note 2 If the Commission approves another period under subregulation (7), the Commission may ask the employer to submit a timetable for the preparation of the safety report — see subregulation (8).

- (2) An employer in control of a facility that is classified as a major hazard facility under subparagraph 9.07 (1) (b) (i) must give the Commission an outline of the safety report within 6 months after the date on which the facility was classified.
- (3) The outline of the safety report must include:
 - (a) a written statement describing the process the employer will follow to develop the safety report; and
 - (b) a written program containing details and timeframes for the preparation of the safety report; and
 - (c) details of the consultation that will be undertaken during the preparation of the safety report; and
 - (d) a draft of the emergency plan that the employer proposes to include in the safety report.
- (4) The safety report must:
 - (a) be in writing; and
 - (b) be prepared, and revised (if necessary), in consultation with employees, contractors, and health and safety representatives at the major hazard facility; and
 - (c) contain the information specified in Schedule 9A.

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- (5) If an employer is unable to prepare the safety report within the period mentioned in paragraph (1) (a) or (b) (as applicable), the employer may apply to the Commission for an extension of the period within which the report must be prepared.
- (6) An application under subregulation (5) must be made as soon as practicable but, in any event, not later than 3 months before the expiration of the period mentioned in paragraph (1) (a) or (b) (as applicable).
- (7) If an application is made to the Commission under subregulation (5), the Commission may approve a period within which the employer must prepare the safety report.
- (8) If the Commission approves a period under subregulation (7), the Commission may ask the employer to submit a timetable for the preparation of the report.

9.48 Review of safety report by employer

- (1) The employer must review and, if necessary, revise the safety report for the major hazard facility:
 - (a) if a proposed modification to the major hazard facility will alter the risks associated with the facility — before the modification is made; and
 - (b) when developments in technical knowledge or the assessment of hazards and risks may affect the method at the major hazard facility for assessing hazards and risks; and
 - (c) at least once every 5 years after the safety report is first prepared; and
 - (d) if the Commission requests a review of the safety report; and
 - (e) if a major accident occurs at the major hazard facility.
- (2) In reviewing the safety report, the employer must take into account any changes at the major hazard facility in relation to the following matters:
 - (a) hazards and risks;
 - (b) the safety management system;
 - (c) technology;

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- (d) training programs;
- (e) work procedures;
- (f) use of land near the major hazard facility.

9.49 Assessment of safety report by approved assessor

- (1) If the employer applies, or intends to apply, under Division 9.3, for a licence to operate the major hazard facility in relation to the facility, the employer must arrange for the safety report for the facility to be assessed in accordance with this regulation.

Note The employer's application for a licence must be accompanied by an executive summary of the assessment of the current safety report for the major hazard facility — see paragraph 9.18 (2) (b).

- (2) Subject to subregulations (3), (4) and (5), the assessment of the safety report must be carried out by an approved assessor.
- (3) The assessment of the safety report must not be carried out by:
 - (a) an approved assessor who is an employee of, or a contractor of, the employer; or
 - (b) an individual who is employed, engaged or contracted by an approved assessor who is an employee of, or a contractor of, the employer.
- (4) If the safety report was prepared by an approved assessor, the assessment of the safety report must not be carried out by:
 - (a) that approved assessor; or
 - (b) any individual who is employed, engaged or contracted by the approved assessor.
- (5) If the safety report was prepared by an individual (the ***first individual***) who is employed, engaged or contracted by an approved assessor, the assessment of the safety report must not be carried out by:
 - (a) the approved assessor; or
 - (b) the first individual; or
 - (c) any individual who is employed, engaged or contracted by:
 - (i) the approved assessor; or
 - (ii) the first individual.

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9.50 Provision of information to community

- (1) The employer must ensure that adequate information is given to an at-risk community on the procedures to be followed if a major accident occurs at the major hazard facility.
- (2) The information given under subregulation (1) must include the following details:
 - (a) the name and location of the major hazard facility;
 - (b) the name, title and telephone number of a person at the major hazard facility who can be contacted for information about a major accident;
 - (c) general information about the nature of the hazards related to the facility, including potential effects on people, property and the built and natural environment;
 - (d) the system to be used for warning people likely to be affected by a major accident at the major hazard facility and for keeping those people informed about an accident at the facility;
 - (e) the actions people should take if a major accident occurs;
 - (f) relevant information about the off-site emergency procedures formulated under subparagraph 9.53 (2) (b) (ii).

9.51 Training program

- (1) The employer must develop a training program at the major hazard facility:
 - (a) for the purpose of assisting a relevant person at the major hazard facility to achieve a reasonable standard of knowledge and practice in occupational health and safety that is appropriate to the person's role and responsibilities at the major hazard facility; and
 - (b) that addresses the hazards and risks identified under regulation 9.43.
- (2) The training program must include the following standards:
 - (a) practices and procedures that must be followed by relevant persons at the major hazard facility to prevent a major accident;

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- (b) emergency procedures that must be followed if a major accident occurs;
 - (c) a standard that sets out the responsibilities of employees and contractors under the safety management system.
- (3) The employer must ensure that the training program is monitored, reviewed, modified, recorded and undertaken in consultation with the employees, contractors (as far as is practicable) and health and safety representatives.

9.52 Ongoing training and education

The employer must ensure that each relevant person at the major hazard facility:

- (a) takes part in the training program developed under regulation 9.51 before the person first starts work at, or visits, the major hazard facility; and
- (b) receives further education and training:
 - (i) as often as necessary; and
 - (ii) to maintain the occupational health and safety competency standards; and
 - (iii) before implementing any modifications of the major hazard facility; and
 - (iv) before introducing new plant, processes, operating procedures or materials to the major hazard facility; and
 - (v) before any change is made to the safety management system for the major hazard facility.

9.53 Emergency plan

- (1) The employer must, in consultation with employees, contractors (as far as is practicable), health and safety representatives and emergency services, prepare an emergency plan for the major hazard facility for the purposes of:
- (a) containing and controlling a major accident at the major hazard facility, so as to minimise the effect of the accident on people, property and the built and natural environment; and

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- (b) implementing measures to protect people, property and the built and natural environment if a major accident occurs.
- (2) The employer must:
 - (a) ensure that the emergency plan addresses the consequences of a major accident at the facility, in relation to the facility and the area surrounding the facility; and
 - (b) in consultation with the emergency services, establish, maintain and agree to include in the emergency plan:
 - (i) procedures (*on-site emergency procedures*) setting out the action to be taken inside the major hazard facility in relation to a major accident at the facility; and
 - (ii) procedures (*off-site emergency procedures*) setting out action to be taken outside the major hazard facility in relation to a major accident at the facility; and
 - (c) ensure that the on-site emergency procedures and the off-site emergency procedures complement each other.
- (3) The emergency plan, the on-site emergency procedures and the off-site emergency procedures must be prepared:
 - (a) if the facility was classified as a major hazard facility under subparagraph 9.07 (1) (b) (i) — within 3 months after the date on which the facility was classified; and
 - (b) if the facility is an identified major hazard facility — within 3 months after the date on which a licence was first issued under regulation 9.20 in relation to the facility.
- (4) The employer must:
 - (a) ensure that the emergency plan is kept in a place that is readily accessible by employees, contractors, health and safety representatives and emergency services; and
 - (b) regularly test, evaluate and review and, if necessary, revise (in accordance with regulation 9.54) the emergency plan to ensure its effectiveness; and
 - (c) ensure that all relevant persons at the major hazard facility are appropriately trained in the implementation of the on-site and off-site emergency procedures; and

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- (d) give information to an at-risk community about the off-site emergency procedures, in accordance with regulation 9.50.

9.54 Review of emergency plan

- (1) The employer must, in consultation with employees, contractors (as far as is practicable), health and safety representatives and emergency services, review and, if necessary, revise the emergency plan prepared under regulation 9.53 for the major hazard facility:
 - (a) when the safety report for the major hazard facility is reviewed under regulation 9.48; or
 - (b) after a major accident at the major hazard facility; or
 - (c) when, because of the result of a test undertaken under paragraph 9.53 (4) (b), it is necessary to do so; or
 - (d) when requested in writing to do so by the Commission.
- (2) The review of the emergency plan must:
 - (a) take into account all relevant modifications of the major hazard facility; and
 - (b) take into account, in the off-site emergency procedures, any changes to the use of the land surrounding the major hazard facility.

9.55 Securing the major hazard facility

- (1) The employer must establish a system for securing the major hazard facility that:
 - (a) controls entry to the major hazard facility by all persons at all times; and
 - (b) applies to all elements of the major hazard facility affecting its safe operation, including documents, computer hardware and software, and the boundaries of the facility.
- (2) The employer must take all reasonably practicable steps to protect the major hazard facility from any action against the facility by any person who is not authorised to have access to the facility.

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Subdivision C Additional duty applying to employer in control of identified major hazard facility

9.56 Provision of licence issued under identified State or Territory law

- (1) An employer in control of an identified major hazard facility must give the Commission a copy of the licence (if any) (the *former licence*) that was issued or otherwise given to the employer, or in respect of the identified major hazard facility of which the employer is in control, under the identified State or Territory law to which the facility was subject immediately before the day on which this Part first applied to the employer.
- (2) The employer must give the Commission a copy of the former licence within 30 days of the day on which the bridging licence that is taken to have been issued under regulation 9.30 in relation to the identified major hazard facility takes effect.

Note Paragraph 9.31 (a) explains when a bridging licence that is taken to have been issued under regulation 9.30 takes effect.

Division 9.5 Duties of an employee and a contractor

9.57 Duties of an employee and a contractor

- (1) This regulation applies to a person who is an employee or a contractor of an employer in control of a major hazard facility.
- (2) The person must, at all times while at work, comply with all practices and procedures relating to the prevention and control of major accidents at the major hazard facility.

Example

The person must participate, as required, in the training program developed by the employer under regulation 9.51 and in any further education and training provided pursuant to regulation 9.52.

- (3) The person must, in the event of a major accident, comply with the major hazard facility's emergency plan prepared under regulation 9.53.

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- (4) The person must report to the employer, as soon as practicable, any matter of which the person is aware that may affect the employer's compliance with the provisions of this Part.
- (5) If the person reasonably believes, based on his or her training and experience at work, that a major accident may occur, the person must, within the limits of his or her responsibilities at work and without risk to his, her or any other person's health:
 - (a) take appropriate action to prevent the major accident, including, if necessary, interrupting the operation of the major hazard facility; and
 - (b) before, or as soon as possible after, taking such action:
 - (i) inform the person's supervisor about the possibility of a major accident occurring; or
 - (ii) raise the alarm, in the most appropriate manner, about the possibility of a major accident occurring.
- (6) If the person considers that a hazard exists at the major hazard facility that may cause a major accident, the person:
 - (a) must notify the employer about his or her concerns; and
 - (b) may notify the Commission about the hazard.

Division 9.6 Approval scheme for assessors

Subdivision A Definition

9.58 Definition for Division 9.6

In this Division:

safety report means:

- (a) for:
 - (i) a facility classified as a major hazard facility under subparagraph 9.07 (1) (b) (i), other than a major hazard facility in relation to which a certificate of compliance is in force; or
 - (ii) an identified major hazard facility in relation to which a licence issued under this Subdivision is in force;

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- a report prepared in accordance with regulation 9.47; and
- (b) for a major hazard facility in relation to which a certificate of compliance is in force — a report that deals with the kinds of matters specified in Schedule 9A and that is prepared in accordance with a condition of the certificate of compliance; and
 - (c) for an identified major hazard facility in relation to which a bridging licence is in force — a report that deals with the kinds of matters specified in Schedule 9A and that is prepared in accordance with a condition of the bridging licence.

Subdivision B Requirements for application for approval

9.59 Who may apply for approval?

A person, an organisation or a statutory authority of a State or Territory may apply to the Commission for approval as an assessor under this approval scheme.

Note There is no fee for making an application for approval under this approval scheme.

9.60 Form of application

An application must be made:

- (a) in writing; and
- (b) in a form approved by the Commission.

9.61 Information to be included in application

The following information must be included in an application made under this Subdivision:

- (a) information about the applicant, including:
 - (i) the qualifications held by the applicant; and
 - (ii) a description of the applicant's professional experience in relevant disciplines; and
 - (iii) the details of any security clearance held by the applicant;

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- (b) if the applicant is not an individual — information about the persons who, at the time the application is made, are:
 - (i) principals of the applicant; or
 - (ii) employees of the applicant who will, or who are likely to, participate in the assessment of safety reports;
- (c) information about any actual or potential conflict of interest between the applicant's business or other interests and the role and function of an approved assessor under this Part;
- (d) any other information determined, by legislative instrument, by the Commission.

Subdivision C Decision on application

9.62 Commission to decide application

- (1) On receiving an application under regulation 9.59, the Commission must:
 - (a) approve the applicant as an assessor; or
 - (b) refuse to approve the applicant as an assessor; or
 - (c) ask the applicant, by written notice, to give the Commission additional information necessary to assist it to decide whether to approve the applicant as an assessor.
- (2) If the Commission asks an applicant to give the Commission additional information in relation to an application for approval:
 - (a) the information must be given to the Commission within the period specified in the notice; and
 - (b) the Commission must not decide whether or not to approve the applicant until the earlier of:
 - (i) the expiration of the period; and
 - (ii) the date the information is given to the Commission.
- (3) If the additional information is not provided within the period specified in the notice, the Commission may decide whether or not to approve the applicant on the basis of the information about the applicant that is available to the Commission.

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- (4) The Commission may approve a person, an organisation or a statutory authority of a State or Territory (the *applicant*) as an assessor under this regulation if the Commission is satisfied that the applicant has the necessary skills, training, knowledge and abilities to perform the functions of an approved assessor under this Part.
- (5) If the Commission refuses to approve an applicant, the Commission must give the applicant a written notice setting out:
 - (a) the reasons for the Commission's decision; and
 - (b) the applicant's review rights under regulation 9.67.
- (6) A notice under subregulation (5) must be given within 6 months of receiving the application for approval.
- (7) If the Commission decides to approve an applicant as an assessor, the Commission must notify the applicant within 6 months of receiving the application for approval.

9.63 Period for which approval is in force

- (1) An approval must specify:
 - (a) the date on which it takes effect; and
 - (b) the period for which it is to be in force.
- (2) The period for which the approval is to be in force must not be longer than 5 years from the date on which the approval takes effect.

Note If an approved assessor wishes to continue as an approved assessor after the period of approval expires, they must apply for a new approval.

Subdivision D Conditions of approval

9.64 Conditions of approval

- (1) The approval of an assessor under regulation 9.62 is subject to the conditions specified by the Commission in the approval.
- (2) The Commission may, by notice in writing given to an approved assessor:

- (a) add a condition to the approval; or
 - (b) vary a condition specified in the approval; or
 - (c) revoke a condition specified in the approval.
- (3) An approved assessor must comply with the conditions to which an approval is subject, including a condition that has been added or varied.

Subdivision E Revocation of approval

9.65 Revocation of approval

- (1) The Commission may revoke an approval given under regulation 9.62 if it is satisfied that:
 - (a) the approved assessor has failed to comply with a condition of the approval; or
 - (b) the approval was given on the basis of false or misleading information, or a failure to disclose particular information, in the application for approval.
- (2) If the Commission is of the opinion that an approval given under regulation 9.62 may be revoked, the Commission must:
 - (a) tell the approved assessor, in writing, of its opinion and the reasons for that opinion; and
 - (b) ask the approved assessor to show cause, in writing, within a specified period of at least 21 days, why the approval should not be revoked.
- (3) If the approved assessor does not show adequate cause within the specified period, the Commission may revoke the approval.
- (4) If the Commission decides to revoke the approval of an assessor under subregulation (3), the Commission must give the assessor written notice of that decision.
- (5) A notice given under subregulation (4) must state:
 - (a) the date from which the approval is revoked; and
 - (b) the reasons for the Commission's decision; and
 - (c) the assessor's review rights under regulation 9.67.

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Subdivision F Register of approved assessors

9.66 Commission to maintain register of approved assessors

- (1) The Commission must establish and maintain a register of approved assessors that sets out the following:
 - (a) the name of each approved assessor;
 - (b) if the approved assessor is an individual who carries on business under a name other than his or her own name — that other name;
 - (c) the business address of each approved assessor.
- (2) If the Commission becomes aware that any particulars entered on the register in relation to an approved assessor are incorrect, the Commission must make such alterations to the register as are appropriate.
- (3) The Commission must make the register available in electronic form.

Division 9.7 Miscellaneous

9.67 Review of decisions

An application may be made to the Administrative Appeals Tribunal for the review of the following decisions:

- (a) a decision under subregulation 9.05 (1) to notify an employer in control of an existing facility that an activity undertaken at the facility could cause a major accident;
- (b) a decision under subregulation 9.05 (2) to notify a person that intends to be the employer in control of a facility that an activity that is likely to be undertaken at the facility once it is in operation could cause a major accident;
- (c) a decision under subparagraph 9.07 (1) (b) (i) to classify a potential major hazard facility as a major hazard facility;
- (d) a decision under subparagraph 9.11 (1) (b) (i) to refuse to revoke the classification of a facility as a major hazard facility;

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- (e) a decision under paragraph 9.20 (1) (b) to refuse to issue a licence;
- (f) a decision under paragraph 9.22 (1) (d) to specify a condition for a licence;
- (g) a decision under subregulation 9.22 (2) to:
 - (i) add a condition to a licence; or
 - (ii) vary a condition specified in a licence; or
 - (iii) revoke a condition specified in a licence;
- (h) a decision under subregulation 9.23 (1) to suspend or cancel a licence;
- (i) a decision under paragraph 9.25 (5) (b) to refuse to issue a certificate of compliance;
- (j) a decision under paragraph 9.28 (1) (e) to specify a condition for a certificate of compliance;
- (k) a decision under subregulation 9.28 (2) to:
 - (i) add a condition to a certificate of compliance; or
 - (ii) vary a condition specified in a certificate of compliance; or
 - (iii) revoke a condition specified in a certificate of compliance;
- (l) a decision under subregulation 9.29 (1) to suspend or cancel a certificate of compliance;
- (m) a decision under paragraph 9.32 (1) (b) to specify a condition for a bridging licence;
- (n) a decision under subregulation 9.32 (2) to:
 - (i) add a condition to a bridging licence; or
 - (ii) vary a condition specified in relation to a bridging licence; or
 - (iii) revoke a condition specified in relation to a bridging licence; or
 - (iv) specify the manner in which the employer to whom the licence is taken to have been issued is required to comply with a specified condition, duty or function mentioned in paragraph 9.32 (1) (a);
- (o) a decision under paragraph 9.35 (1) (a) to transfer a licence or a certificate of compliance to an employer subject to a condition;

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- (p) a decision under paragraph 9.35 (1) (b) to refuse to transfer a licence or a certificate of compliance to an employer;
- (q) a decision under paragraph 9.47 (1) (b) to determine a period within which a safety report must be prepared in relation to an identified major hazard facility;
- (r) a decision under paragraph 9.62 (1) (b) to refuse to approve an applicant as an assessor;
- (s) a decision under subregulation 9.64 (1) to specify a condition in relation to the approval of an applicant as an assessor;
- (t) a decision under subregulation 9.64 (2) to:
 - (i) add a condition to the approval of an assessor; or
 - (ii) vary a condition specified in the approval of an assessor; or
 - (iii) revoke a condition specified in the approval of an assessor;
- (u) a decision under subregulation 9.65 (3) to revoke the approval of an assessor;
- (v) a decision under regulation 9.71 to give a direction to an employer in control of a major hazard facility or a potential major hazard facility.

Note Under section 27A of the *Administrative Appeals Tribunal Act 1975*, the decision-maker must give to any person whose interests are affected by the decision notice, in writing or otherwise, of the making of the decision and of the person's right to have the decision reviewed. In giving the notice, the decision-maker must have regard to the Code of Practice determined under section 27B of that Act (*Gazette* No. S 432, 7 December 1994).

9.68 Confidentiality of information

The Commission must protect the confidentiality of information given to it by an employer in control of a major hazard facility if the Commission is satisfied that:

- (a) protecting the confidentiality of the information will not compromise the safety of any person, property or the built or natural environment; or
- (b) the information is national security information.

9.69 Annual report of the Commission

For paragraph 75 (e) of the Act, the annual report of the Commission must include an analysis of the operation of these Regulations in relation to the following facilities:

- (a) a major hazard facility classified by the Commission under subparagraph 9.07 (1) (b) (i) in the financial year to which the annual report of the Commission relates;
- (b) an identified major hazard facility that was taken to have been issued with a bridging licence in the financial year to which the annual report of the Commission relates.

9.70 Report to Minister on major accident

- (1) If a report of an investigation of a major accident at a major hazard facility is provided to the Commission under section 53 of the Act, the Commission must, as soon as practicable after the report is provided to the Commission, prepare a summary of the report.
- (2) The Commission must, as soon as practicable after the summary is prepared, provide to the Minister:
 - (a) a copy of the summary; and
 - (b) a statement about the following matters:
 - (i) whether the employer in control of the major hazard facility at the time that the major accident occurred had made an application, in accordance with Division 9.3, for a licence to operate the facility or for a certificate of compliance in relation to the facility;
 - (ii) whether a licence (including a bridging licence) or a certificate of compliance was issued, or taken to have been issued, under Division 9.3, to the employer in relation to the facility;
 - (iii) if a licence or certificate of compliance was issued or taken to have been issued — whether that licence or certificate of compliance was in force at the time that the major accident occurred;

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- (iv) if no licence or certificate of compliance was issued or taken to have been issued — the reason for this; and
- (c) if the major hazard facility continues to operate after the major accident:
 - (i) a statement about whether the major hazard facility is operated at a level of safety that satisfies the requirements of:
 - (A) a licence or certificate issued, or taken to have been issued, under Division 9.3 that is in force in relation to the facility (if any); and
 - (B) this Part, to the extent that it is applicable to the employer; and
 - (ii) such information as the Commission considers is reasonably necessary to support the statement.

9.71 Directions to employer

- (1) This regulation applies to an employer that is:
 - (a) an employer in control of a major hazard facility; or
 - (b) an employer in control of a potential major hazard facility.
- (2) The Commission may give a direction, by written notice, to an employer mentioned in subregulation (1), with respect to the performance of the employer's duties under these Regulations, for the purpose of ensuring the safety of:
 - (a) a person inside or outside of the facility; and
 - (b) property near the facility; and
 - (c) the built or natural environment.
- (3) The employer must comply with a direction given under subsection (2).
- (4) A written notice given under subregulation (2) must state:
 - (a) the reasons for the Commission's decision; and
 - (b) the employer's review rights under regulation 9.67.

9.72 Notification of transfer of control of major hazard facility

- (1) If:
 - (a) a licence issued under regulation 9.20, a bridging licence or a certificate of compliance is in force in relation to an employer (the *first operator*) and a major hazard facility; and
 - (b) another person (the *second operator*) proposes to take control of the major hazard facility from the first employer;the first operator must notify the Commission of this fact.
- (2) The Commission may, by written notice, ask the first or second operator to give the Commission information about the proposal.
- (3) If the Commission asks the first or second operator to give it information under subregulation (2), the information must be given to the Commission within the period specified in the notice.

Note 1 Providing advice and information to the Commission under this regulation will allow Comcare to advise operators on the application of this Part to the transfer of control.

Note 2 If a licence issued under regulation 9.20, a bridging licence or a certificate of compliance is in force in relation to the first employer, and that licence or certificate will be in force for less than 12 months, the licence or certificate cannot be transferred to the second operator — see regulation 9.34.

Regulation 10.01

Part 10 Electricity

Division 10.1 Introduction

10.01 Object of Part 10

The object of this Part is to control the risks to the health or safety of persons from hazards arising from the use of electricity in a workplace by:

- (a) ensuring that persons at a workplace are, as far as reasonably practicable, safe from the risk of injury or death caused by the use of electricity; and
- (b) minimising the risk of injury or death because of electrical installations at a workplace; and
- (c) ensuring that electrical installation work is carried out safely; and
- (d) ensuring that electrical work is undertaken only by a person who is a competent person in relation to that work.

10.02 Definitions for Part 10

In this Part:

competent person, in relation to a specified task, means a person who:

- (a) has, through a combination of training, education and experience, acquired knowledge and skills that enable the person to perform correctly that task; and
- (b) meets any specific requirements imposed by a State or Territory law in relation to undertaking that task (including, for example, a State or Territory law that requires a person to be licensed to undertake the task).

Note Paragraph (a) of this definition reflects the definition of ***competent person*** in regulation 10.01.

electrical connection work means connecting electrical equipment to, or disconnecting electrical equipment from, a supply of electricity.

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electrical equipment work means the repair, alteration or maintenance of electrical equipment.

electrical installation work means the repair, alteration or maintenance of an electrical installation.

electrical work means any of the following:

- (a) electrical connection work;
- (b) electrical equipment work;
- (c) electrical installation work.

employer, in relation to a workplace, employee, equipment, thing or activity, means an employer who has management or control of the workplace, employee, equipment, thing or activity.

Division 10.2 Duties of employers

10.03 Duty to identify risks

- (1) An employer must identify any risk of injury from:
 - (a) the existence or use of electricity at a workplace; and
 - (b) the existence, operation or use of electrical installations at the workplace.
- (2) The employer must make a record of each risk that has been identified.

10.04 Duty to assess and control risks

- (1) If a risk is identified under subregulation 10.03 (1), the employer must:
 - (a) arrange for an assessment of the risk; and
 - (b) either:
 - (i) take measures to eliminate the risk; or
 - (ii) if it is not reasonably practicable to eliminate the risk — take measures to minimise the risk as far as reasonably practicable.
- (2) The employer must make a record of:
 - (a) each risk that has been assessed; and

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- (b) each measure taken to eliminate or minimise the risk.

10.05 Duty to ensure that electrical work is carried out by a competent person

An employer must take all reasonably practicable steps to ensure that electrical work is carried out at a workplace:

- (a) only by a competent person; and
- (b) only in accordance with Australian/New Zealand Standard Wiring Rules (AS/NZS 3000:2000).

Note Electrical work includes the maintenance of electrical equipment or an electrical installation at a workplace.

10.06 Duty to inspect and test electrical equipment

- (1) This regulation applies to electrical equipment that is:
 - (a) supplied with electricity through an electrical outlet socket; and
 - (b) either:
 - (i) used in construction work; or
 - (ii) located at a workplace at which the safe operation of the electrical equipment could be affected by a hostile operating environment.
- (2) An employer must ensure that the electrical equipment is regularly inspected by a competent person.
- (3) An employer must ensure that the electrical equipment is regularly tested by a competent person.
- (4) In subparagraph (1) (b) (ii):

hostile operating environment means an operating environment where electrical equipment in its normal use is subject to operating conditions that are likely to result in:

 - (a) damage to the equipment; or
 - (b) the compromising of insulation or of other protective measures.

Examples

- 1 Conditions that might cause mechanical damage to the equipment.

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2 Conditions that might expose the equipment to moisture, heat, vibration, corrosive substances or dust that is likely to result in damage to the equipment.

10.07 Duty to inspect and test electrical installations

An employer must ensure that each electrical installation at a workplace is inspected and tested by a competent person during the period:

- (a) starting when it is installed; and
- (b) ending before it is first energised for the purpose of normal use.

Note Further duties relating to electrical installation work are set out in Division 10.4.

10.08 Duty to disconnect unsafe electrical equipment and installations

- (1) If electrical equipment or an electrical installation at a workplace is unsafe, or is reasonably believed to be unsafe, the employer must, as soon as practicable, arrange for the installation or equipment to be:
 - (a) disconnected from the electricity supply; and
 - (b) repaired, removed from use, or replaced.
- (2) The employer must also:
 - (a) place at least one warning label or sign on the equipment in a prominent place; and
 - (b) take measures to avoid inadvertent reconnection while the equipment is disconnected.

10.09 Underground electrical cables

An employer at a workplace at which excavation work is to be carried out must:

- (a) obtain information about the location of all underground electrical cables at or near the workplace; and
- (b) give the information to all persons who are undertaking, or intending to undertake, excavation work at the workplace.

Regulation 10.10

10.10 Overhead electrical lines

- (1) Subject to subregulation (2), an employer must ensure that none of the following comes within close proximity of overhead electrical lines at a workplace:
 - (a) employees at the workplace;
 - (b) plant;
 - (c) tools;
 - (d) equipment other than tools;
 - (e) material used in or arising from the work.
- (2) Subregulation (1) does not apply to work that is done in accordance with:
 - (a) a written risk assessment; and
 - (b) a safe work method statement; and
 - (c) the requirements of the electricity supply authority in relation to the workplace.

10.11 Cords, cables and fittings

- (1) An employer must ensure that an electrical cord or electrical cable:
 - (a) is located where it is not likely to be damaged; and
 - (b) is protected from damage; and
 - (c) is not laid across a passageway unless the cord or cable is suitably protected.
- (2) An employer must ensure that a fitting for an electrical cord or electrical cable:
 - (a) is located where the fitting and the cord or cable are not likely to be damaged; and
 - (b) is protected from damage; and
 - (c) for a fitting that can be laid — is not laid across a passageway unless the fitting and the cord or cable are suitably protected.

10.12 Hazard warning signs

- (1) An employer must ensure, as far as reasonably practicable, that signs are displayed at or near an area of the workplace at which there is a risk of exposure to hazards arising from electricity.
- (2) The employer must ensure that each sign:
 - (a) warns of the hazards; and
 - (b) if necessary — restricts access of employees, contractors and other persons at the workplace to the area.

Division 10.3 Duty to keep records

10.13 Record-keeping

- (1) In addition to keeping the records required under Division 10.2, an employer must keep a record of:
 - (a) all maintenance carried out on electrical equipment and electrical installations; and
 - (b) all inspections and tests carried out under regulations 10.06 and 10.07.
- (2) The records must include the following information:
 - (a) the name of the person who carried out the maintenance, inspection or test;
 - (b) the date or dates on which the maintenance, inspection or test was carried out;
 - (c) the result of the maintenance, inspection or test;
 - (d) the date on which the next inspection or test is to be carried out.
- (3) The employer must keep the record for at least 5 years.

Regulation 10.14

Division 10.4 Electrical installations

10.14 Electrical installations not energised

- (1) Subject to subregulation (2), an employer must ensure that electrical installation work at a workplace is not carried out at any time at which a circuit or apparatus of the installation on which the work will be carried out is energised.
- (2) Subregulation (1) does not apply to electrical installation work if all of the following circumstances exist:
 - (a) it is necessary, to minimise the risk of injury, to carry out the work while the circuits and apparatus are energised;
 - (b) a written risk assessment for the work has been completed in consultation with the person proposing to do the work;
 - (c) the work is to be carried out in accordance with a safe work method statement for the work;
 - (d) the work has been authorised by the person in control of the workplace;
 - (e) each employee who is to do the work is appropriately qualified, trained and instructed in safe work practices for the particular task, including the proper use of equipment, tools, accessories and personal protective equipment;
 - (f) appropriate test equipment, tools and accessories are:
 - (i) provided to the persons doing the work; and
 - (ii) properly used; and
 - (iii) well maintained;
 - (g) appropriate clothing and personal protective equipment are:
 - (i) provided to the persons doing the work; and
 - (ii) properly worn and used;
 - (h) the isolation point of the electricity supply:
 - (i) has been clearly identified; and
 - (ii) is able to be reached and operated quickly without any need to remove or negotiate obstacles;
 - (i) the work area is clear of obstructions to safe entry and exit;

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- (j) unauthorised persons are prevented from entering the work area by signage or barriers;
- (k) the work is carried out in the presence of a safety observer who is:
 - (i) competent to perform the task to be carried out; and
 - (ii) competent in electrical rescue and cardio-pulmonary resuscitation.

10.15 Electrical installation work — safe system of work

- (1) If subregulation 10.14 (1) applies to an employer, the employer must ensure that a safe system of work exists to ensure that:
 - (a) electrical installation work at the workplace is not carried out at any time at which a circuit or apparatus of the installation on which the work will be carried out is energised; and
 - (b) each circuit or apparatus of the installation on which the electrical installation work will be carried out:
 - (i) is not energised when the work commences; and
 - (ii) does not become energised until the work is completed.
- (2) If subregulation 10.14 (2) applies to an employer, the employer must ensure that electrical installation work at a workplace is carried out using a safe system of work that includes procedures to ensure that the circuits and apparatus of the installation on which the work will be carried out are energised to the minimum extent practicable.
- (3) For subregulations (1) and (2), the employer must also ensure that the safe system of work includes procedures to eliminate or minimise the risk that the employee carrying out the work may inadvertently contact:
 - (a) a part of the installation that remains energised; or
 - (b) another electrical installation; or
 - (c) electrical equipment.

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Division 10.5 Duties of employees

10.16 Duty to undertake electrical work

An employee must not undertake electrical work at a workplace unless the employee is a competent person in relation to that work.

Division 10.6 Duties of contractors

10.17 Duty to undertake electrical work

A contractor must not undertake electrical work at a workplace unless the contractor is a competent person in relation to that work.

Part 11 Driver fatigue

Division 11.1 Introduction

11.01 Object of Part 11

The objective of this Part is to control driver fatigue, and to ensure the safety of drivers and other people:

- (a) by the implementation of suitable plans to manage the fatigue of drivers of heavy trucks, buses and commercial buses; and
- (b) by requiring employees and contractors to comply with driver fatigue management plans; and
- (c) by requiring consignors, consignees and other people not to act in a way that imposes unreasonable timeframes on drivers.

11.02 Application of Part 11

- (1) This Part applies to an employer who is in control of:

- (a) a heavy truck; or
- (b) a bus; or
- (c) a commercial bus;

because the employer uses the heavy truck, bus or commercial bus on a regular basis to transport people or goods.

- (2) Divisions 11.1 and 11.4 of this Part also apply to an employer who is a consignor or consignee.

11.03 Definitions for Part 11

In this Part:

bus means a motor vehicle that:

- (a) is built principally for the purpose of carrying people; and
- (b) is capable of carrying 12 or more seated adults (including the driver); and

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- (c) is not operated to carry people or goods for reward, or as part of a commercial business.

commercial bus means a motor vehicle that:

- (a) is built principally for the purpose of carrying people; and
- (b) is capable of carrying 12 or more seated adults (including the driver); and
- (c) is operated to carry people or goods for reward, or as part of a commercial business.

consignee means an employer who engages or proposes to engage a person who is not an employee, directly or through an agent or other intermediary, for the purpose of:

- (a) transporting goods to the employer by road; or
- (b) transporting people to the employer by road.

consignor means an employer who engages or proposes to engage a person who is not an employee, directly or through an agent or other intermediary, for the purpose of:

- (a) transporting goods from the employer by road; or
- (b) transporting people from a workplace by road; or
- (c) transporting people by road from another place for the purposes of the employer.

driver means a person who drives a heavy truck, a bus or a commercial bus for the purposes of an employer, whether the driver is an employee or not.

driver fatigue management plan means a plan that:

- (a) sets out details of an employer's processes to manage the risks imposed by driver fatigue; and
- (b) is prepared in accordance with regulation 11.07.

driving means the driving of a heavy truck, bus or commercial bus, including:

- (a) being in the driver's seat of a stationary heavy truck, bus or commercial bus while the engine is running; and
- (b) being in a heavy truck, bus or commercial bus for the purpose of:
 - (i) instructing another person to drive it; or
 - (ii) supervising another person's driving of the heavy truck, bus or commercial bus.

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driving time, for a driver, is the time that the driver spends driving on:

- (a) a road within the meaning of the *National Transport Commission (Road Transport Legislation — Driving Hours Regulations) Regulations 2006*; or
- (b) a road-related area within the meaning of those Regulations.

heavy truck means:

- (a) a motor vehicle that:
 - (i) is not a bus or tram; and
 - (ii) has a Gross Vehicle Mass (GVM) of over 12 tonnes; and
- (b) a motor vehicle that:
 - (i) is not a bus or tram; and
 - (ii) forms part of a combination vehicle in relation to which the total of the GVMs of the vehicles in the combination is more than 12 tonnes.

rest time, for a driver, is a continuous period of at least 15 minutes that is not the driver's work time.

work time, for a driver, is the total of:

- (a) the driver's driving time; and
- (b) any time that the driver spends:
 - (i) loading or unloading a heavy truck, bus or commercial bus to which this Part relates; or
 - (ii) inspecting, servicing or repairing the heavy truck, bus or commercial bus; or
 - (iii) inspecting or attending to the load on the heavy truck, bus or commercial bus; or
 - (iv) attending to the passengers of the bus or commercial bus; or
 - (v) cleaning or refuelling the heavy truck, bus or commercial bus; or
 - (vi) performing marketing tasks in relation to the operation of the heavy truck, bus or commercial bus; or
 - (vii) helping with, or supervising, an activity mentioned in paragraph (a) or subparagraphs (i) to (vi); or

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- (viii) recording information, or completing a document, in accordance with these Regulations in relation to the operation of the heavy truck, bus or commercial bus; or
- (ix) recording information, or completing a document, in accordance with another obligation in relation to the operation of the heavy truck, bus or commercial bus.

Division 11.2 Duties of employers

11.04 Duty to assess and manage fatigue of drivers

- (1) An employer must identify:
 - (a) any significant risk of serious injury; or
 - (b) any risk of death;
arising from the fatigue of a driver.
- (2) The employer must make a record of each risk that has been identified.

11.05 Duty to assess risks

- (1) If a risk is identified under subregulation 11.04 (1), the employer must:
 - (a) arrange for an assessment of the risk; and
 - (b) either:
 - (i) take measures to eliminate the risk; or
 - (ii) if it is not reasonably practicable to eliminate the risk — take measures to minimise the risk as far as reasonably practicable.
- (2) The employer must make a record of:
 - (a) each risk that has been assessed; and
 - (b) each measure taken to eliminate or minimise the risk.

11.06 Duty to ensure that driver does not risk fatigue

An employer must not allow a driver to transport people or goods in a heavy truck, a bus or a commercial bus for the purposes of the employer unless the employer has complied with regulations 11.04 and 11.05.

11.07 Duty to develop and implement driver fatigue management plan

- (1) An employer must develop and implement a management plan (a *driver fatigue management plan*) for the control of the risks of serious injury or death arising from the fatigue of a driver who is:
 - (a) an employee; or
 - (b) a contractor.
- (2) The employer must ensure that the management plan:
 - (a) deals with all drivers who are employees or contractors; and
 - (b) is prepared in consultation with those employees; and
 - (c) is prepared, as far as practicable, in consultation with those contractors.
- (3) The management plan must include arrangements for the following matters:
 - (a) the preparation of rosters for drivers that take into account:
 - (i) timeframes for carrying out the transport safely; and
 - (ii) times actually taken to perform tasks; and
 - (iii) the rest periods required to recover from the fatigue effects of work; and
 - (iv) the cumulative effects of fatigue over more than one day; and
 - (v) the management of the cumulative effects of driving during the day and during the night;
 - (b) identifying the driver's fitness for work;

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- (c) training and education of drivers about fatigue management, including:
 - (i) ensuring the driver's fitness for duty before commencing work; and
 - (ii) planning the driver's non-work time to ensure that the driver rests adequately; and
 - (iii) ways of recognising and dealing with fatigue;
 - (d) procedures and processes for managing incidents relating to fatigue, including recording the details of the procedures and processes;
 - (e) establishing and maintaining safe conditions at a workplace, as far as reasonably practicable.
- (4) The management plan must also include arrangements for the scheduling and conduct of transport in a way that controls the risk of serious injury or death arising from a driver's fatigue, including:
- (a) arrangements for the way in which, and the time in which, the heavy truck, bus or commercial bus is to be loaded and unloaded; and
 - (b) arrangements for time spent waiting for the heavy truck, bus or commercial bus to be loaded or unloaded; and
 - (c) arrangements for determining timeframes for carrying out the transport safely; and
 - (d) arrangements for rest periods required to recover from fatigue; and
 - (e) arrangements for the management of the cumulative effects of fatigue; and
 - (f) arrangements for the management of the cumulative effects of driving during the day and during the night.
- (5) The management plan must also include arrangements for the management of work time and rest times, including arrangements to ensure that:
- (a) as far as reasonably practicable, the driver's driving time, work time and rest time are consistent with the regulated hours specified in Part 2 of Schedule 1 to the *National Transport Commission (Road Transport Legislation — Driving Hours Regulations) Regulations 2006*; and

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- (b) if an employer decides to require or allow driving time, work time or rest time that is not consistent with those regulated hours:
 - (i) the employer records the reason for requiring or allowing the different time; and
 - (ii) the employer records the hours that are required or allowed; and
 - (iii) the employer records the measures to be taken to control the risk of serious injury or death arising from fatigue.
- (6) The management plan must also contain:
 - (a) a timetable for the implementation of the plan; and
 - (b) an explanation of the responsibilities of people involved with the implementation of the management plan.
- (7) The employer must:
 - (a) keep its management plan current; and
 - (b) review its management plan at least once in each period of 3 years; and
 - (c) keep accurate records relating to the implementation, operation and review of its management plan; and
 - (d) make a copy of the plan available to each driver; and
 - (e) make a copy of the plan available on request to a person who may be at risk of serious injury or death arising from a driver's fatigue.

Division 11.3 Additional duty of employer to keep records

11.08 Record-keeping

- (1) In addition to keeping the records required under Division 11.2, an employer must keep a record of:
 - (a) all driving time, work time and rest time taken, in a non-local work area, on a day by a driver who is an employee; and

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- (b) the final destination, on a day, of each driver who:
 - (i) is an employee; and
 - (ii) is required to drive, in a non-local work area, a heavy truck, bus or commercial bus that forms the whole or part of a workplace.
- (2) The employer must keep records required under Division 11.2 or this Division:
 - (a) in a clear and systematic manner; and
 - (b) for at least 5 years from the date on which the record is made.
- (3) In this regulation:
non-local work area has the same meaning as in regulation 44 of the *National Transport Commission (Road Transport Legislation — Driving Hours Regulations) Regulations 2006*.

Division 11.4 Duty of employer in the capacity of consignee or consignor

11.09 Consignee or consignor

- (1) A consignor or consignee must not enter into a contract with another person for the transport of the people or goods unless the employer is satisfied, on reasonable grounds, that the proposed timetable (if any) for the transport is reasonable, having regard to:
 - (a) the risk of serious injury or death arising from a driver's fatigue; and
 - (b) the time that is likely to be reasonable for carrying out the transport, including:
 - (i) time in which the heavy truck, bus or commercial bus is to be loaded and unloaded; and
 - (ii) time that is likely to be spent waiting for the heavy truck, bus or commercial bus to be loaded or unloaded; and
 - (iii) the rest periods required to recover from the fatigue effects of work.

- (2) The consignor or consignee must also keep a record of the reasons why the consignor or consignee considers the proposed timetable (if any) to be reasonable.

Division 11.5 Duty of drivers who are employees

11.10 Cooperation with driver fatigue management plan

- (1) A driver who is an employee must perform his or her work as a driver in accordance with the applicable driver fatigue management plan.
- (2) A driver who is an employee must cooperate with his or her employer to the extent necessary to ensure that the employer's driver fatigue management plan complies with regulation 11.07.

Division 11.6 Duty of drivers who are contractors

11.11 Cooperation with driver fatigue management plan

- (1) A driver who is a contractor must perform his or her work as a driver in accordance with the applicable driver fatigue management plan.
- (2) A driver who is a contractor must cooperate with an employer to the extent necessary to ensure that the employer's driver fatigue management plan complies with regulation 11.07.

Regulation 12.01

Part 12 Construction work

Division 12.1 Introduction

12.01 Object of Part 12

The object of this Part is to protect persons from the hazards associated with construction work by ensuring:

- (a) that hazards are identified; and
- (b) that each risk arising from a hazard is assessed; and
- (c) that each risk is:
 - (i) eliminated; or
 - (ii) if it is not reasonably practicable to eliminate the risk — minimised as far as is reasonably practicable.

12.02 Definitions for Part 12

In this Part:

Act means the *Occupational Health and Safety Act 1991*.

construction project means a project involving construction work including design, preparation and planning.

construction site has the meaning given by regulation 12.04.

construction work has the meaning given by regulation 12.03.

demolition means the complete or partial dismantling of a structure by planned and controlled methods.

design, in relation to a structure, includes a drawing, design detail, scope of works document or specification relating to the structure.

excavation means an earthwork, trench, well, shaft, tunnel or underground work.

existing services means gas, water, sewerage, communication, electrical and other services such as chemical, fuel and refrigerant lines supplied to, or adjacent to, a construction site.

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high-risk construction work means any of the following:

- (a) construction work where there is a risk of a person falling 2 metres or more;
- (b) construction work on telecommunications towers;
- (c) construction work involving demolition;
- (d) construction work involving the disturbance or removal of asbestos;
- (e) construction work involving structural alterations that require temporary support to prevent collapse;
- (f) construction work involving a confined space;
- (g) construction work involving excavation to a depth greater than 1.5 metres;
- (h) the construction of tunnels;
- (i) construction work involving the use of explosives;
- (j) construction work on or near pressurised gas distribution mains and consumer piping;
- (k) construction work on or near chemical, fuel or refrigerant lines;
- (l) construction work on or near energised electrical installations and services;
- (m) construction work in an area that may have a contaminated or flammable atmosphere;
- (n) tilt-up and precast concrete construction work;
- (o) construction work on, or adjacent to, roadways or railways used by road or rail traffic;
- (p) work on construction sites where there is any movement of powered mobile plant;
- (q) construction work in an area where there are artificial extremes of temperature;
- (r) construction work in, over, or adjacent to water or other liquids where there is a risk of drowning;
- (s) construction work involving diving.

plant includes:

- (a) anything mentioned in the definition of ***plant*** in section 5 of the Act; and

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- (b) any scaffolding, appliance or implement, and any component of any scaffolding, appliance or implement.

structure includes any of the following:

- (a) buildings;
- (b) steel or reinforced concrete constructions;
- (c) ships or submarines;
- (d) railway lines or sidings;
- (e) docks or harbours;
- (f) inland navigation channels;
- (g) waterworks;
- (h) towers or pylons;
- (i) pipelines;
- (j) roads;
- (k) airfields;
- (l) drainage works or earthworks;
- (m) earth retaining constructions;
- (n) underground tanks;
- (o) fixed plant constructions designed to preserve or alter any natural feature;
- (p) formwork, falsework, scaffolding or other constructions designed or used to provide support or access during construction work.

12.03 Meaning of *construction work*

- (1) In this Part:

construction work means work on or in the vicinity of a construction site carried out in connection with the construction, alteration, conversion, fitting out, commissioning, renovation, repair, maintenance, decommissioning, demolition or dismantling of any structure.

- (2) Without limiting subregulation (1), each of the following is construction work:
 - (a) the removal from the construction site of any product or waste from the demolition or dismantling of a structure;
 - (b) the assembly of prefabricated elements to form a structure;

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- (c) the disassembly of prefabricated elements which, immediately before such disassembly, formed a structure;
 - (d) any work in connection with excavation, landscaping, preparatory work or site preparation for the purpose of any work mentioned in paragraphs (a) to (c).
- (3) Work carried out on, or under, water, including work on buoys, obstructions to navigation, reefs, ships and wrecks, is construction work if it is otherwise within the definition in subregulation (1).
- (4) Each of the following is not construction work:
- (a) exploration for, or extraction of, mineral resources;
 - (b) preparatory work relating to the extraction of mineral resources carried out at a place where such extraction is carried out;
 - (c) minor maintenance work that is regular or routine in nature.

12.04 Meaning of *construction site*

- (1) In this Part:
- construction site* means:
- (a) a place where construction work is undertaken; and
 - (b) an area in the vicinity of such a place, where plant or other material that is, or will be, used in connection with the construction work is located during the construction work.
- (2) A construction site does not include a place where:
- (a) elements of a structure are manufactured off-site; or
 - (b) construction material is stored as stock for sale or hire.

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**Division 12.2 General duties of employers in
control of a construction project**

12.05 Duty to identify hazards

- (1) An employer in control of a construction project must identify reasonably foreseeable hazards that might harm the health and safety of a person:
 - (a) who undertakes construction work on the project; or
 - (b) who is affected by construction work on the project.
- (2) Hazards that must be identified under subregulation (1) include hazards arising from the following:
 - (a) the construction site, including its layout and condition;
 - (b) the physical working environment;
 - (c) working at height;
 - (d) hazardous substances, including their:
 - (i) handling; and
 - (ii) use; and
 - (iii) storage; and
 - (iv) on-site transportation; and
 - (v) disposal;
 - (e) the presence of asbestos;
 - (f) systems of work;
 - (g) plant, including its:
 - (i) on-site transportation; and
 - (ii) installation; and
 - (iii) erection; and
 - (iv) commissioning; and
 - (v) maintenance; and
 - (vi) dismantling; and
 - (vii) storage; and
 - (viii) disposal;
 - (h) manual handling, including the potential for occupational overuse injuries.

12.06 Duty to establish procedures to identify and record hazards

- (1) An employer in control of a construction project must:
 - (a) establish procedures in accordance with subregulation (2) to identify and record reasonably foreseeable hazards that are potential risks to health and safety; and
 - (b) make a record of hazards identified under regulation 12.05.
- (2) Procedures under subregulation (1) must require hazards to be identified and recorded:
 - (a) before the commencement of construction work; and
 - (b) before and during the installation, erection, commissioning or alteration of plant; and
 - (c) before changes to systems of work are introduced; and
 - (d) before hazardous substances are brought onto the site; and
 - (e) when any work is being carried out; and
 - (f) when additional information that is relevant to the health and safety of persons employed in construction work becomes available.

12.07 Duty to assess risks

- (1) If a hazard has been identified under regulation 12.05, the employer in control of a construction project must arrange for an assessment, in accordance with subregulation (2), of each risk arising from that hazard to the health and safety of a person:
 - (a) who undertakes construction work on the project; or
 - (b) who is affected by construction work on the project.
- (2) A risk assessment in relation to a hazard under subregulation (1) must include:
 - (a) an evaluation of:
 - (i) the likelihood of an injury, illness or disease occurring; and
 - (ii) the likely severity of the injury, illness or disease; and

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- (b) a review of the available health and safety information relevant to the hazard; and
 - (c) identification of actions necessary to control the risk.
- (3) An employer in control of a construction project must make a record of each risk assessment under subregulation (1).

12.08 Duty to control risks

If a risk is identified and assessed under regulation 12.07, the employer in control of the construction project must take measures to

- (a) eliminate the risk; or
- (b) if it is not reasonably practicable to eliminate the risk — minimise the risk as far as is reasonably practicable.

Note See also regulation 1.06.

12.09 Measures to control risks

- (1) An employer in control of a construction project must make a record of measures taken to control risks.
- (2) An employer in control of a construction project must ensure that measures to control risks to health and safety, including plant and systems of work, are properly used and maintained.

12.10 Duty to review procedures for hazard identification, and measures for assessment and control of risks

- (1) An employer in control of a construction project must ensure that there is a procedure to review the following:
 - (a) hazard identification procedures;
 - (b) risk assessment procedures;
 - (c) measures to control risks.
- (2) The employer in control of a construction project must review hazard identification procedures, risk assessment procedures and measures to control risks whenever:
 - (a) there is information that the procedures are no longer adequate; or

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- (b) advice is received from a person undertaking construction work on the project that:
 - (i) a hazard has not been identified; or
 - (ii) a risk has not been assessed; or
 - (iii) a risk has not been eliminated or adequately controlled; or
- (c) an injury, illness or disease results from exposure to a hazard; or
- (d) a significant change is proposed for the construction site or part of the construction site, including the introduction of:
 - (i) new plant or technology; or
 - (ii) new procedures or systems of work.

12.11 Duty to keep records

An employer in control of a construction project must keep the following for 5 years after the completion of the project:

- (a) records under regulation 12.06 of hazards;
- (b) records under regulation 12.07 of risk assessments;
- (c) records under regulation 12.09 of measures to control risks;
- (d) records under subregulation 12.10 of procedures for reviews;
- (e) records of information and training provided under regulation 12.12.

12.12 Duty to provide information and training

- (1) An employer in control of a construction project must provide to persons engaged in construction work on the project information and training about:
 - (a) hazards that have been identified in relation to the project; and
 - (b) the risks arising from those hazards; and
 - (c) the measures that have been implemented to eliminate or minimise those risks.

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- (2) Information under subsection (1) must be provided:
 - (a) when the person commences work on the project; and
 - (b) whenever a new or different hazard is identified.

Division 12.3 Particular areas of risk

12.13 Duty to identify existing services and associated risks

- (1) In this regulation:
existing services includes the following services supplied to, or adjacent to, a construction site:
 - (a) electricity;
 - (b) gas;
 - (c) water;
 - (d) sewerage;
 - (e) communication services;
 - (f) chemical, fuel or refrigerant lines.
- (2) Before the commencement of construction work, an employer in control of a construction project must:
 - (a) identify the existing services at the construction site; and
 - (b) assess:
 - (i) the condition of the services; and
 - (ii) any risks associated with the services.
- (3) An assessment under subregulation (2) must identify the following:
 - (a) the type of service;
 - (b) the location;
 - (c) whether the service is underground, overhead or contained within a structure;
 - (d) the extent of the services;
 - (e) any risks associated with the services.

Regulation 12.16

- (4) If contact with an existing service presents a risk to the health or safety of any person, the employer in control of the construction project must ensure that contact with the service is prevented by:
- (a) removing the service; or
 - (b) disconnecting the service; or
 - (c) isolating the service from the construction work.

12.14 Traffic control

An employer in control of a construction project must ensure the safety of pedestrians, motor vehicles or plant moving on or near the construction site, by:

- (a) eliminating any risks to health or safety; or
- (b) if it is not reasonably practicable to eliminate the risks — minimising the risks as far as is reasonably practicable.

12.15 Lighting

An employer in control of a construction project must ensure that there is a level of lighting sufficient to allow work or passage without risk to health or safety:

- (a) in any area in which a person performs construction work; and
- (b) in any area a person might be required to pass through, including access ways and emergency exits.

12.16 Access and egress

- (1) An employer in control of a construction project must ensure that all persons on the construction site have safe access to, and egress from, all places where they might be required to work or pass.
- (2) An employer in control of a construction project must provide emergency access and egress routes that are free of obstructions.

Regulation 12.17

12.17 Public access

- (1) An employer in control of a construction project must ensure, as far as reasonably practicable, that members of the public are not exposed to a health or safety risk arising from the construction work.
- (2) To the extent that it is reasonably practicable to do so, an employer in control of a construction project must:
 - (a) erect perimeter fencing around the construction site before construction work commences; and
 - (b) maintain the perimeter fencing during the construction work; and
 - (c) place signs on each construction site, clearly visible from outside the site, with the following information:
 - (i) names and telephone numbers of persons in control of the construction work;
 - (ii) the name and telephone number of a person who may be contacted in case of an after-hours emergency.

12.18 Emergency procedures

An employer in control of a construction project must ensure that:

- (a) it is possible for all persons to evacuate all work areas safely in an emergency; and
- (b) the following are displayed at appropriate locations on the construction site:
 - (i) a diagram showing emergency exits and evacuation routes;
 - (ii) emergency evacuation plans; and
- (c) there are arrangements for the rescue of injured persons; and
- (d) where required by the risk assessment — emergency evacuation procedures are practised at regular intervals and any difficulties are identified and resolved.

Regulation 12.21

12.19 Maintaining the site

An employer in control of a construction project must ensure that, on a construction site:

- (a) access ways are kept clear of material and debris and are not slippery; and
- (b) general safety signs are erected and kept in good condition; and
- (c) there is a safe system for collecting, storing and disposing of excess or waste material at the construction site; and
- (d) plant is safely secured when not in use; and
- (e) material at or near the construction site is moved and stored so that it does not present a risk to the health or safety of any person.

12.20 Exposure to the elements

If weather conditions create a hazard on the construction site, an employer in control of the construction project must take action to ensure the safety of persons working on the site.

Example

While rainfall is not itself unsafe, rain can make scaffolding slippery creating a risk of serious injury.

12.21 Duty to provide amenities

An employer in control of a construction project has a duty to provide access, for persons undertaking construction work, to amenities to meet their welfare and personal hygiene needs.

Regulation 12.22

Division 12.4 Occupational health and safety management plans

12.22 Occupational health and safety management plans

- (1) An employer in control of a construction project on which it is likely that 5 or more persons will be working at a construction site at any one time, must ensure that:
 - (a) a site-specific occupational health and safety management plan is prepared, in accordance with subregulation (2), before the construction work commences; and
 - (b) the plan is kept up to date during the course of the work.
- (2) An occupational health and safety management plan must include the following:
 - (a) a list of all persons on the site who have specific responsibilities for occupational health and safety, including:
 - (i) names; and
 - (ii) positions; and
 - (iii) the aspects of occupational health and safety for which they are responsible;
 - (b) arrangements for the provision of training under subregulation 12.12 (1);
 - (c) arrangements for the coordination of health and safety issues of persons undertaking construction work;
 - (d) arrangements for managing occupational health and safety incidents when they occur, including names and contact details of persons or agencies available to:
 - (i) prevent such incidents; or
 - (ii) prepare for procedures where there is a risk to health or safety; or
 - (iii) respond to such incidents; or
 - (iv) manage recovery from such incidents;
 - (e) the site safety rules;
 - (f) arrangements for ensuring that all persons at the site are informed of the site safety rules;

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- (g) for each work activity assessed as having a risk to health or safety, information on:
 - (i) the hazard identification; and
 - (ii) the risk assessment; and
 - (iii) measures for control of risk;
 - (h) for all high-risk construction work — the safe work method statements.
- (3) The employer in control of the construction project must ensure that the plan is available for inspection at the construction site throughout the course of the construction work.
- (4) The employer in control of the construction project must ensure that each relevant person engaged to work at the construction site is provided with a copy of the occupational health and safety management plan for the site before they commence work at the site.
- (5) If an occupational health and safety management plan for a construction site is changed during the course of construction work, the employer in control of the construction project must provide a copy of the changed parts of the plan to relevant persons working at the site.

Division 12.5 High-risk construction work

12.23 Safe work method statements for high-risk construction work

- (1) An employer in control of a construction project that requires high-risk construction work at a construction site must obtain a safe work method statement in relation to that work from the persons engaged to undertake that work before they commence work at the site.
- (2) If there is a change to high-risk construction work on a construction project, the employer in control of the construction project must ensure that:
- (a) the safe work method statement is reviewed; and
 - (b) any necessary changes to the statement are made.

Regulation 12.24

- (3) An employer in control of a construction project that requires high-risk construction work must take all reasonably practicable steps to ensure that:
- (a) construction work on the construction site is carried out in accordance with the safe work method statement; and
 - (b) if a person is working on the site in a manner that does not comply with the safe work method statement — the person is directed:
 - (i) to stop work immediately and not to resume work until he or she complies with the safe work method statement; or
 - (ii) if an immediate cessation of work is likely to increase the risk to health or safety — to stop work as soon as it is safe to do so.

Division 12.6 Education and training

12.24 Induction training before commencing work

An employer in control of a construction project must not direct or allow a person to carry out construction work on the construction site unless the person has completed a course of occupational health and safety induction training relating to construction.

Division 12.7 Duties of employees and contractors

12.25 Duty to undertake training

A person engaged to undertake construction work on a construction project must not commence construction work until the person has completed:

- (a) a course of occupational health and safety induction training; and
- (b) training identified in the risk assessment for the construction work.

Regulation 12.26

12.26 Duty to work in accordance with training, information and instructions

A person engaged to undertake construction work on a construction project must undertake that work in accordance with:

- (a) occupational health and safety training; and
- (b) information and instructions on occupational health and safety measures.

Regulation 13.01

Part 13 Falls from 2 metres or more

Division 13.1 Introduction

13.01 Object of Part 13

The object of this Part is to prevent or reduce injury to an individual at a workplace resulting from a fall 2 metres or more by:

- (a) imposing an obligation on an employer to:
 - (i) identify any task to be performed in a workplace that involves a fall hazard; and
 - (ii) eliminate the risk or, if that is not reasonably practicable, minimise the risk; and
 - (iii) inform, instruct and train employees and contractors concerning fall hazards and fall control measures; and
 - (iv) keep records of:
 - (A) tasks identified; and
 - (B) measures taken to eliminate and reduce fall hazards; and
- (b) imposing an obligation on an employee or contractor to perform tasks in accordance with:
 - (i) information, instruction and training given by an employer; and
 - (ii) risk control measures adopted by the employer.

13.02 Application of Part 13

This Part applies to an employer, employee or contractor as follows:

- (a) Division 13.2 applies to an employer;
- (b) Division 13.3 applies to an employee or a contractor.

13.03 Definitions for Part 13

In this Part:

administrative control means a system of work or work procedures that eliminates or reduces the risk of a fall.

fall means an involuntary fall of 2 metres or more by an individual.

fall hazard means an object or circumstance that increases the risk of a fall.

fall injury prevention system means equipment or material designed to arrest a fall to prevent an injury, including:

- (a) an industrial safety net; or
- (b) a catch platform; or
- (c) a safety harness system other than a travel restraint system.

industrial rope access system means a system that:

- (a) is designed for use by an individual in carrying out work on a building or structure; and
- (b) consists of equipment that:
 - (i) enables the individual to manually raise or lower himself or herself in a harness or seat supported by one or more fibre ropes; and
 - (ii) is capable of anchoring a rope.

passive fall prevention device means equipment or material that:

- (a) is designed to prevent a fall; and
- (b) after installation, does not require ongoing adjustment, alteration or operation by a person to maintain its ability to prevent a fall.

Example

Temporary work platforms, roof safety mesh and guard railings are all passive fall prevention devices.

solid construction means a building or structure, or a part of a building or structure that has:

- (a) a surface capable of supporting the number of people, and amount of material, that it may reasonably be expected to support for a particular task; and

Regulation 13.03

- (b) a barrier or barriers around its perimeter and any open penetrations that are designed to prevent a fall; and
- (c) an even and readily negotiable surface and gradient; and
- (d) a safe means of access and egress.

task includes:

- (a) the work to be done; and
- (b) matters necessary for or directly associated with the work to be done; and
- (c) the movement to and from a task.

temporary work platform means:

- (a) a fixed, mobile or suspended scaffold; or
- (b) an elevating work platform; or
- (c) a mast climbing work platform; or
- (d) a work box supported and suspended by a crane, hoist, forklift truck or other form of mechanical plant; or
- (e) building maintenance equipment, including a building maintenance unit; or
- (f) a portable or mobile fabricated platform; or
- (g) any other temporary platform that:
 - (i) provides a working area for the duration of work carried out at height; and
 - (ii) is designed to prevent a fall.

Example for paragraph (f)

A step platform.

travel restraint system means equipment that is:

- (a) worn by or attached to an individual; and
- (b) designed to physically restrain the individual from reaching an edge or elevated surface from which there is a risk of a fall.

unprotected edge means the edge of a surface:

- (a) from which extends a horizontal gap, void or space of more than 300 millimetres; and
- (b) that is not provided with a barrier to eliminate or reduce the risk of a fall.

Regulation 13.04

work positioning system means:

- (a) an industrial rope access system; or
- (b) a drainer's hoist; or
- (c) a travel restraint system; or
- (d) any other equipment that:
 - (i) enables an individual to be positioned and safely supported at a work location for the duration of a task being undertaken at height; and
 - (ii) is not a temporary work platform.

Division 13.2 Duties of employers

13.04 Employer's duty to identify tasks that involve fall hazard

- (1) An employer must, as far as reasonably practicable, identify any task to be performed in a workplace that involves a fall hazard.
- (2) Without limiting subregulation (1), an employer must identify any fall hazard caused by or involved by a task, that relates to the following:
 - (a) the construction, demolition, inspection, testing, maintenance, repair or cleaning of any plant or structure;
 - (b) a fragile, slippery or potentially unstable surface;
 - (c) the use of equipment to gain access to an elevated level, or to carry out a task at an elevated level;
 - (d) a sloping surface on which it is difficult for an individual to maintain balance;
 - (e) an unprotected edge;
 - (f) a hole, shaft, pit or trench into which an individual may fall.
- (3) The employer must make a record of each task that has been identified.

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13.05 Employer's duty to control risk

- (1) If a fall hazard is identified under subregulation 13.04 (1), the employer must, before the task is performed or an employee or contractor is required to perform any work that involves the fall hazard concerned:
 - (a) eliminate the risk; or
 - (b) if it is not reasonably practicable to eliminate the risk — take measures to minimise the risk as far as reasonably practicable.
- (2) The employer must make a record of steps taken to eliminate or minimise a risk.

13.06 Risk control measures

- (1) An employer must adopt risk control measures in accordance with subregulation (2).
- (2) In eliminating or minimising risk, an employer must:
 - (a) arrange that tasks be performed on the ground or on a solid construction; or
 - (b) if it is not reasonably practicable to comply with paragraph (a) in relation to all of the task, the employer must:
 - (i) comply with paragraph (a) as far as reasonably practicable; and
 - (ii) control the remaining risk by ensuring that a passive fall prevention device is used; or
 - (c) if it is not reasonably practicable to comply with paragraph (a) or (b) in relation to all of the task, the employer must:
 - (i) comply with paragraphs (a) and (b) as far as reasonably practicable; and
 - (ii) control the remaining risk by ensuring that a work positioning system is used; or

Regulation 13.07

- (d) if it is not reasonably practicable to comply with paragraph (a), (b) or (c) in relation to all of the task, the employer must:
 - (i) comply with paragraphs (a), (b) and (c) as far as reasonably practicable; and
 - (ii) control the remaining risk by ensuring that a fall injury prevention system is used; or
- (e) if it is not reasonably practicable to comply with paragraph (a), (b), (c) or (d) in relation to all of the task, the employer must:
 - (i) comply with paragraphs (a), (b), (c) and (d) as far as reasonably practicable; and
 - (ii) control the remaining risk by:
 - (A) ensuring that a fixed or portable ladder is used in accordance with regulation 13.08; or
 - (B) ensuring that an administrative control is implemented; or
 - (C) taking all reasonably practicable steps.
- (3) If there is a change in the way a task is being performed, the employer must review risk control measures adopted under subregulation (2).
- (4) The employer must make a record of risk control measures adopted under this regulation.

13.07 Employer must maintain control measures and equipment

- (1) An employer must ensure that any equipment or measure mentioned in regulation 13.06 that is used, or available for use, is:
 - (a) used properly; and
 - (b) maintained properly.
- (2) The employer must make a record of steps taken to monitor the use and maintenance of equipment or measures.

Regulation 13.08

13.08 Use of fixed or portable ladder

For sub-subparagraph 13.06 (2) (e) (ii) (A), if an employer uses a fixed or portable ladder to control a risk, the employer must ensure that the ladder is:

- (a) appropriate for the performance of the task; and
- (b) appropriate for the duration of the task; and
- (c) set up in a correct manner; and
- (d) used in a correct manner.

13.09 Use of administrative control

If an employer uses an administrative control to control a risk, and repeats the control in relation to more than 1 task, the employer may make a single record for all the performances of the task.

13.10 Use of plant

- (1) If an employer uses plant to control the risk of a fall, the employer must ensure that the plant is:
 - (a) designed and constructed for the task or range of tasks to be undertaken; and
 - (b) designed and constructed in such a way to enable its safe use in:
 - (i) the physical surroundings in which it is to be used; and
 - (ii) the physical conditions expected to prevail during the period it is to be used.

Examples of physical surroundings

The type and condition of the supporting surface, and proximity to powerlines or trees.

Examples of physical conditions

Lighting or weather conditions.

- (2) An employer must ensure that while plant is being installed, erected or dismantled, those operations are carried out in such a manner so as to reduce, as far as reasonably practicable the risk of a fall.

Regulation 13.12

13.11 Emergency procedures

- (1) If an employer establishes risk control measures for a task in accordance with regulation 13.06, the employer must also adopt emergency procedures in accordance with this regulation before the task is performed.
- (2) The emergency procedures must, as far as reasonably practicable, provide for:
 - (a) the rescue of an individual in the event of a fall; and
 - (b) the provision of first aid to the individual; in a timely manner.
- (3) An employer must ensure that emergency procedures adopted are carried out in such a manner so as to eliminate, or if that is not reasonably practicable, minimise as far as reasonably practicable:
 - (a) the risk of a fall; or
 - (b) any other risk.
- (4) An employer must make a record of:
 - (a) emergency procedures; and
 - (b) measures taken to adopt emergency procedures.

13.12 Employer's duty to provide information, instruction and training

- (1) If an employee or contractor is to perform a task that involves a fall hazard the employer must provide to the employee or contractor such information, instruction or training as is reasonably necessary to enable the employee or contractor to perform the task in a safe manner, having regard to:
 - (a) the nature of the task; and
 - (b) the need for, and proper use of, measures to control the risk of a fall.
- (2) An employer must make a record of information, instruction and training provided to an employee or contractor.

Regulation 13.13

13.13 Employer's duty to keep records

An employer must keep records required under this Part for not less than 5 years.

Division 13.3 Duties of employees and contractors

13.14 Duty of employee or contractor

An employee or contractor who has been provided with information, instruction or training mentioned in regulation 13.12 in relation to a task must:

- (a) perform the task in accordance with the information, instruction or training; and
- (b) use any risk control measures adopted by the employer under regulation 13.06, in accordance with the information, instruction or training.

Part 20 Definitions

20.01 Interpretation

- (1) In these Regulations:

ADG Code means the Australian Code for the Transport of Dangerous Goods by Road and Rail, 6th edition, published by the Federal Office of Road Safety in 1998.

Note Further information about the ADG Code is available on the Internet at www.dotars.gov.au/index.htm.

amusement structure means a structure or a device:

- (a) that is operated for hire or reward; and
- (b) that is used, or designed to be used, for amusement, recreation, sport, sightseeing or entertainment; and
- (c) on which persons may be moved, carried, raised, lowered or supported by any part of the structure or device; and
- (d) that is either:
 - (i) an arrangement of structural or mechanical elements, or both, that has as its prime function the provision of movement of a passenger in a controlled manner so that the passenger is not necessarily required to move himself or herself to obtain the desired effect (called an **amusement ride**); or
 - (ii) an arrangement or equipment through which, or on which, a rider moves and for which the desired effect is achieved primarily by the rider's self-powered motion, or by another process that is not referred to in the description of an amusement ride (called an **amusement device**).

asbestos means any of the following fibrous forms of mineral silicates belonging to the serpentine and amphibole groups of rock-forming minerals:

- (a) actinolite asbestos;
- (b) amosite (brown asbestos);
- (c) anthophyllite asbestos;
- (d) chrysotile (white asbestos);

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- (e) crocidolite (blue asbestos);
- (f) tremolite asbestos.

boiler:

- (a) means a vessel, or an arrangement of vessels, and interconnecting parts, in which:
 - (i) steam or other vapour is generated; or
 - (ii) water or other liquid is heated at a pressure greater than atmospheric pressure;by the use of fire, the products of combustion, electrical power or other similar means; and
- (b) includes a superheater, reheater, economiser, boiler piping support, mounting, valve, gauge, fitting, control, setting or other equipment directly associated with a boiler; and
- (c) does not include a fully flooded or pressurised system where water or other liquid is heated to a temperature lower than the normal atmospheric boiling temperature of the liquid.

bracket scaffold means a scaffold the platform of which is carried on frames that are attached to, or supported by, permanent or temporary construction.

bridge crane means a crane:

- (a) comprising a bridge beam mounted at each end to an end carriage; and
- (b) capable of travelling along elevated runways; and
- (c) having one or more hoisting mechanisms arranged to traverse the bridge.

building includes part of a building or a building under construction.

building maintenance equipment:

- (a) means a suspended platform and associated equipment which incorporates permanently installed overhead supports to provide access to any face or other similar surface of a building for maintenance purposes; and
- (b) includes a building maintenance unit and a swing stage; and

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- (c) does not include a suspended scaffold.

building maintenance unit means a power-operated suspended platform and associated equipment which is:

- (a) permanently installed on a building; and
- (b) specifically designed to provide access to any face of the building for maintenance purposes.

cantilevered scaffold (other than a bracket scaffold) that is supported by cantilevered load-bearing members.

commissioning, in relation to plant, means performing the necessary adjustments, tests and inspections to ensure that the plant is in full working order to specified requirements before the plant is used, and includes re-commissioning.

competent person, in relation to a specified task, means a person who has, through a combination of training, education and experience, acquired knowledge and skills that enable the person to perform correctly that task.

concrete placing unit (truck-mounted with boom) means plant that:

- (a) is used to place concrete by way of pumping concrete through a pipeline attached to or forming part of the boom; and
- (b) is capable of travelling over a supporting surface without the need for fixed runways (including railway tracks); and
- (c) relies on gravity for stability, that is, with no vertical restraining connection between itself and the supporting surface and no horizontal restraining connection (other than frictional forces at supporting surface level) that may act as an aid to stability.

consumer package means a package that is intended for retail display and sale, and includes a package that:

- (a) is intended for retail sale and display; and
- (b) is transported and distributed in a group of identical packages that form a larger package.

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conveyor:

- (a) means an apparatus or equipment worked by a form of power, other than human power, by means of which a load may be raised, lowered, transported or continuously driven by:
 - (i) an endless belt, rope, chain or similar means; or
 - (ii) buckets, trays or other containers or fittings moved by an endless belt, rope, chain or similar means; or
 - (iii) a rotating screw; or
 - (iv) a vibration or walking beam; or
 - (v) a powered roller conveyor where the rolls are driven by an endless belt, rope, chain or similar means; and
- (b) includes the supporting structure, auxiliary equipment and gear used in connection with the apparatus or equipment.

crane means an appliance by means of which a load may be raised, lowered or moved horizontally, including the supporting structure and foundations of an appliance of that kind, but does not include the following:

- (a) an industrial lift truck;
- (b) earthmoving machinery;
- (c) an amusement structure;
- (d) a tractor;
- (e) an industrial robot;
- (f) a conveyor;
- (g) building maintenance equipment.

defence employing authority means the Secretary of the Department of Defence and the Chief of the Defence Force.

direct-fired process heater means an arrangement of tubes comprising one or more coils located in the radiant zone, convection zone, or both, of a combustion chamber, the prime purpose of which is to raise the temperature of a process fluid (being liquid, gas or a combination of both), which is circulated through the coils, to allow:

- (a) the distillation, fractionation or reaction of the process fluid; or
- (b) the occurrence of another petrochemical process in relation to the process fluid.

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earthmoving machinery:

- (a) means an operator-controlled item of plant used to excavate, load, transport, spread or compact earth, overburden, rubble, spoil, aggregate or similar material; and
- (b) does not include a tractor or an industrial lift truck.

electrical equipment means an appliance, wire, fitting, cable, conduit, meter, insulator, apparatus, material or other electrical article that generates, uses, conveys or controls electricity.

electrical installation means electrical equipment that is fixed, or intended to be fixed, in, on, under or over land.

electrical plant means plant that consumes, converts or generates electricity.

elevating work platform means a telescoping device, scissor device or articulating device (or a combination of 2 or more of those devices) used to move people, equipment and material to and from a work location above the device's support structure.

emergency service includes:

- (a) a fire, ambulance or police department operating in a State or Territory; and
- (b) another department, agency or instrumentality of the Crown, operating in a State or Territory, that may be required to attend at the scene of an emergency in the State or Territory.

erector means a person who erects or installs plant in a workplace.

ergonomic means the factors that maximise the functioning of plant, or a system of work associated with plant, by adapting the plant or system to human capacity or need.

exposure standard:

- (a) in relation to exposure to a substance — means an airborne concentration of a particular substance in a person's breathing zone identified in accordance with the Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC:1003 (1995)]; and
- (b) in relation to exposure to noise — means the exposure standard for noise set out in subregulation 3.03 (1).

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fault means:

- (a) a break or defect that may cause an object to present an increased risk to health and safety; or
- (b) an aspect of the design of an object that may cause the object to be a risk to health and safety if it is manufactured in accordance with the design.

fired heater means a pressure vessel in which:

- (a) a liquid is heated below its normal atmospheric boiling temperature; or
- (b) a process fluid is heated, in tubes, above or below its normal atmospheric boiling temperature;

by the application of fire, the products of combustion, electric power or similar high temperature means.

gantry crane means a crane:

- (a) comprised of a bridge beam, supported at each end by legs mounted on end carriages; and
- (b) that is capable of travelling on supporting surfaces or deck levels, whether fixed or not; and
- (c) that has a crab with one or more hoisting units arranged to travel across the bridge.

gas cylinder means an individual rigid pressure vessel:

- (a) of a water capacity that does not exceed 3,000 litres; and
- (b) that does not have openings or integral attachments on its shell, other than at the ends; and
- (c) that is designed for the storage or transport of gas under pressure; and
- (d) that is referred to in AS 2030 (SAA Gas Cylinders Code).

guard means a device that prevents or reduces access to a danger point or area.

hazard means the potential to cause injury or illness.

hazardous situation means a situation that has the potential to cause injury or illness to an individual.

hoist means an appliance (other than building maintenance equipment) by means of which a load may be raised or lowered, such as:

- (a) an elevating work platform; or

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- (b) a mast climbing platform; or
- (c) a people or materials hoist; or
- (d) a scaffolding hoist; or
- (e) a serial hoist.

hung scaffold means a scaffold which:

- (a) is hung from another structure; and
- (b) is not capable of being raised or lowered when in use.

industrial lift truck:

- (a) means powered mobile plant, designed to move goods, material or equipment, that:
 - (i) is equipped with an elevating load carriage; and
 - (ii) is normally equipped with a load-holding attachment; and
- (b) does not include a mobile crane or earthmoving machinery.

industrial robot:

- (a) means a multifunctional manipulator that is capable of handling material, parts, tools or specialised devices through variable programmed motions for the performance of a variety of tasks; and
- (b) includes the device used to control the manipulator.

ingredient means a component of a substance that is a mixture or a combination, and includes an impurity in the substance.

Note An ingredient may be included in reactive or unstable dangerous goods to maintain the stability of the dangerous goods.

installer means a person who installs plant in a workplace.

interlocked, in relation to plant, means the connection between a guard or machine element and the control system, or the power system, of the plant that:

- (a) allows access to the moving parts of the plant at the times when those parts are not moving; and
- (b) prevents moving parts from starting up or operating when access is available to those moving parts.

laser:

- (a) means any device that can produce or amplify electromagnetic radiation in the wave length range from

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100 nanometers to 1 millimetre by the process of controlled stimulated emission; and

(b) does not include:

- (i) an electric light globe; or
- (ii) a fluorescent light tube; or
- (iii) an electric radiator used for heating; or
- (iv) radio or video communication equipment; or
- (v) a domestic cooking appliance that uses high-powered lamps; or
- (vi) a navigation or search light.

laser product means any product or assembly of components that constitutes, incorporates, or is intended to incorporate, a laser.

manual handling means an activity requiring the use of force exerted by a person to lift, lower, push, pull, carry or otherwise move, hold or restrain any person, animal or thing.

mast climbing work platform means a hoist having a working platform used for temporary purposes to raise personnel and materials to the working position by means of a drive system mounted to an extendable mast.

minimise means to reduce to the lowest level that is reasonably practicable to achieve.

mobile crane means a crane:

- (a) capable of travelling over a supporting surface without the need for fixed runways (including railway tracks); and
- (b) that relies only on gravity for stability, having no vertical restraining connection between itself and the supporting surface and no horizontal restraining connection (other than frictional forces at supporting-surface level) which may act as an aid to stability.

MSDS means a Material Safety Data Sheet.

NOHSC means the National Occupational Health and Safety Commission established under section 6 of the *National Occupational Health and Safety Commission Act 1985*.

operator protective device includes:

- (a) a roll-over protective structure; and

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- (b) a falling object protective structure; and
- (c) an operator restraining device; and
- (d) a seat belt.

personal use products means:

- (a) cosmetics; and
- (b) a substance that is therapeutic goods within the meaning of the *Therapeutic Goods Act 1989*; and
- (c) tobacco and substances made from tobacco; and
- (d) toilet products; and
- (e) toiletries.

prefabricated scaffolding means an integrated system of prefabricated components manufactured in such a way that the geometry of assembled scaffolds is pre-determined.

presence sensing safeguarding system includes:

- (a) a sensing system that employs one or more forms of radiation that are self-generated or otherwise generated by pressure; and
- (b) an interface between the final switching devices of a sensing system and a primary control element; and
- (c) the capability to stop a machine, by which the presence of a person in the sensing field will cause the dangerous parts of a machine to be brought to a safe state.

pressures expressed are gauge pressures relative to atmospheric pressure, unless otherwise identified.

pressure equipment means:

- (a) a boiler; or
- (b) a pressure vessel; or
- (c) pressure piping.

pressure piping:

- (a) means an assembly (other than a boiler or a pressure vessel) consisting of pipes, pipe fittings, valves and pipe accessories that are:
 - (i) subject to internal or external pressure; and
 - (ii) used to contain or convey fluid, or to transmit fluid pressure; and

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- (b) includes a distribution header, bolting, gasket, pipe support or pressure retaining accessory.

pressure vessel:

- (a) means a vessel (other than a boiler) that is subject to internal or external pressure greater than atmospheric pressure; and
- (b) includes:
 - (i) any interconnected part, component, valve, gauge or other fitting up to the first point of connection of piping; and
 - (ii) a fired heater; and
 - (iii) a gas cylinder.

record includes anything in which information is stored or from which information can be reproduced.

relevant person means any of the following persons:

- (a) an employee;
- (b) a contractor in respect of whom an employer has obligations in accordance with subsection 16 (4) of the Act;
- (c) any other person at or near a workplace under an employer's control.

repair:

- (a) means the restoration of plant to an operating condition; and
- (b) does not include routine maintenance, replacement or alteration.

retailer means a person who sells goods to a person who is not engaged in the resale of the goods.

risk means the probability and consequences of occurrence of injury or illness.

risk assessment means the process of evaluating the probability and consequences of injury or illness arising from exposure to an identified hazard or hazards.

risk control means the process of managing the elimination or minimisation of a risk to health and safety.

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safe work method statement means a document that:

- (a) identifies each work activity assessed as having one or more safety risks; and
- (b) describes the safety risk or risks; and
- (c) describes the control measures that will be applied to the work activity; and
- (d) describes how safety measures will be implemented to do the work safely; and
- (e) includes a description of the equipment used in the work, the qualifications of the people doing the work and the training required to do the work safely.

scaffold means a temporary structure specifically erected to support one or more access or working platforms.

scaffolding equipment means any component, assembly or machine used or intended to be used in the construction of a scaffold.

spur scaffold means a scaffold which is partially supported by inclined load bearing members.

structure includes a part of a structure.

suspended scaffold:

- (a) means a scaffold incorporating a suspended platform that is capable of being raised or lowered when in use; and
- (b) includes a boatswain's chair.

the Act means the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

tower crane means a boom or jib crane mounted on a tower structure.

tractor means a motor vehicle, whether wheeled or track mounted (other than earthmoving equipment), that is designed to provide power and movement to an attached machine or implement by a transmission shaft, belt or linkage system.

use means:

- (a) in relation to dangerous goods, or a substance, at a workplace — to produce, handle, store, transport or dispose of the dangerous goods or substance at the workplace; and

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- (b) in relation to plant — to work from, operate, maintain, inspect or clean the plant.

vehicle hoist means a vehicle-hoisting device the purpose of which is to provide accessibility for convenient under-chassis examination or service.

work box means a personnel carrying device that is:

- (a) designed to be suspended from a crane; and
- (b) intended to provide a working area for an person elevated by and working from the box.

workpiece, in relation to plant:

- (a) means material, offcut or scrap (in any form):
 - (i) on which the plant performs work; or
 - (ii) produced by the plant; and
- (b) does not include a load being lifted or moved by the plant.

(2) In these Regulations:

- (a) a reference to a document the title of which includes the letters **AS** is a reference to a document of that title published by Standards Australia and:
 - (i) as in force on the day on which it was published; or
 - (ii) if the document has been amended — as in force immediately before the day on which the regulation that refers to the document commences; and
- (b) a reference to a document the title of which includes the letters **NOHSC** is a reference to a document of that title published by the National Occupational Health and Safety Commission and:
 - (i) as in force on the day on which it was published; or
 - (ii) if the document has been amended — as in force immediately before the day on which the regulation that refers to the document commences; and
- (c) if paragraphs (a) and (b) do not apply — a reference to a document, followed by a description of the person that published the document, is a reference to the document of that title:

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- (i) as in force on the day on which it was published; or
 - (ii) if the document has been amended — as in force immediately before the day on which the regulation that refers to the document commences.
- (3) In these Regulations:
 - (a) the **Australian Defence Organisation** comprises the Department of Defence and the Australian Defence Force; and
 - (b) anything required to be done by the defence employing authority may be done by the Secretary of the Department of Defence or the Chief of the Defence Force acting:
 - (i) for himself or herself; and
 - (ii) on behalf of the other person; and
 - (c) anything given or notified to the Secretary of the Department of Defence or the Chief of the Defence Force is taken to be given or notified to the defence employing authority.

Note 1 Under the definition of **employing authority** in section 5 of the Act and regulation 4 of the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*, the Chief of the Defence Force is the employing authority in relation to a member of the Australian Defence Force.

Note 2 Under the definitions of **employing authority**, **Entity** and **principal officer** in section 5 of the Act, the Secretary to the Defence Department is the employing authority in relation to a person who is employed by the Defence Department.

Note 3 The effect of section 10 of the Act is that an employer is required to act through the employing authority.

Schedule 1A Scheduled carcinogenic substances

(regulations 6.03, 6.17A and 6.22)

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Circumstance
1	2-Acetylaminofluorene	All circumstances
2	Aflatoxins	All circumstances
3	4-Aminodiphenyl	All circumstances
4	Amosite (brown asbestos)	All circumstances other than the following circumstances: (a) removal or disposal of amosite in accordance with a law of a State or Territory relating to the removal of asbestos; (b) disturbance of naturally occurring amosite that is incidental to operations not related to the extraction or processing of amosite, for example, roadworks; (c) use (without disturbance) of amosite in products that are in situ
5	Benzidine and its salts, including benzidine dihydrochloride	All circumstances
6	bis(Chloromethyl) ether	All circumstances
7	Chloromethyl methyl ether (technical grade containing bis(chloromethyl) ether)	All circumstances

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Circumstance
8	Crocidolite (blue asbestos)	All circumstances other than the following circumstances: <ul style="list-style-type: none"> (a) removal or disposal of crocidolite in accordance with a law of a State or Territory relating to the removal of asbestos; (b) disturbance of naturally occurring crocidolite that is incidental to operations not related to the extraction or processing of crocidolite, for example, roadworks; (c) use (without disturbance) of crocidolite in products that are in situ
9	4-Dimethylaminoazo-benzene	All circumstances
10	2-Naphthylamine and its salts	All circumstances
11	4-Nitrodiphenyl	All circumstances
12	Acrylonitrile	All circumstances
13	Benzene	When contained in a feedstock containing more than 50% of benzene by volume
14	Chrysotile (white asbestos)	All circumstances other than the following: <ul style="list-style-type: none"> (a) removal or disposal of chrysotile in accordance with a law of a State or Territory relating to the removal of asbestos;

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Circumstance
		(b) disturbance of naturally occurring chrysotile that is incidental to operations not related to the extraction or processing of chrysotile, for example, roadworks;
		(c) use (without disturbance) of chrysotile in products that are in situ
15	Cyclophosphamide (cytotoxic drug)	1. When contained in a preparation for therapeutic use in hospitals and oncological treatment facilities. 2. When used in manufacturing operations.
16	3,3'-Dichlorobenzidine and its salts	All circumstances
17	3,3'-Dichlorobenzidine dihydrochloride	All circumstances
18	Diethyl sulfate	All circumstances
19	Dimethyl sulfate	All circumstances
20	Ethylene dibromide	When used as a fumigant
21	4,4'-Methylene bis(2-chloroaniline) — known as 'MOCA'	All circumstances
22	2-Propiolactone	All circumstances
23	ortho-Toluidine	All circumstances
24	ortho-Toluidine hydrochloride	All circumstances
25	Vinyl chloride monomer	All circumstances

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Circumstance
26	Actinolite asbestos	<p>All circumstances other than the following:</p> <ul style="list-style-type: none"> (a) removal or disposal of actinolite in accordance with a law of a State or Territory relating to the removal of asbestos; (b) disturbance of naturally occurring actinolite that is incidental to operations not related to the extraction or processing of actinolite, for example, roadworks; (c) use (without disturbance) of actinolite in products that are in situ
27	Anthophyllite asbestos	<p>All circumstances other than the following:</p> <ul style="list-style-type: none"> (a) removal or disposal of anthophyllite in accordance with a law of a State or Territory relating to the removal of asbestos; (b) disturbance of naturally occurring anthophyllite that is incidental to operations not related to the extraction or processing of anthophyllite, for example, roadworks; (c) use (without disturbance) of anthophyllite in products that are in situ

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Circumstance
28	Tremolite asbestos	All circumstances other than the following: <ul style="list-style-type: none">(a) removal or disposal of tremolite in accordance with a law of a State or Territory relating to the removal of asbestos;(b) disturbance of naturally occurring tremolite that is incidental to operations not related to the extraction or processing of tremolite, for example, roadworks;(c) use (without disturbance) of tremolite in products that are in situ

Note Schedule 1A is not an exhaustive list of carcinogens used in workplaces. The absence of a substance from the Schedule should not be presumed to be indicative of the absence of a carcinogenic hazard. The general requirements of Part 6 apply to all carcinogenic substances that are hazardous substances within the meaning of regulation 6.03.

Schedule 1 Hazardous substances

(regulation 6.16)

Part 1 Permitted circumstances for using certain hazardous substances

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Permitted circumstance
101	Polychlorinated biphenyls (also known as PCBs)	<ol style="list-style-type: none">1. Handling for storage prior to removal or disposal.1A. Storage prior to removal or disposal.2. Removal or disposal.3. Use when contained in existing electrical equipment or construction material.4. Repair of existing electrical equipment or construction material.

Part 2 Permitted circumstances for using certain hazardous substances with carcinogenic properties

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Permitted circumstance
201	2-Acetylaminofluorene	Bona fide research
202	Aflatoxins	Bona fide research
203	4-Aminodiphenyl	Bona fide research

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Permitted circumstance
204	Amosite (brown asbestos)	<ol style="list-style-type: none"> 1. Bona fide research. 2. Handling for storage prior to removal or disposal of amosite. 3. Storage prior to removal or disposal of amosite. 4. Removal or disposal of amosite in accordance with a law of a State or Territory relating to the removal of asbestos. 5. Disturbance of naturally occurring amosite that is incidental to operations not related to the extraction or processing of amosite, for example, roadworks. 6. Use (without disturbance) of amosite in products that are in situ.
205	Benzidine and its salts, including benzidine dihydrochloride	Bona fide research
206	bis(Chloromethyl) ether	Bona fide research
207	Chloromethyl methyl ether (technical grade containing bis(chloromethyl) ether)	Bona fide research
208	Crocidolite (blue asbestos)	<ol style="list-style-type: none"> 1. Bona fide research. 2. Handling for storage prior to removal or disposal of crocidolite. 3. Storage prior to removal or disposal of crocidolite.
352	Occupational Health and Safety (Safety Standards) Regulations 1994	

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Permitted circumstance
		<ul style="list-style-type: none"> 4. Removal or disposal of crocidolite in accordance with a law of a State or Territory relating to the removal of asbestos. 5. Disturbance of naturally occurring crocidolite that is incidental to operations not related to the extraction or processing of crocidolite, for example, roadworks. 6. Use (without disturbance) of crocidolite in products that are in situ.
209	4-Dimethylaminoazo-benzene	Bona fide research
210	2-Naphthylamine and its salts	Bona fide research
211	4-Nitrodiphenyl	Bona fide research
212	Actinolite asbestos	<ul style="list-style-type: none"> 1. Bona fide research. 2. Handling for storage prior to removal or disposal of actinolite. 3. Storage prior to removal or disposal of actinolite. 4. Removal or disposal of actinolite in accordance with a law of a State or Territory relating to the removal of asbestos.

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Permitted circumstance
		<ul style="list-style-type: none"> 5. Disturbance of naturally occurring actinolite that is incidental to operations not related to the extraction or processing of actinolite, for example, roadworks. 6. Use (without disturbance) of actinolite in products that are in situ.
213	Anthophyllite asbestos	<ul style="list-style-type: none"> 1. Bona fide research. 2. Handling for storage prior to removal or disposal of anthophyllite. 3. Storage prior to removal or disposal of anthophyllite. 4. Removal or disposal of anthophyllite in accordance with a law of a State or Territory relating to the removal of asbestos. 5. Disturbance of naturally occurring anthophyllite that is incidental to operations not related to the extraction or processing of anthophyllite, for example, roadworks. 6. Use (without disturbance) of anthophyllite in products that are in situ.

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Permitted circumstance
214	Chrysotile (white asbestos)	<ol style="list-style-type: none"> 1. Bona fide research. 2. Handling for storage prior to removal or disposal of chrysotile. 3. Storage prior to removal or disposal of chrysotile. 4. Removal or disposal of chrysotile in accordance with a law of a State or Territory relating to the removal of asbestos. 5. Disturbance of naturally occurring chrysotile that is incidental to operations not related to the extraction or processing of chrysotile, for example, roadworks. 6. Use (without disturbance) of chrysotile in products that are in situ.
215	Tremolite asbestos	<ol style="list-style-type: none"> 1. Bona fide research. 2. Handling for storage prior to removal or disposal of tremolite. 3. Storage prior to removal or disposal of tremolite. 4. Removal or disposal of tremolite in accordance with a law of a State or Territory relating to the removal of asbestos.

Schedule 1	Hazardous substances
Part 2	Permitted circumstances for using certain hazardous substances with carcinogenic properties

Column 1 Item	Column 2 Substance (identified by substance name)	Column 3 Permitted circumstance
		<p>5. Disturbance of naturally occurring tremolite that is incidental to operations not related to the extraction or processing of tremolite, for example, roadworks.</p> <p>6. Use (without disturbance) of tremolite in products that are in situ.</p>

Schedule 1B Exemption from regulation 6.16

(regulation 6.16A)

Part 1 General

1.01 Definition

In this Schedule:

relevant employing authority, in relation to an employer seeking an exemption under regulation 6.16A, means:

- (a) if the employer is the Commonwealth — the employing authority that wishes to seek the exemption; or
- (b) if the employer is a Commonwealth authority — that Commonwealth authority.

Note The term *employing authority* is defined in subsection 5 (1) of the Act. See also section 10 of the Act in relation to employing authority.

Part 2 Hazardous substances other than chrysotile

2.01 Applications for exemption

If an employer wishes to seek an exemption under regulation 6.16A in relation to a hazardous substance other than chrysotile, the relevant employing authority must:

- (a) apply to the Commission in writing, using the application form (if any) approved by the Commission; and
- (b) include in the application evidence that:
 - (i) the use of the hazardous substance is essential to the operation of the employer's business; and
 - (ii) there is no reasonable alternative substance for the hazardous substance.

2.02 Grant or refusal of exemption

- (1) On receipt of an application by a relevant employing authority under clause 2.01, the Commission may, in writing:
 - (a) grant the exemption to the employer, in the name of the relevant employing authority; or
 - (b) refuse to grant the exemption; or
 - (c) ask the relevant employing authority to give it further information about the application.
- (2) Before granting an exemption to the employer, the Commission must be satisfied that:
 - (a) the use of the hazardous substance is essential to the operation of the employer's business; and
 - (b) there is no reasonable alternative substance for the hazardous substance; and
 - (c) there are no circumstances suggesting that granting the exemption would be inconsistent with the objects of Part 6 of these Regulations.
- (3) If the Commission refuses to grant an exemption, it must give the relevant employing authority a written notice setting out its decision and the reasons for its decision.

2.03 Conditions of an exemption

- (1) An exemption granted under clause 2.02 may be subject to conditions that promote the objects of Part 6 of these Regulations.
- (2) The Commission may, by notice in writing to the relevant employing authority to which an exemption relates:
 - (a) add a condition to the exemption, or vary a condition; or
 - (b) revoke a condition.
- (3) The notice must include:
 - (a) the reasons for the addition, variation or revocation; and
 - (b) the time when the addition, variation or revocation takes effect.

2.04 Operation of an exemption

- (1) An exemption granted under clause 2.02 commences on:
 - (a) the day on which it is granted; or
 - (b) a later date stated in the exemption.
- (2) The Commission must cancel an exemption if:
 - (a) it is satisfied that continuing the exemption would be inconsistent with the objects of Part 6 of these Regulations; or
 - (b) the relevant employing authority to which the exemption relates asks the Commission to cancel it.
- (3) The Commission is not required to consult the relevant employing authority to which an exemption relates before cancelling the exemption.
- (4) If the Commission cancels an exemption under paragraph (2) (a), it must give the relevant employing authority a written notice setting out:
 - (a) its decision to cancel the exemption; and
 - (b) the reasons for cancelling it; and
 - (c) the time from which it is cancelled.
- (5) An exemption ceases:
 - (a) at the end of the day (if any) stated in the exemption as the day when it ceases; or
 - (b) when it is cancelled.

Part 3 Chrysotile

Division 3.1 General

3.01 Interpretation

- (1) In this Part:

list of exemptions means the table set out in clause 3.02.

Note Plant is defined in subsection 5 (1) of the Act to include any machinery, equipment or tool, and any component thereof.

- (3) For this Part, a part or component of a plant is *mission-critical* if:
- (a) the unavailability of the part or component prevents the plant from being available for use; and
 - (b) the unavailability of the plant prevents a mission from being undertaken.

3.02 List of exemptions

- (1) The Commission may exempt an employer in relation to a use of chrysotile only if the use is a use mentioned in column 2 of the list of exemptions.
- (2) The Commission must not grant an exemption, in relation to a use mentioned in column 2 in the list of exemptions, that purports to have effect after the date mentioned in column 3 in relation to that use.

Note An exemption is not effective after the relevant date mentioned in column 3 in the list of exemptions. See subclauses 3.06 (5) and 3.10 (5).

Item	Uses for which exemption may be granted	Date exemption ceases
1	Use of chrysotile in a compressed asbestos fibre gasket that is: <ul style="list-style-type: none">(a) for use with:<ul style="list-style-type: none">(i) saturated steam; or(ii) superheated steam; or(iii) substances that are classified as dangerous goods (as defined in the ADG Code); or(b) for use with chlorine in a plant used in liquid chlorine service with design process conditions of -45°C and 1 500 kPa	31 December 2004 31 December 2006
2	Use of chrysotile in a product that consists of a mixture of asbestos with a phenol formaldehyde resin or with a cresylic formaldehyde resin used in: <ul style="list-style-type: none">(a) a vane for rotary vacuum pumps; or	31 December 2007

Item	Uses for which exemption may be granted	Date exemption ceases
	(b) a vane for rotary compressors; or (c) a split face seal of at least 150 mm in diameter used to prevent leakage of water from cooling water pumps in fossil fuel electricity generating stations	
3	Use of chrysotile in a diaphragm for use in an electrolytic cell in an existing electrolysis plant for chlor-alkali manufacture	31 December 2006
4	Use by the Australian Defence Organisation of chrysotile in a part or component of a plant, if: (a) the part or component is mission-critical; and (b) there is no reasonable alternative to the use of chrysotile	31 December 2007

Note The list of exemptions reflects the exemptions listed in the *National List of Exemptions to the Prohibition of the Workplace Use of Chrysotile Asbestos* set out in Schedule 2 to the *National Model Regulations for the Control of Workplace Hazardous Substances* [NOHSC: 1005 (1994)] which includes notes about the exemptions.

Division 3.2 Exemption for uses other than defence mission-critical uses

3.03 Applications for exemption

- (1) If an employer wishes to seek an exemption for a use mentioned in column 2 of any of items 1 to 3 in the list of exemptions, the relevant employing authority must:
 - (a) apply to the Commission in writing, using the application form (if any) approved by the Commission; and
 - (b) state in the application the use for which the exemption is sought; and
 - (c) include in the application:
 - (i) evidence that the use is essential to the operation of the employer's business; and

- (ii) evidence that there is no reasonable alternative to the use of chrysotile; and
 - (iii) a statement of the measures that the relevant employing authority will take, if the exemption is granted, to deal with any risk that might arise from the use of chrysotile; and
 - (iv) a statement of the actions that the relevant employing authority will take, if the exemption is granted, to comply with the condition mentioned in paragraph 3.05 (1) (a).
- (2) Subclause (3) applies in relation to an application made in accordance with subclause (1) if:
 - (a) the application is to seek an exemption that is to commence on 31 December 2003; and
 - (b) the application is made before that day; and
 - (c) the Commission has not, before that day, decided whether to grant or to refuse to grant the exemption.
- (3) The exemption sought in the application is taken to be granted to the employer, in the name of the relevant employing authority, on 31 December 2003 and to continue in force until:
 - (a) if the Commission grants the exemption — the exemption commences; or
 - (b) if the Commission refuses to grant the exemption — written notice of the Commission's decision is given to the relevant employing authority; or
 - (c) the application is taken to have been withdrawn under subclause 3.04 (2).

3.04 Grant or refusal of exemption

- (1) On receipt of an application made by a relevant employing authority under subclause 3.03 (1), the Commission may, in writing:
 - (a) grant the exemption to the employer, in the name of the relevant employing authority; or
 - (b) refuse to grant the exemption; or

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- (c) ask the relevant employing authority to give it further information about the application within a reasonable period specified by it.
 - (2) If the Commission has asked for information under paragraph (1) (c), and no information has been given to the Commission within the specified period, or a longer period agreed to by the Commission before the end of the specified period, the application is taken to have been withdrawn.
 - (3) Before granting an exemption to the employer, the Commission must be satisfied that:
 - (a) the use is a use mentioned in column 2 of any of items 1 to 3 in the list of exemptions; and
 - (b) the use is essential to the operation of the employer's business; and
 - (c) there is no reasonable alternative to the use of chrysotile; and
 - (d) the relevant employing authority has in place appropriate measures to deal with any risk that might arise from the use of chrysotile; and
 - (e) the relevant employing authority will be able to comply with the condition mentioned in paragraph 3.05 (1) (a); and
 - (f) there are no circumstances suggesting that granting the exemption would be inconsistent with the objects of Part 6 of these Regulations.
 - (4) If the Commission refuses to grant an exemption, it must give the relevant employing authority a written notice setting out its decision and the reasons for its decision.

3.05 Conditions of an exemption

- (1) An exemption granted under clause 3.04 is subject to the condition that the relevant employing authority:
 - (a) takes reasonable steps to find alternatives to the use of chrysotile covered by the exemption, including, if necessary, undertaking, or contributing to the undertaking of, research and development of alternatives to the use of chrysotile covered by the exemption; and

- (b) informs the Commission, in writing, as soon as the relevant employing authority becomes aware of either of the following:
 - (i) that the use covered by the exemption is no longer essential to the operation of the employer's business;
 - (ii) that there is a reasonable alternative to the use of chrysotile covered by the exemption.
- (2) An exemption granted under clause 3.04 may be subject to other conditions that promote the objects of Part 6 of these Regulations.
- (3) The Commission may, by notice in writing to the relevant employing authority to which an exemption relates:
 - (a) add a condition to the exemption, or vary a condition; or
 - (b) revoke a condition.
- (4) The notice must include:
 - (a) the reasons for the addition, variation or revocation; and
 - (b) the time when the addition, variation or revocation takes effect.

3.06 Operation of an exemption

- (1) An exemption granted under clause 3.04 commences on:
 - (a) the day on which it is granted; or
 - (b) a later date stated in the exemption.
- (2) The Commission must cancel an exemption if:
 - (a) it is satisfied that continuing the exemption would be inconsistent with the objects of Part 6 of these Regulations; or
 - (b) the relevant employing authority to which the exemption relates asks the Commission to cancel it.
- (3) The Commission is not required to consult the relevant employing authority to which an exemption relates before cancelling the exemption.

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- (4) If the Commission cancels an exemption under paragraph (2) (a), it must give the relevant employing authority a written notice setting out:
 - (a) its decision to cancel the exemption; and
 - (b) the reasons for cancelling it; and
 - (c) the time from which it is cancelled.
 - (5) Unless sooner cancelled, an exemption is effective until:
 - (a) the end of the day stated in column 3 of the item in the list of exemptions that relates to the exemption; or
 - (b) if an earlier day is stated in the exemption as the day when it ceases — the end of the earlier day.

Division 3.3 Exemption for defence mission-critical uses

3.07 Applications for exemption

- (1) If it is necessary for the Australian Defence Organisation to use chrysotile in the circumstance mentioned in column 2 of item 4 in the list of exemptions, the defence employing authority must:
 - (a) apply to the Commission in writing, using the application form (if any) approved by the Commission; and
 - (b) include in the application:
 - (i) a list that meets the requirements of subclause (2); and
 - (ii) a statement certifying that each item identified in the list is mission-critical; and
 - (iii) evidence that there is no reasonable alternative to the use of chrysotile; and
 - (iv) a statement of the measures that the defence employing authority will take, if the exemption is granted, to deal with any risk that might arise from the use of those items; and

- (v) a statement of the actions that the defence employing authority will take, if the exemption is granted, to comply with the condition mentioned in paragraph 3.09 (1) (a).

Note An application may be made by either the Secretary of the Department of Defence or the Chief of the Defence Force acting for himself or herself and on behalf of the other. See subclause 3.01 (2).

- (2) For subparagraph (1) (b) (i), the list must:
 - (a) identify each type of parts and components in relation to which the exemption is sought; and
 - (b) for each type of parts and components identified — identify, using a unique identifier, each item of that type, for the use of which the exemption is sought.
- (3) Subclause (4) applies in relation to an application made in accordance with subclause (1) if:
 - (a) the application is to seek an exemption that is to commence on 31 December 2003; and
 - (b) the application is made within 18 days after the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2003 (No. 1)* is notified in the *Gazette*; and
 - (c) the Commission has not, before 31 December 2003, decided whether to grant or to refuse to grant the exemption.
- (4) The exemption sought in the application is taken to be granted to the Commonwealth, in the joint names of the Secretary of the Department of Defence and the Chief of the Defence Force, on 31 December 2003 and to continue in force until:
 - (a) if the Commission grants an exemption in relation to the application — the exemption commences; or
 - (b) if the Commission refuses to grant an exemption in relation to the application — written notice of the Commission's decision is given to the defence employing authority; or
 - (c) the application is taken to have been withdrawn under subclause 3.08 (2).

3.08 Grant or refusal of exemption

- (1) On receipt of an application made under subclause 3.07 (1), the Commission may, in writing:
 - (a) grant an exemption to the Commonwealth, in the joint names of the Secretary of the Department of Defence and the Chief of the Defence Force:
 - (i) for the use of all items identified in the application;
or
 - (ii) for the use of some only of the items so identified (*partial exemption*); or
 - (b) refuse to grant an exemption; or
 - (c) ask the defence employing authority to give it further information about the application within a reasonable period specified by it.
- (2) If the Commission has asked for information under paragraph (1) (c), and no information has been given to the Commission within the specified period, or a longer period agreed to by the Commission before the end of the specified period, the application is taken to have been withdrawn.
- (3) Before granting an exemption for the use of an item, the Commission must be satisfied that:
 - (a) the item is mission-critical; and
 - (b) there is no reasonable alternative to the use of chrysotile;
and
 - (c) the defence employing authority has in place appropriate measures to deal with any risk that might arise from the use of the item; and
 - (d) the defence employing authority will be able to comply with the condition mentioned in paragraph 3.09 (1) (a);
and
 - (e) there are no circumstances suggesting that granting the exemption would be inconsistent with the objects of Part 6 of these Regulations.

- (4) For paragraph (3) (a), the Commission must treat a statement included in the application certifying that an item is mission-critical as conclusive evidence that the item is mission-critical.
- (5) If the Commission refuses to grant an exemption, or grants a partial exemption, it must give the defence employing authority a written notice setting out its decision and the reasons for its decision.

3.09 Conditions of an exemption

- (1) An exemption granted under clause 3.08 is subject to the conditions that the defence employing authority:
 - (a) takes reasonable steps to find alternatives to the use of chrysotile covered by the exemption, including, if necessary, undertaking, or contributing to the undertaking of, research and development of alternatives to the use of chrysotile covered by the exemption; and
 - (b) informs the Commission, in writing, as soon as the Secretary of the Department of Defence or the Chief of the Defence Force becomes aware of either of the following:
 - (i) that any of the items covered by the exemption is no longer mission-critical;
 - (ii) that there is a reasonable alternative to the use of chrysotile for any of the items covered by the exemption.
- (2) An exemption granted under clause 3.08 may be subject to other conditions that promote the objects of Part 6 of these Regulations.
- (3) The Commission may, by notice in writing to the defence employing authority:
 - (a) add a condition to the exemption, or vary a condition; or
 - (b) revoke a condition.
- (4) The notice must include:
 - (a) the reasons for the addition, variation or revocation; and
 - (b) the time when the addition, variation or revocation takes effect.

3.10 Operation of an exemption

- (1) An exemption granted under clause 3.08 commences on:
 - (a) the day on which it is granted; or
 - (b) a later date stated in the exemption.
- (2) The Commission must cancel an exemption in relation to an item if:
 - (a) it is satisfied that continuing the exemption in relation to the item would be inconsistent with the objects of Part 6 of these Regulations; or
 - (b) the defence employing authority asks the Commission to cancel it.
- (3) The Commission is not required to consult the defence employing authority before cancelling the exemption.
- (4) If the Commission cancels an exemption under paragraph (2) (a), it must give the defence employing authority a written notice setting out:
 - (a) its decision to cancel the exemption; and
 - (b) the reasons for cancelling it; and
 - (c) the time from which it is cancelled.
- (5) Unless sooner cancelled, an exemption in relation to an item is effective:
 - (a) if it is the first exemption for the item — until the earlier of the following:
 - (i) the end of 12 months from the beginning of the day when the exemption is granted;
 - (ii) the end of the day stated in column 3 of item 4 in the list of exemptions; or
 - (b) in any other case — until:
 - (i) the end of the day stated in column 3 of item 4 in the list of exemptions; or
 - (ii) if an earlier day is stated in the exemption as the day when it ceases — the end of the earlier day.

Schedule 2 Hazardous substances for which health surveillance is required

(regulation 6.21)

Column 1 Item	Column 2 Substance	Column 3 Description of health surveillance
1	4,4' Methylenebis (2-chloroaniline) (also known as MOCA)	Urinary total MOCA Dipstick analysis of urine for haematuria Urine cytology
2	Acrylonitrile	Demographic, medical and occupational history Exposure record Medical interview if required by the doctor supervising the health surveillance
3	Asbestos	Occupational and demographic data Medical interview Records of personal exposure
4	Cadmium	Demographic, medical and occupational history Exposure record Health advice including counselling about the effect of smoking on cadmium exposure Physical examination with emphasis on the respiratory system Standard respiratory questionnaire to be completed

Column 1 Item	Column 2 Substance	Column 3 Description of health surveillance
5	Crystalline silica	<p>Standard respiratory function tests including, for example, FEV₁, FVC and FEV₁/FVC</p> <p>Urinary cadmium and β2-microglobulin</p> <p>Demographic, medical and occupational history</p> <p>Completion of a standardised respiratory questionnaire</p> <p>Standardised respiratory function test, such as FEV₁, FVC or FEV₁/FVC</p>
6	Inorganic arsenic	<p>Chest X-ray, full size PA view</p> <p>Demographic, medical and occupational history</p> <p>Exposure record</p> <p>Health advice</p> <p>Physical examination with emphasis on the peripheral nervous system and skin</p>
7	Inorganic mercury	<p>Urinary total arsenic</p> <p>Demographic, medical and occupational history</p> <p>Health advice</p> <p>Physical examination with emphasis on dermatological, gastrointestinal, neurological and renal systems</p> <p>Urinary inorganic mercury</p>

Column 1 Item	Column 2 Substance	Column 3 Description of health surveillance
8	Isocyanates	Physical examination of respiratory system and skin Standardised respiratory function test, such as FEV ₁ , FVC or FEV ₁ /FVC Standardised respiratory questionnaire to be completed
9	Organophosphate pesticides	Baseline examination of red cell and plasma cholinesterase activity levels Estimate of red cell and plasma cholinesterase activity towards the end of the working day on which organophosphate pesticides have been used Medical and occupational history
10	Polycyclic aromatic hydrocarbons	Physical examination Exposure record Demographic, medical and occupational history Health advice including recognition of photochemical burns and skin changes
11	Thallium	Physical examination Demographic and occupational history Physical examination Urinary thallium
12	Vinyl chloride	Occupational and demographic data Record of personal exposure
372	Occupational Health and Safety (Safety Standards) Regulations 1994	

Column 1 Item	Column 2 Substance	Column 3 Description of health surveillance
13	Benzene	Demography, occupational and medical history and health advice Baseline blood sample for haematological profile Records of personal exposure
14	Creosote	Demography, occupational and medical history Health advice, including recognition of photosensitivity and skin changes Physical examination with emphasis on the neurological system and skin, noting any abnormal lesions and evidence of skin sensitisation Records of personal exposure, including photosensitivity
15	Inorganic chromium	Demography, occupational and medical history and health advice Physical examination with emphasis on the respiratory system and skin Weekly inspection of hands and forearms by the employee's supervisor
16	Pentachlorophenol	Demography, occupational and medical history and health advice Physical examination with emphasis on the skin, noting any abnormal lesions or effects of irritancy Test for urinary free pentachlorophenol Dipstick urinalysis for haematuria and proteinuria Records of personal exposure

Schedule 5 Plant standards

(paragraphs 4.05 (2) (d) and 4.51 (4) (b))

Item	Australian Standard	Title
1	AS/NZS 1200:2000	'Pressure equipment'
2	AS 1418	
	AS 1418.1-2002	'Cranes (including hoists and winches) – Part 1: General requirements'
	AS 1418.2-1997	'Cranes (including hoists and winches) – Part 2: Serial hoists and winches'
	AS 1418.3-1997	'Cranes (including hoists and winches) – Part 3: Bridge, gantry and portal cranes (including container cranes)'
	AS 1418.4:2004	'Cranes (including hoists and winches) – Part 4: Tower cranes'
	AS 1418.5-2002	'Cranes (including hoists and winches) – Part 5: Mobile and vehicle loading cranes'
	AS 1418.6-1988	'Cranes (including hoists and winches) (known as the SAA Crane Code) – Part 6: Guided storing and retrieving appliances'
	AS 1418.7-1999	'Cranes (including hoists and winches) – Part 7: Builders hoists and associated equipment'
	AS 1418.8-2002	'Cranes (including hoists and winches) (known as the SAA Crane Code) – Part 8: Special purpose appliances'
	AS/NZS 1418.9-1996	'Cranes (including hoists and winches) – Part 9: Vehicle hoists'
	AS 1418.10-1996	'Cranes (including hoists and winches) – Part 10: Elevating work platforms'
	AS 1418.12-1991	'Cranes (including hoists and winches) – Part 12: Crane collector systems'
	AS 1418.13-1996	'Cranes (including hoists and winches) – Part 13: Building maintenance units'

Item	Australian Standard	Title
	AS 1418.14-1996	'Cranes (including hoists and winches) – Part 14: Requirements for cranes subject to arduous working conditions'
	AS 1418.15-1994	'Cranes (including hoists and winches) – Part 15: Concrete placing equipment'
	AS 1418.16-1997	'Cranes (including hoists and winches) – Part 16: Mast climbing work platforms'
	AS 1418.17-1996	'Cranes (including hoists and winches) – Part 17: Design and construction of workboxes'
	AS 1418.18-2001	'Cranes (including hoists and winches) – Part 18: Crane runways and monorails'
3	AS 1576	
	AS/NZS 1576.1-1995	'Scaffolding – Part 1: General requirements'
	AS 1576.2-1991	'Scaffolding – Part 2: Couplers and accessories'
	AS/NZS 1576.3-1995	'Scaffolding – Part 3: Prefabricated and tube-and-coupler scaffolding'
	AS 1576.4-1991	'Scaffolding – Part 4: Suspended scaffolding'
	AS/NZS 1576.5-1995	'Scaffolding – Part 5: Prefabricated splitheads and trestles'
	AS/NZS 1576.6-2000	'Scaffolding – Part 6: Metal tube-and-coupler scaffolding – Deemed to comply with AS/NZS 1576.3'
4	AS 2030	
	AS 2030.1-1999	'The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 1: Cylinders for compressed gases other than acetylene'
	AS 2030.2-1996	'The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 2: Cylinders for dissolved acetylene'

Item	Australian Standard	Title
	AS 2030.4-1985	'The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 4: Welded cylinders-insulated'
5	AS/NZS 3509:2003	'LP gas fuel vessels for automotive use'
6	AS 3533.1-1997	'Amusement rides and devices – Part 1: Design and construction'
7	AS 3920.1-1993 except the provisions about hazard levels	'Assurance of product quality – Part 1: Pressure equipment manufacture'
8	AS 4343-1999	'Pressure equipment — Hazard levels'

Schedule 6 Types of plant

(paragraph 4.19 (2) (a), subregulations 4.40 (1), 4.47 (1), 4.49 (1), 4.51 (1) and 4.56 (1))

Part 1 Plant requiring registration or notification of design

Item	Description of plant
1	Pressure equipment, other than pressure piping, that has a hazard level of A, B, C or D, determined in accordance with AS 4343-1999 'Pressure equipment – Hazard levels' and specifically covered by the standard mentioned in item 1 of Schedule 5
2	Gas cylinders covered by the standards mentioned in item 4 of Schedule 5
3	Tower cranes ¹
4	Building maintenance units
5	Hoists, with a platform movement in excess of 2.4 metres, designed to lift people ¹
6	Work boxes suspended from cranes
7	Amusement structures covered by the standard mentioned in item 6 of Schedule 5, other than class 1 structures
8	Prefabricated scaffolding
9	Boom-type elevating work platforms
10	Gantry crane ¹ : (a) with a safe working load greater than 5 tonnes; or (b) designed to handle molten metal or dangerous goods ²
11	Bridge cranes ¹ : (a) with a safe working load of greater than 10 tonnes; or (b) designed to handle molten metal or dangerous goods ² .
12	Vehicle hoists ¹
13	Mast climbing work platforms ¹
14	Mobile cranes with a safe working load greater than 10 tonnes ¹

Part 2 Plant requiring a licence

Item	Description of plant
1	Boilers: <ul style="list-style-type: none">(a) that have a hazard level of A, B or C determined in accordance with AS 4343-1999 'Pressure equipment – Hazard levels'; and(b) are specifically covered by the standard mentioned in item 1 of Schedule 5
2	Pressure vessels: <ul style="list-style-type: none">(a) that have a hazard level of A, B or C, determined in accordance with AS 4343-1999 'Pressure equipment – Hazard levels'; and(b) are specifically covered by the standard mentioned in item 1 of Schedule 5, other than:<ul style="list-style-type: none">(i) gas cylinders mentioned in the standard mentioned in item 4 of Schedule 5; and(ii) LP gas fuel vessels for automotive use mentioned in AS/NZS 3509:2003 'LP gas fuel vessels for automotive use'; and(iii) serially produced pressure vessels mentioned in AS 2971:2002 'Serially Produced Pressure Vessels'
3	Tower cranes ¹
4	Building maintenance units
5	Amusement structures covered by the standard mentioned in item 6 of Schedule 5, other than class 1 structures
6	Truck-mounted concrete placing units with booms ¹
7	Mobile cranes with a safe working load greater than 10 tonnes ¹

Note 1 For the purposes of licensing, cranes and hoists in Schedule 6 exclude those that are manually powered, elevating work platforms or tow trucks.

Note 2 ***Dangerous goods*** means dangerous goods as defined in the ADG Code.

Schedule 7 Quantities of dangerous goods

(regulations 8.01, 8.27, 8.39, 8.41, 8.42, 8.50, 8.51, 8.52, 8.53 and 8.54)

Item	Dangerous goods	Packing group	Placarding quantity	Manifest quantity
1	Class 2.1		500 L	5 000 L
2	Class 2.2, Subsidiary Risk 5.1		2 000 L	10 000 L
3	Class 2.2, other than Subsidiary Risk 5.1		5 000 L	10 000 L
4	Class 2.3		50 L	500 L
5	Aerosols		5 000 L	10 000 L
6	Cryogenic fluids		1 000 L	10 000 L
7	Class 3, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1 or 8	I	50 kg or L	500 kg or L
8	Class 3, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1 or 8	II	250 kg or L	2 500 kg or L
9	Class 3, 4.1, 4.2, 4.3, 5.1, 5.2, 6.1 or 8	III	1 000 kg or L	10 000 kg or L
10	Class 3	Mixed	1 000 kg or L	10 000 kg or L
11	Class 4.1	Mixed	1 000 kg or L	10 000 kg or L
12	Class 4.2	Mixed	1 000 kg or L	10 000 kg or L
13	Class 4.3	Mixed	1 000 kg or L	10 000 kg or L
14	Class 5.1	Mixed	1 000 kg or L	10 000 kg or L
15	Class 5.2	Mixed	1 000 kg or L	10 000 kg or L
16	Class 6.1	Mixed	1 000 kg or L	10 000 kg or L

Item	Dangerous goods	Packing group	Placarding quantity	Manifest quantity
17	Class 8	Mixed	1 000 kg or L	10 000 kg or L
18	Class 9	II	1 000 kg or L	10 000 kg or L
19	Class 9	III	5 000 kg or L	10 000 kg or L
20	Class 9	Mixed	5 000 kg or L	10 000 kg or L
21A	Mixed Classes of dangerous goods for which: (a) none of the Classes, types and Packing Groups present exceeds the quantities specified in items 1 to 20; and (b) the quantity specified in this Schedule for each of the Classes is 2 000 kg or L or less		2 000kg or L	10 000 kg or L
21B	Mixed Classes of dangerous goods for which: (a) none of the Classes, types and Packing Groups present exceeds the quantities specified in Items 1 to 20 of this Table; and		5 000 kg or L	10 000 kg or L

Item	Dangerous goods	Packing group	Placarding quantity	Manifest quantity
	(b) the quantity specified in this Schedule for one or more of the Classes is 5 000 kg or L; and (c) placarding is not required for any items specified in items 1 to 21A			
22	Goods too dangerous to be transported		5 kg or L	50 kg or L
23	Combustible liquids stored or handled with fire risk dangerous goods		1 000 kg or L	10 000 kg or L
24	C1 combustible liquids in bulk containers		10 000 L	100 000 L
25	C1 combustible liquids in packages		50 000 L	100 000 L
26	C1 combustible liquids in bulk and packages combined		50 000 L	100 000 L

Note 1 Capacity of class 2 cylinders for the purposes of schedule 7 is the water capacity stamped on the cylinder in accordance with AS 2030.1-1999 — *The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases — Cylinders for compressed gases other than acetylene.*

Note 2 Items 7, 8 and 9 should be considered separately by class within their packing groups.

Schedule 8 Placard requirements for dangerous goods

(regulations 8.49, 8.50, 8.53 and 8.54)

1 Bulk dangerous goods

- (1) A placard for bulk dangerous goods must:
 - (a) have dimensions not less than the dimensions shown in Figure 1; and
 - (b) show the following details for the dangerous goods in the following positions on the placard:
 - (i) in position (p) — the proper shipping name;
 - (ii) in position (q) — the UN number;
 - (iii) in position (r) — the Hazchem code;
 - (iv) in position (s) — the Class label and the Subsidiary Risk label (if any).
- (2) The numbers and letters used for the proper shipping name, UN number and Hazchem code must be:
 - (a) black on a white background; and
 - (b) if the proper shipping name takes no more than 1 line — at least 100 mm high; and
 - (c) if the proper shipping name takes 2 lines or more — at least 50 mm high.
- (3) Despite paragraph (2) (a), a letter of the Hazchem code may be white on a black background.
- (4) The Class label must:
 - (a) comply with the form and colouring specified in Chapter 7 of the ADG Code; and
 - (b) if there is also a Subsidiary Risk label — have sides of at least 200 mm; and

- (c) if there is no Subsidiary Risk label — have sides of at least 250 mm.
- (5) A Subsidiary Risk label must:
 - (a) comply with the form and colouring specified in Chapter 7 of the ADG Code; and
 - (b) have sides of at least 150 mm.

Figure 1 Template for a placard for bulk dangerous goods

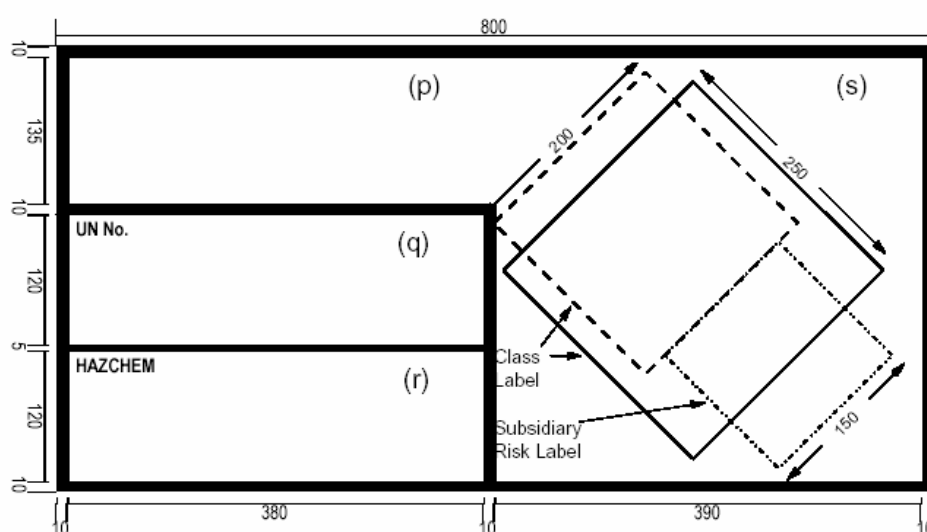


Figure 2 Example of a placard for bulk dangerous goods



2 C1 combustible liquids

A placard for C1 combustible liquids must display the words 'COMBUSTIBLE LIQUID' as shown in Figure 3:

- (a) in black upper-case text at least 100 mm high; and
- (b) in lettering of the kind shown in Figure 3; and
- (c) on a white or silver background.

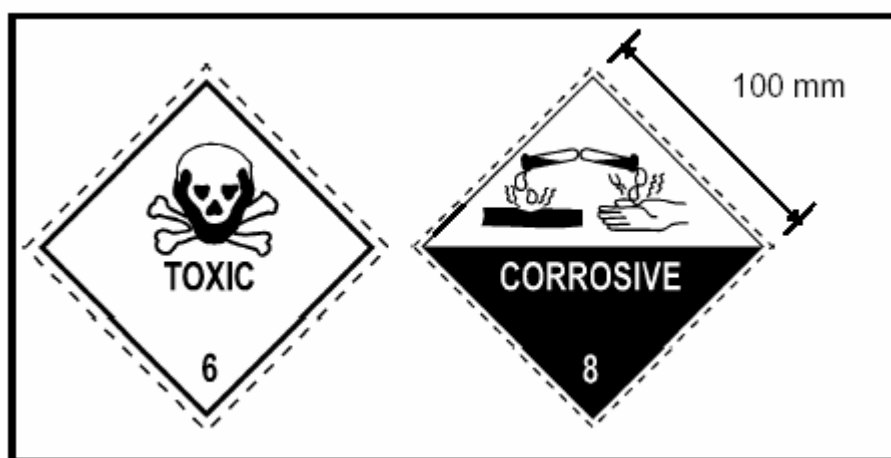
Figure 3 C1 combustible liquids placard



3 Packaged dangerous goods

- (1) A placard for packaged dangerous goods must:
 - (a) display the Class label for each of the dangerous goods to which the placard relates; and
 - (b) comply with the form and colouring specified in Chapter 7 of the ADG Code.
- (2) Each Class label must have sides of at least 100 mm.

Figure 4 Example of a placard for packaged dangerous goods



4 HAZCHEM outer warning placard

A HAZCHEM outer warning placard for dangerous goods must:

- (a) be at least 120 mm high; and
- (b) display the word 'HAZCHEM' as shown in Figure 5:
 - (i) in red upper-case text at least 100 mm high; and
 - (ii) in lettering of the kind shown in Figure 5; and
 - (iii) on a white or silver background.

Figure 5 Outer warning placard

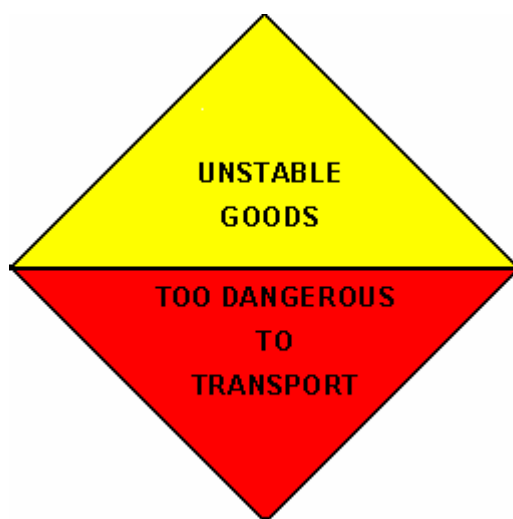


5 Goods too dangerous to be transported

- (1) A placard for goods too dangerous to be transported must:
 - (a) be in the form shown in Figure 6; and
 - (b) display the words 'UNSTABLE', 'GOODS', 'TOO DANGEROUS', 'TO' and 'TRANSPORT' on separate lines as shown in Figure 6:
 - (i) in black upper-case text; and
 - (ii) in lettering of the kind shown in Figure 6; and
 - (c) when used in a placard for packaged dangerous goods — have sides of at least 100 mm; and
 - (d) when used in a placard for dangerous goods in bulk — have sides of at least 250 mm.
- (2) The background colour for the top half of the placard must be the colour described as Canary 2 in paragraph Y11 of AS 2700-1996 'Colour Standards for general purposes'.
- (3) The background colour for the bottom half of the placard must be the colour described as Signal Red 2 in paragraph R13 of AS 2700-1996 'Colour Standards for general purposes'.

Note AS 2700-1996 is available for purchase from SAI Global Limited — see www.saiglobal.com.au.

Figure 6 Placard for goods too dangerous to be transported



Schedule 9 Materials at major hazard facilities and potential major hazard facilities — threshold quantities

(regulations 9.03, 9.06 and 9.08)

Part 1 Classification of explosive materials

1 Determining Subclass of explosive materials stored with other explosive materials

For the purpose of column 2 of items 44 to 47 of Part 2, if explosive materials of different hazard divisions are present in the same area of a major hazard facility or a potential major hazard facility, the Subclass of each explosive material present must be determined in accordance with the following table and the notes to the table.

HAZARD DIVISION	1.1	1.2	1.3	1.4	1.5	1.6
1.1	1.1	1.1	1.1	1.1	1.1	1.1
1.2	1.1	1.2	1.1	1.2	1.1	1.2
1.3	1.1	1.1	1.3	1.3	1.1	1.3
1.4	1.1	1.2	1.3	1.4	1.5	1.6
1.5	1.1	1.1	1.1	1.5	1.5	1.5
1.6	1.1	1.2	1.3	1.6	1.5	1.6

Notes to the table

Note 1 If explosive materials of more than 2 Divisions are present, any 2 of those Divisions are to be considered in determining a resultant Division, which must then be considered with the next Division, and so on until all Divisions present have been considered.

Note 2 If 2 or more explosive materials of Division 1.6 are present, the subclass of those materials may be determined to be Division 1.6 only if it is proved by testing or analogy that there is no additional risk of sympathetic detonation between the materials. Otherwise, the subclass of those materials must be determined to be Division 1.1.

Part 2 Threshold quantities

Item	Material	UN number	Threshold quantity (tonnes)
General			
1	Acetone cyanohydrin	1541	20
2	Acetylene	1001	50
3	Acrolein	1092	200
4	Acrylonitrile	1093	200
5	Allyl alcohol	1098	20
6	Allylamine	2334	200
7	Ammonia — anhydrous, liquefied or ammonia solutions, relative density less than 0.880 at 15° C in water, with more than 50% ammonia	1005	200
8	Ammonium nitrate fertilisers	2067 2068 2069 2070	5 000
9	Ammonium nitrate, with no more than 0.2% combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance	1942	2 500
10	Arsenic pentoxide, Arsenic (V) acid and other salts	1559	10

Schedule 9 Materials at major hazard facilities and potential major hazard
 facilities — threshold quantities
 Part 2 Threshold quantities

Item	Material	UN number	Threshold quantity (tonnes)
11	Arsenic trioxide, Arsenious (III) acid and other salts	1561	0.10
12	Arsine	2188	0.01
13	Bromine or Bromine solutions	1744	100
14	Carbon disulfide	1131	200
15	Chlorine	1017	25
16	Dioxins		0.10
17	Ethyl nitrate		50
18	Ethylene dibromide	1605	50
19	Ethylene oxide	1040	50
20	Ehtyleneimine	1185	50
21	Fluorine	1045	25
22	Formaldehyde	1198	50
		2209	
23	Hydrofluoric acid solution (greater than 50%)	1790	50
24	Hydrogen	1049	50
25	Hydrogen chloride:		
	(a) anhydrous;	1050	250
	(b) refrigerated liquid	2186	250
26	Hydrogen cyanide	1051	20
		1614	
27	Hydrogen fluoride	1052	50
28	Hydrogen sulfide	1053	50

Item	Material	UN number	Threshold quantity (tonnes)
29	LP gases	1011	200
		1012	
		1075	
		1077	
		1978	
30	Methyl bromide	1062	200
31	Methane, or natural gas	1971	200
		1972	
32	Methyl isocyanate	2480	0.15
33	Oxides of nitrogen, including nitrous oxide, nitrogen dioxide and nitrogen trioxide	1067	50
		1070	
		1660	
		1975	
		2201	
		2421	
34	Oxygen	1072	2 000
		1073	
35	Phosgene	1076	0.75
36	Propyleneimine	1921	200
37	Propylene oxide	1280	50
38	Sodium chlorate, solid	1495	200
39	Sulfuric anhydride (syn. Sulphur trioxide)	1829	75
40	Sulfur dichloride	1828	1
41	Sulfur dioxide, liquefied	1079	200
42	Titanium tetrachloride	1838	500
43	Toluene diisocyanate	2078	200

Item	Material	UN number	Threshold quantity (tonnes)
<i>Explosive materials</i>			
44	Explosive materials of Subclass 1.1A		10
45	Explosive materials of Subclass 1.1 (other than explosive materials mentioned in item 44)		50
46	Explosive materials of Subclass 1.2		200
47	Explosive materials of Subclass 1.3		200
<i>Compressed and liquefied gases</i>			
48	Compressed or liquefied gases of: (a) Subclass 2.1; or (b) Subsidiary Risk 2.1		200
49	Liquefied gases of Subsidiary Risk 5		200
50	Compressed or liquefied gases that meet the criteria for Very Toxic in Part 3 of this Schedule		20
51	Compressed or liquefied gases that meet the criteria for Toxic in Part 3 of this Schedule		200
<i>Flammable materials</i>			
52	Liquids of Class 3 and Packing Group I (other than the materials mentioned in item 53)		200
53	Crude oil, in remote locations, of Class 3 and Packing Group I		2 000

Item	Material	UN number	Threshold quantity (tonnes)
54	Liquids of: (a) Class 3; and (b) either: (i) Packing Group I; or (ii) Packing Group II		50 000
55	Liquids with flashpoints of less than 61° C kept above their boiling points at ambient conditions		200
56	Combustible solids of Subclass 4.1 and Packing Group I		200
57	Spontaneously combustible dangerous goods of: (a) Subclass 4.2; and (b) either: (i) Packing Group I; or (ii) Packing Group II		200
58	Dangerous goods that: (a) either: (i) liberate flammable gases; or (ii) react violently on contact with water; and (b) are of: (i) Subclass 4.3; and (ii) either: (A) Packing Group I; or (B) Packing Group II		200

Item	Material	UN number	Threshold quantity (tonnes)
59	Dangerous goods that: (a) have Hazchem codes of 4WE (materials that react violently with water); and (b) are of: (i) either: (A) Class 3; or (B) Class 8; and (ii) either: (A) Packing Group I; or (B) Packing Group II		500
<i>Oxidising materials</i>			
60	Oxidising material listed in Appendix 5 to the ADG Code		50
61	Oxidising materials of: (a) Subclass 5.1; and (b) either: (i) Packing Group I; and (ii) Packing Group II		200
<i>Peroxides</i>			
62	Peroxides listed in Appendix 5 to the ADG Code		50
63	Organic peroxides of Subclass 5.2		200
<i>Toxic liquids and solids</i>			
64	Materials that meet the criteria for Very Toxic in Part 3 of this Schedule		20
65	Materials that meet the criteria for Toxic in Part 3 of this Schedule		200

Note 1 The UN number listed for a material specified in an item in this Part is for information only. The listing of the UN number is not intended to restrict the meaning of the name of the material, which may also apply to material that does not come within the scope of the UN number, for example, because the material is too dangerous to transport or is part of a mixture covered by another UN number. However, any material that is covered by the UN number listed in the table must be included in the quantity of the material named.

Note 2 If a material specified in an item in this Part is part of a mixture, the equivalent quantity is to be calculated in accordance with Example 2 in Chapter 16 of the National Code of Practice for the Control of Major Hazard Facilities [NOHSC:2016 (1996)], as in existence at the commencement of this Schedule.

Part 3 Criteria for toxicity

Description	Oral toxicity in rabbits	Dermal toxicity in rats or rabbits	Inhalation toxicity (4 hours in rabbits)
	LD ₅₀ (mg/kg)	LD ₅₀ (mg/kg)	LC ₅₀ (mg/L)
Very toxic	LD ₅₀ ≤ 5	LD ₅₀ ≤ 40	LC ₅₀ ≤ 0.5
Toxic	5 < LD ₅₀ ≤ 50	40 < LD ₅₀ ≤ 200	0.5 < LC ₅₀ ≤ 2

Part 4 Aggregation formula

For Part 9, the aggregation formula is as follows:

$$\frac{qx}{Qx} + \frac{qy}{Qy} + \dots + \frac{qn}{Qn}$$

where:

qx, *qy*, ... *qn* is the total amount of each material (*x*, *y*, ... *n*) that is present, that will be present, or that is likely to be present, in an isolated amount that is more than 2% of the threshold quantity for the material.

Qx, *Qy*, ... *Qn* is the threshold quantity for each material.

Schedule 9A Information to be included in safety report

(paragraph 9.47 (4) (c))

Part 1 Definitions

101 In this Schedule:

critical operating parameters means the upper and lower performance limits of any equipment, process or procedure, if compliance with that equipment, process or procedure is necessary to avoid a major accident.

failure, in relation to a control measure, means:

- (a) if the control measure is a positive action or event — the non-occurrence, or the defective occurrence, of the action or event; and
- (b) if the control measure is a limitation on an operational activity, process or procedure — a breach of that limitation.

Part 2 Specified information

Division 1 Facility description

Details of the facility

201 A description of the main activities and products of the major hazard facility, particularly those activities associated with the following materials:

- (a) a material specified in Part 2 of Schedule 9;
- (b) biological materials;
- (c) radioactive materials.

-
- 202 If a material mentioned in paragraph 201 (a), (b) or (c) is present, or is likely to be present at the facility — the following information in relation to the material:
- (a) sufficient information to identify the material (including, if applicable, the information mentioned in subparagraphs 9.06 (2) (i) (i) to (v));
 - (b) the maximum quantity in which the material is, or is likely to be, present at the facility;
 - (c) the physical, chemical and toxicological characteristics of the material, both immediate and delayed;
 - (d) any other hazardous characteristics of the material, both immediate and delayed;
 - (e) the physical and chemical behaviour of the material, under:
 - (i) normal conditions of use; and
 - (ii) foreseeable abnormal conditions.
- 203 A description of the chemical and physical processes associated with a material mentioned in paragraph 201 (a), (b) or (c), including:
- (a) a description of the main units of process equipment used in those processes; and
 - (b) a process flow drawing, or a set of such drawings.
- 204 A drawing of the major hazard facility's general layout, including the location of:
- (a) the main process units; and
 - (b) the main storage areas; and
 - (c) hazard and major accident initiators.
- 205 If:
- (a) a change is proposed to the major hazard facility; and
 - (b) no new control measures will be adopted in relation to the proposed change; and
 - (c) the proposed change will:
 - (i) alter the production capacity or profile of the major hazard facility; or

- (ii) involve the deletion, addition or modification of any processes;
 - a description of the proposed change.
- 206 If:
- (a) a change is proposed to a major hazard facility; and
 - (b) no new control measures will be adopted in relation to the proposed change;
- a statement about whether, and the way in which (if applicable), existing control measures and safety management systems are capable of maintaining the safe operation of the major hazard facility while the proposed change is being made and after the proposed change is made.

Details of the surrounding area

- 207 A scaled plan of the facility and its surrounding area, showing:
- (a) the location of the facility within the surrounding area; and
 - (b) topographical information; and
 - (c) surrounding land uses; and
 - (d) the location of any identified external threats, including:
 - (i) other major hazard facilities; or
 - (ii) other facilities that could affect the safety of the major hazard facility.
- 208 Graphically presented demographic information for the local community, including land uses permitted by the local planning authority.
- 209 Meteorological data relevant to the estimation of the effects of any major accident.

Division 2 Safety information

Control measures

- 210 A detailed description of the following:
- (a) the instrumentation and other equipment installed in the facility;

-
- (b) the procedures in place that are the control measures for preventing or limiting the consequences of major accidents;
 - (c) the critical operating parameters for the control measures mentioned in paragraph (b);
 - (d) key personnel and resources (both internal and external) available to intervene in the event of any failure of a control measure, whether or not that failure could result in a major accident;
 - (e) the emergency plan for the major hazard facility, including specific information about how compliance with the plan can be expected to limit the consequences of a major accident;
 - (f) the means by which the employer in control of the major hazard facility will ensure:
 - (i) that there is, at all times, a command structure in place for the major hazard facility that will apply in the event of an emergency; and
 - (ii) that details of the command structure is communicated throughout the facility.

Performance monitoring

- 211 A detailed description of:
- (a) the performance standards that must be met by the safety management system; and
 - (b) any performance indicators relevant to those performance standards.

Safety management system

- 212 If a matter addressed in the safety report is covered by the safety management system — a clear reference to the relevant part of the document prepared under subregulation 9.429.43 (2) that addresses the matter.
- 213 A description of the parts of the safety management system that address the maintenance of the system.

Safety and reliability of plant

- 214 A description of the steps taken to ensure that safety and reliability are incorporated into the design and construction of all aspects of the major hazard facility (whether or not the employer in control of the facility is or was directly engaged in the design and construction of the facility).

Accident history

- 215 A summary of each major accident that has occurred at the facility in the preceding 5 years.

Table of Instruments

Notes to the *Occupational Health and Safety (Safety Standards) Regulations 1994*

Note 1

The *Occupational Health and Safety (Safety Standards) Regulations 1994* (in force under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*) as shown in this compilation comprise Statutory Rules 1994 No. 414 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 21 November 2003 is not included in this compilation. For subsequent information *see* Table A.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
1994 No. 414	13 Dec 1994	31 Mar 1995	
1995 No. 53	29 Mar 1995	31 Mar 1995	—
1995 No. 98	18 May 1995	30 Sept 1995	—
1995 No. 337	6 Nov 1995	Rr. 5, 6 and 8: 30 Apr 1996 Remainder: 6 Nov 1995	—
1996 No. 129	28 June 1996	1 July 1996	—
1996 No. 288	18 Dec 1996	18 Dec 1996	—
1997 No. 227	27 Aug 1997	27 Aug 1997	—
1999 No. 66	7 May 1999	7 May 1999	—
1999 No. 86	4 June 1999	4 June 1999	—
1999 No. 189	1 Sept 1999	1 Sept 1999	—
2000 No. 289	1 Nov 2000	1 Nov 2000	—
2001 No. 326	13 Dec 2001	15 Dec 2001	—

Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
2003 No. 286	21 Nov 2003	31 Dec 2003	R. 4 [see Table A]
2003 No. 314	11 Dec 2003	11 Dec 2003	—
2004 No. 227	28 July 2004	28 July 2004	—
2004 No. 378	23 Dec 2004	1 July 2005	R. 2 (rs. by 2005 No. 48, Sch. 1 item [1])
as amended by			
2005 No. 48	29 Mar 2005 (see F2005L00734)	30 Mar 2005	—
2005 No. 124	17 June 2005 (see F2005L01460)	18 June 2005	—
2005 No. 30	11 Mar 2005 (see F2005L00543)	12 Mar 2005	—
2006 No. 8	17 Feb 2006 (see F2006L00532)	24 Apr 2006	—
2006 No. 9	17 Feb 2006 (see F2006L00531)	1 May 2006	—
2007 No. 8	16 Feb 2007 (see F2007L00370)	Rr. 1–3 and Schedule 1: 14 Mar 2007 (see r. 2 (a)) R. 4 and Schedule 2: (a) R. 5 and Schedule 3: (a)	—
2007 No. 30	2 Mar 2007 (see F2007L00461)	(b) (see r. 2)	—
(a) Regulation 2 (b) and (c) of SLI 2007 No. 8 provides as follows:			
(b) immediately after the commencement of Schedule 1 — regulation 4 and Schedule 2;			
(c) immediately after the commencement of Schedule 2 — regulation 5 and Schedule 3.			
(b) Regulation 2 of SLI 2007 No. 30 provides as follows:			
These Regulations commence immediately after the commencement of Schedule 2 to the <i>Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2007 (No. 1)</i> .			

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
R. 1.01	rs. 1999 No. 66; 2007 No. 8
Note 1 to r. 1.04	am. 2004 No. 378
R. 1.05	ad. 1995 No. 337
R. 1.06	ad. 1995 No. 337
Part 2	
Division 1	
Note to r. 2.01	rs. 2004 No. 378
R. 2.02	am. 1995 No. 53; 2004 No. 378; 2006 No. 9
R. 2.03	am. 2006 No. 9
Note to r. 2.04	rs. 2006 No. 9
Division 2	
R. 2.05A	ad. 2001 No. 326 am. 2004 No. 378
R. 2.06	am. 1995 No. 53 rs. 2001 No. 326
R. 2.07	am. 1995 No. 53 rs. 2001 No. 326
Note 2 to r. 2.07 (3)	rs. 2006 No. 9
R. 2.07A	ad. 1995 No. 53 am. 1995 No. 337 rep. 2004 No. 378
R. 2.07B	ad. 1995 No. 53 am. 2001 No. 326
R. 2.07C	ad. 1995 No. 53 am. 2004 No. 378
R. 2.07D	ad. 1995 No. 53
R. 2.07E	ad. 1995 No. 53 am. 2004 No. 378
R. 2.07F	ad. 1995 No. 53 am. 2001 No. 326
R. 2.08	am. 2001 No. 326
Division 3	
R. 2.11	am. 2004 No. 378; 2006 No. 9
R. 2.12	am. 2001 No. 326
R. 2.13	rs. 1995 No. 53

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 3	
Note to r. 3.01	rs. 2000 No. 289
R. 3.03	am. 2000 No. 289; 2003 No. 314; 2004 No. 378
R. 3.08	am. 2001 No. 326; 2004 No. 378
Note to r. 3.08 (4)	ad. 2004 No. 378
R. 3.09	am. 2001 No. 326
R. 3.10	am. 2001 No. 326
Part 4	
Part 4	ad. 1996 No. 129
Division 1	
R. 4.01	ad. 1996 No. 129
R. 4.02	ad. 1996 No. 129 am. 1997 No. 227
R. 4.03	ad. 1996 No. 129 rep. 2006 No. 9
Division 2	
R. 4.04	ad. 1996 No. 129 am. 2001 No. 326
R. 4.05	ad. 1996 No. 129 am. 2001 No. 326
R. 4.06	ad. 1996 No. 129
Division 3	
R. 4.07	ad. 1996 No. 129 am. 2001 No. 326; 2004 No. 378
R. 4.07A	ad. 2004 No. 378
R. 4.07B	ad. 2004 No. 378
Heading to r. 4.08	rs. 2004 No. 378
R. 4.08	ad. 1996 No. 129 am. 2001 No. 326
Division 4	
R. 4.09	ad. 1996 No. 129 am. 2001 No. 326
R. 4.10	ad. 1996 No. 129 am. 2001 No. 326
Division 5	
Subdivision A	
R. 4.11	ad. 1996 No. 129 am. 2001 No. 326
R. 4.12	ad. 1996 No. 129 am. 2001 No. 326
R. 4.13	ad. 1996 No. 129

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 4.14	ad. 1996 No. 129 am. 2001 No. 326
R. 4.15	ad. 1996 No. 129 am. 2001 No. 326
R. 4.16	ad. 1996 No. 129
R. 4.17	ad. 1996 No. 129
R. 4.18	ad. 1996 No. 129
R. 4.19	ad. 1996 No. 129 am. 2001 No. 326
Subdivision B	
R. 4.20	ad. 1996 No. 129 am. 2001 No. 326 rs. 2004 No. 378
R. 4.20A	ad. 2004 No. 378
R. 4.21	ad. 1996 No. 129 rs. 2001 No. 326
R. 4.22	ad. 1996 No. 129 am. 2001 No. 326 rs. 2004 No. 378
R. 4.22A	ad. 2004 No. 378
R. 4.23	ad. 1996 No. 129
R. 4.24	ad. 1996 No. 129 am. 2001 No. 326
R. 4.25	ad. 1996 No. 129 am. 2001 No. 326
R. 4.26	ad. 1996 No. 129 am. 2001 No. 326
R. 4.27	ad. 1996 No. 129 am. 2001 No. 326 rs. 2004 No. 378
R. 4.28	ad. 1996 No. 129 am. 2001 No. 326
R. 4.29	ad. 1996 No. 129
Note to r. 4.29	am. 2007 No. 8
Division 6	
R. 4.30	ad. 1996 No. 129 am. 2001 No. 326
Division 7	
R. 4.31	ad. 1996 No. 129
R. 4.32	ad. 1996 No. 129
R. 4.33	ad. 1996 No. 129
R. 4.34	ad. 1996 No. 129

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 4.35	ad. 1996 No. 129
R. 4.36	ad. 1996 No. 129
R. 4.37	ad. 1996 No. 129 am. 2001 No. 326
R. 4.38	ad. 1996 No. 129
Division 8	
R. 4.39	ad. 1996 No. 129 rs. 2004 No. 378
Subdivision A	
Heading to Subdiv. A of Div. 8 of Part 4	ad. 2004 No. 378
R. 4.40	ad. 1996 No. 129 am. 1996 No. 288; 1997 No. 227; 2001 No. 326; 2004 No. 378
Heading to r. 4.40A	rs. 2004 No. 378
R. 4.40A	ad. 1996 No. 288
R. 4.40B	ad. 1996 No. 288
R. 4.40C	ad. 1996 No. 288
R. 4.40D	ad. 2004 No. 378
R. 4.41	ad. 1996 No. 129
R. 4.42	ad. 1996 No. 129 rs. 2004 No. 378
R. 4.43	ad. 1996 No. 129 am. 1996 No. 288; 1997 No. 227 rs. 2004 No. 378 (as am. by 2005 No. 124) am. 2007 No. 30
R. 4.44	ad. 1996 No. 129 rs. 1999 No. 86 am. 2004 No. 378
R. 4.45	ad. 1996 No. 129 am. 2004 No. 378
R. 4.46	ad. 1996 No. 129 rs. 2004 No. 378 (as am. by 2005 No. 124) am. 2007 No. 30
R. 4.47	ad. 1996 No. 129 rs. 2004 No. 378
R. 4.48	ad. 1996 No. 129 rs. 2004 No. 378
R. 4.49	ad. 1996 No. 129 am. 2001 No. 326; 2004 No. 378
R. 4.50	ad. 1996 No. 129 am. 2001 No. 326

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 4.51	ad. 1996 No. 129 am. 2003 No. 314; 2004 No. 378
R. 4.52	ad. 1996 No. 129
R. 4.53	ad. 1996 No. 129
R. 4.54	ad. 1996 No. 129 am. 2001 No. 326; 2007 No. 30
Subdivision B	
Heading to Subdiv. B of Div. 8 of Part 4	ad. 2004 No. 378
R. 4.55	ad. 1996 No. 129 rs. 2004 No. 378; 2006 No. 9
R. 4.55A	ad. 2004 No. 378
R. 4.56	ad. 1996 No. 129 rs. 2004 No. 378 am. 2007 No. 30
R. 4.57	ad. 1996 No. 129 rs. 2004 No. 378
R. 4.58	ad. 1996 No. 129 rs. 2004 No. 378 (as am. by 2005 No. 124)
R. 4.59	ad. 1996 No. 129
R. 4.60	ad. 1996 No. 129 rs. 2004 No. 378
R. 4.60A	ad. 2004 No. 378
R. 4.61	ad. 1996 No. 129
R. 4.62	ad. 1996 No. 129 rs. 2004 No. 378 (as am. by 2005 No. 124)
R. 4.62A	ad. 2004 No. 378
R. 4.62B	ad. 2007 No. 30
Division 9	
R. 4.63	ad. 1996 No. 129 am. 1996 No. 288 rs. 1999 No. 86 am. 2004 No. 378
Division 10	
R. 4.64	ad. 1996 No. 129
R. 4.65	ad. 1996 No. 129
Part 5	
Division 1	
Div. 1 of Part 5	ad. 1995 No. 98
R. 5.01	ad. 1995 No. 98

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 2	
Div. 2 of Part 5	ad. 1995 No. 98
R. 5.02	ad. 1995 No. 98 am. 2001 No. 326
R. 5.03	ad. 1995 No. 98 am. 2001 No. 326
R. 5.04	ad. 1995 No. 98 am. 2001 No. 326
Division 3	
Div. 3 of Part 5	ad. 1995 No. 98
R. 5.05	ad. 1995 No. 98 am. 2001 No. 326
Part 6	
Part 6	ad. 1995 No. 337
Division 1	
Heading to Div. 1 of Part 6..	rs. 1999 No. 66
Heading to Subdiv. A of Div. 1 of Part 6	rep. 1999 No. 66
Heading to r. 6.01.....	rs. 1999 No. 66
R. 6.01	ad. 1995 No. 337 am. 1999 No. 66; 2003 No. 286
Notes to r. 6.01.....	am. 1999 No. 66; 2000 No. 289; 2003 No. 286 rep. 2005 No. 30
Note to r. 6.01	ad. 2005 No. 30
Heading to r. 6.02.....	rs. 1999 No. 66
R. 6.02	ad. 1995 No. 337 am. 1999 No. 66; 2003 Nos. 286 and 314; 2006 No. 9
Heading to r. 6.03.....	rs. 1999 No. 66
R. 6.03	ad. 1995 No. 337 am. 1999 No. 66; 2000 No. 289; 2003 No. 286; 2004 No. 227; 2005 No. 30; 2006 No. 9
Division 2	
R. 6.04	ad. 1995 No. 337 am. 2000 No. 289; 2001 No. 326; 2005 No. 30
R. 6.05	ad. 1995 No. 337 am. 2003 No. 286; 2006 No. 8
Note to r. 6.05 (1)	am. 2006 No. 8
Heading to Subdiv. B of Div. 1 of Part 6	rep. 1999 No. 66
Heading to Div. 2 of Part 6..	ad. 1999 No. 66
R. 6.06	ad. 1995 No. 337 am. 1999 No. 66

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 6.07	ad. 1995 No. 337 am. 2001 No. 326
R. 6.08	ad. 1995 No. 337 rs. 2006 No. 8
R. 6.09	ad. 1995 No. 337
R. 6.10	ad. 1995 No. 337
R. 6.11	ad. 1995 No. 337
Heading to Subdiv. C of Div. 1 of Part 6	rep. 1999 No. 66
Division 3	
Heading to Div. 3 of..... Part 6	ad. 1999 No. 66
R. 6.12	ad. 1995 No. 337 am. 2001 No. 326; 2006 No. 8
R. 6.13	ad. 1995 No. 337 am. 2001 No. 326; 2003 No. 286
R. 6.14	ad. 1995 No. 337 am. 2001 No. 326; 2003 No. 286
R. 6.15	ad. 1995 No. 337
Heading to r. 6.16.....	rs. 2003 No. 286
R. 6.16	ad. 1995 No. 337 am. 1999 No. 66; 2003 No. 286
R. 6.16A	ad. 1999 No. 66 am. 2003 No. 286
R. 6.16B	ad. 1999 No. 66 am. 1999 No. 189 rep. 2003 No. 286
R. 6.16C	ad. 1999 No. 66 rep. 2003 No. 286
R. 6.16D	ad. 1999 No. 66 rs. 1999 No. 189 am. 2003 No. 286
R. 6.17	ad. 1995 No. 337 am. 1999 No. 66; 2003 No. 286
R. 6.17A	ad. 1999 No. 66 am. 2001 No. 326
R. 6.18	ad. 1995 No. 337
R. 6.19	ad. 1995 No. 337 am. 2001 No. 326
R. 6.20	ad. 1995 No. 337 am. 1999 No. 66; 2001 No. 326
R. 6.21	ad. 1995 No. 337 am. 1999 No. 66; 2001 No. 326

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 6.22	ad. 1995 No. 337 am. 1999 No. 66; 2001 No. 326
R. 6.23	ad. 1995 No. 337 am. 1999 No. 66; 2001 No. 326
Heading to Subdiv. D of Div. 1 of Part 6	rep. 1999 No. 66
Division 4	
Heading to Div. 4 of..... Part 6	ad. 1999 No. 66
R. 6.24	ad. 1995 No. 337
Div. 2 of Part 6	rep. 1999 No. 66
Div. 3 of Part 6	rep. 1999 No. 66
Part 7	
Part 7	ad. 1995 No. 337
R. 7.01	ad. 1995 No. 337
R. 7.02	ad. 1995 No. 337
R. 7.03	ad. 1995 No. 337
R. 7.04	ad. 1995 No. 337
R. 7.05	ad. 1995 No. 337
R. 7.06	ad. 1995 No. 337 am. 2001 No. 326
R. 7.07	ad. 1995 No. 337 am. 2001 No. 326
R. 7.08	ad. 1995 No. 337 am. 2001 No. 326
R. 7.09	ad. 1995 No. 337
R. 7.10	ad. 1995 No. 337 am. 2001 No. 326
R. 7.11	ad. 1995 No. 337
R. 7.12	ad. 1995 No. 337 am. 2001 No. 326
Note to r. 7.12 (5)	rep. 2001 No. 326
Part 8	
Heading to Part 8	rs. 2006 No. 9
Division 8.1	
R. 8.01	ad. 2006 No. 9 am. 2007 No. 30
Heading to r. 8.02.....	rs. 2007 No. 30
R. 8.02	ad. 2006 No. 9 am. 2007 No. 30
R. 8.02A	ad. 2007 No. 30

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 8.03	ad. 2006 No. 9
R. 8.04	ad. 2006 No. 9 am. 2007 No. 30
R. 8.05	ad. 2006 No. 9
R. 8.06	ad. 2006 No. 9
R. 8.07	ad. 2006 No. 9
R. 8.08	ad. 2006 No. 9
Division 8.2	
Subdivision 8.2.1	
R. 8.09	ad. 2006 No. 9
R. 8.10	ad. 2006 No. 9
Subdivision 8.2.2	
R. 8.11	ad. 2006 No. 9
R. 8.12	ad. 2006 No. 9
R. 8.13	ad. 2006 No. 9
Subdivision 8.2.3	
R. 8.14	ad. 2006 No. 9
Division 8.3	
Subdivision 8.3.1	
R. 8.15	ad. 2006 No. 9
R. 8.16	ad. 2006 No. 9
Subdivision 8.3.2	
R. 8.17	ad. 2006 No. 9
R. 8.18	ad. 2006 No. 9
R. 8.19	ad. 2006 No. 9
R. 8.20	ad. 2006 No. 9
R. 8.21	ad. 2006 No. 9
R. 8.22	ad. 2006 No. 9
R. 8.23	ad. 2006 No. 9
R. 8.24	ad. 2006 No. 9
R. 8.25	ad. 2006 No. 9
R. 8.26	ad. 2006 No. 9
R. 8.27	ad. 2006 No. 9 am. 2007 No. 30
R. 8.28	ad. 2006 No. 9
R. 8.29	ad. 2006 No. 9
R. 8.30	ad. 2006 No. 9
R. 8.31	ad. 2006 No. 9
R. 8.32	ad. 2006 No. 9

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 8.33	ad. 2006 No. 9
R. 8.34	ad. 2006 No. 9
Subdivision 8.3.3	
R. 8.35	ad. 2006 No. 9
R. 8.36	ad. 2006 No. 9
R. 8.37	ad. 2006 No. 9
R. 8.38	ad. 2006 No. 9
R. 8.39	ad. 2006 No. 9
	am. 2007 No. 30
R. 8.40	ad. 2006 No. 9
	am. 2007 No. 30
Note 2 to r. 8.40	rs. 2007 No. 30
Subdivision 8.3.4	
Heading to Subdiv 8.3.4	rs. 2007 No. 30
R. 8.41	ad. 2006 No. 9
	am. 2007 No. 30
R. 8.42	ad. 2006 No. 9
	am. 2007 No. 30
R. 8.43	ad. 2006 No. 9
	am. 2007 No. 30
R. 8.44	ad. 2006 No. 9
	am. 2007 No. 30
Subdivision 8.3.4A	
R. 8.44A	ad. 2007 No. 30
R. 8.44B	ad. 2007 No. 30
R. 8.44C	ad. 2007 No. 30
Subdivision 8.3.5	
R. 8.45	ad. 2006 No. 9
R. 8.46	ad. 2006 No. 9
R. 8.47	ad. 2006 No. 9
Subdivision 8.3.6	
R. 8.48	ad. 2006 No. 9
R. 8.49	ad. 2006 No. 9
R. 8.50	ad. 2006 No. 9
Subdivision 8.3.7	
R. 8.51	ad. 2006 No. 9
R. 8.52	ad. 2006 No. 9
R. 8.53	ad. 2006 No. 9
R. 8.54	ad. 2006 No. 9
R. 8.55	ad. 2006 No. 9

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision 8.3.8	
R. 8.56	ad. 2006 No. 9
Subdivision 8.3.9	
R. 8.57	ad. 2006 No. 9
R. 8.58	ad. 2006 No. 9
Subdivision 8.3.10	
R. 8.59	ad. 2006 No. 9
R. 8.60	ad. 2006 No. 9 am. 2007 No. 30
R. 8.61	ad. 2006 No. 9
Division 8.4	
R. 8.62	ad. 2006 No. 9
R. 8.63	ad. 2006 No. 9 am. 2007 No. 30
R. 8.64	ad. 2006 No. 9 am. 2007 No. 30
R. 8.65	ad. 2006 No. 9 am. 2007 No. 30
R. 8.66	ad. 2006 No. 9 am. 2007 No. 30
Division 8.5	
R. 8.67	ad. 2006 No. 9
Part 9	
Heading to Part 9	rs. 2007 No. 8
Division 9.1	
R. 9.01	ad. 2007 No. 8
R. 9.02	ad. 2007 No. 8
R. 9.03	ad. 2007 No. 8
R. 9.04	ad. 2007 No. 8
Division 9.2	
Subdivision A	
R. 9.05	ad. 2007 No. 8
R. 9.06	ad. 2007 No. 8
R. 9.07	ad. 2007 No. 8
Subdivision B	
R. 9.08	ad. 2007 No. 8
R. 9.09	ad. 2007 No. 8
Subdivision C	
R. 9.10	ad. 2007 No. 8
R. 9.11	ad. 2007 No. 8

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 9.12	ad. 2007 No. 8
R. 9.13	ad. 2007 No. 8
Subdivision D	
R. 9.14	ad. 2007 No. 8
Division 9.3	
Subdivision A	
R. 9.15	ad. 2007 No. 8
R. 9.16	ad. 2007 No. 8
R. 9.17	ad. 2007 No. 8
R. 9.18	ad. 2007 No. 8
R. 9.19	ad. 2007 No. 8
R. 9.20	ad. 2007 No. 8
R. 9.21	ad. 2007 No. 8
R. 9.22	ad. 2007 No. 8
R. 9.23	ad. 2007 No. 8
Subdivision B	
R. 9.24	ad. 2007 No. 8
R. 9.25	ad. 2007 No. 8
R. 9.26	ad. 2007 No. 8
R. 9.27	ad. 2007 No. 8
R. 9.28	ad. 2007 No. 8
R. 9.29	ad. 2007 No. 8
Subdivision C	
R. 9.30	ad. 2007 No. 8
R. 9.31	ad. 2007 No. 8
R. 9.32	ad. 2007 No. 8
R. 9.33	ad. 2007 No. 8
Subdivision D	
R. 9.34	ad. 2007 No. 8
R. 9.35	ad. 2007 No. 8
R. 9.36	ad. 2007 No. 8
Division 9.4	
Subdivision A	
R. 9.37	ad. 2007 No. 8
R. 9.38	ad. 2007 No. 8
R. 9.39	ad. 2007 No. 8
R. 9.40	ad. 2007 No. 8
R. 9.41	ad. 2007 No. 8

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Subdivision B	
R. 9.42	ad. 2007 No. 8
R. 9.43	ad. 2007 No. 8
R. 9.44	ad. 2007 No. 8
R. 9.45	ad. 2007 No. 8
R. 9.46	ad. 2007 No. 8
R. 9.47	ad. 2007 No. 8
R. 9.48	ad. 2007 No. 8
R. 9.49	ad. 2007 No. 8
R. 9.50	ad. 2007 No. 8
R. 9.51	ad. 2007 No. 8
R. 9.52	ad. 2007 No. 8
R. 9.53	ad. 2007 No. 8
R. 9.54	ad. 2007 No. 8
R. 9.55	ad. 2007 No. 8
Subdivision C	
R. 9.56	ad. 2007 No. 8
Division 9.5	
R. 9.57	ad. 2007 No. 8
Division 9.6	
Subdivision A	
R. 9.58	ad. 2007 No. 8
Subdivision B	
R. 9.59	ad. 2007 No. 8
R. 9.60	ad. 2007 No. 8
R. 9.61	ad. 2007 No. 8
Subdivision C	
R. 9.62	ad. 2007 No. 8
R. 9.63	ad. 2007 No. 8
Subdivision D	
R. 9.64	ad. 2007 No. 8
Subdivision E	
R. 9.65	ad. 2007 No. 8
Subdivision F	
R. 9.66	ad. 2007 No. 8
Division 9.7	
R. 9.67	ad. 2007 No. 8
R. 9.68	ad. 2007 No. 8
R. 9.69	ad. 2007 No. 8

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 9.70	ad. 2007 No. 8
R. 9.71	ad. 2007 No. 8
R. 9.72	ad. 2007 No. 8
Part 10	
Division 10.1	
R. 10.01	ad. 2007 No. 8
R. 10.02	ad. 2007 No. 8
Division 10.2	
R. 10.03	ad. 2007 No. 8
R. 10.04	ad. 2007 No. 8
R. 10.05	ad. 2007 No. 8
R. 10.06	ad. 2007 No. 8
R. 10.07	ad. 2007 No. 8
R. 10.08	ad. 2007 No. 8
R. 10.09	ad. 2007 No. 8
R. 10.10	ad. 2007 No. 8
R. 10.11	ad. 2007 No. 8
R. 10.12	ad. 2007 No. 8
Division 10.3	
R. 10.13	ad. 2007 No. 8
Division 10.4	
R. 10.14	ad. 2007 No. 8
R. 10.15	ad. 2007 No. 8
Division 10.5	
R. 10.16	ad. 2007 No. 8
Division 10.6	
R. 10.17	ad. 2007 No. 8
Part 11	
Division 11.1	
R. 11.01	ad. 2007 No. 8
R. 11.02	ad. 2007 No. 8
R. 11.03	ad. 2007 No. 8
Division 11.2	
R. 11.04	ad. 2007 No. 8
R. 11.05	ad. 2007 No. 8
R. 11.06	ad. 2007 No. 8
R. 11.07	ad. 2007 No. 8 am. 2007 No. 30

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 11.3	
R. 11.08	ad. 2007 No. 8 am. 2007 No. 30
Division 11.4	
R. 11.09	ad. 2007 No. 8
Division 11.5	
R. 11.10	ad. 2007 No. 8 am. 2007 No. 30
Division 11.6	
R. 11.11	ad. 2007 No. 8
Part 12	
Division 12.1	
R. 12.01	ad. 2007 No. 30
R. 12.02	ad. 2007 No. 30
R. 12.03	ad. 2007 No. 30
R. 12.04	ad. 2007 No. 30
Division 12.2	
R. 12.05	ad. 2007 No. 30
R. 12.06	ad. 2007 No. 30
R. 12.07	ad. 2007 No. 30
R. 12.08	ad. 2007 No. 30
R. 12.09	ad. 2007 No. 30
R. 12.10	ad. 2007 No. 30
R. 12.11	ad. 2007 No. 30
R. 12.12	ad. 2007 No. 30
Division 12.3	
R. 12.13	ad. 2007 No. 30
R. 12.14	ad. 2007 No. 30
R. 12.15	ad. 2007 No. 30
R. 12.16	ad. 2007 No. 30
R. 12.17	ad. 2007 No. 30
R. 12.18	ad. 2007 No. 30
R. 12.19	ad. 2007 No. 30
R. 12.20	ad. 2007 No. 30
R. 12.21	ad. 2007 No. 30
Division 12.4	
R. 12.22	ad. 2007 No. 30
Division 12.5	
R. 12.23	ad. 2007 No. 30

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Division 12.6	
R. 12.24	ad. 2007 No. 30
Division 12.7	
R. 12.25	ad. 2007 No. 30
R. 12.26	ad. 2007 No. 30
Part 13	
Division 13.1	
R. 13.01	ad. 2007 No. 30
R. 13.02	ad. 2007 No. 30
R. 13.03	ad. 2007 No. 30
Division 13.2	
R. 13.04	ad. 2007 No. 30
R. 13.05	ad. 2007 No. 30
R. 13.06	ad. 2007 No. 30
R. 13.07	ad. 2007 No. 30
R. 13.08	ad. 2007 No. 30
R. 13.09	ad. 2007 No. 30
R. 13.10	ad. 2007 No. 30
R. 13.11	ad. 2007 No. 30
R. 13.12	ad. 2007 No. 30
R. 13.13	ad. 2007 No. 30
Division 13.3	
R. 13.14	ad. 2007 No. 30
Part 20	
Heading to Part 10	
Renumbered Part 20	2007 No. 8
R. 10.01	am. 1995 Nos. 98 and 337; 1996 No. 129; 2003 No. 314; 2004 No. 378; 2006 No. 9
Renumbered r. 20.01	2007 No. 8
R. 20.01	am. 2007 No. 8; 2007 No. 30
Schedule 1A	
Schedule 1A	ad. 1999 No. 66 am. 2003 No. 286; 2004 No. 227
Schedule 1	
Schedule 1	ad. 1995 No. 337 rs. 1999 No. 66 am. 2003 No. 286; 2004 No. 227
Schedule 1B	
Schedule 1B	ad. 2003 No. 286 am. 2006 No. 9

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Schedule 2	
Schedule 2	ad. 1995 No. 337 am. 1999 No. 66
Schedule 5	
Schedule 5	ad. 1996 No. 129 rs. 2004 No. 378
Schedule 6	
Heading to Schedule 6	rs. 2004 No. 378
Schedule 6	ad. 1996 No. 129 am. 1997 No. 227; 2000 No. 289; 2004 No. 378
Schedule 7	
Schedule 7	ad. 2006 No. 9 rs. 2007 No. 30
Schedule 8	
Schedule 8	ad. 2006 No. 9
Schedule 9	
Schedule 9	ad. 2007 No. 8
Schedule 9A	
Schedule 9A	ad. 2007 No. 8

Note 2

Note 2

Regulation 6.07 — Schedule 2 of Statutory Rules 2001 No. 326 provides as follows:

[2095] Regulation 6.07

omit

A supplier of hazardous substance

insert

(1) A supplier of hazardous substance

The proposed amendment was misdescribed and is not incorporated in this compilation.

Table A Application, saving or transitional provisions

Statutory Rules 2003 No. 286

4 Transitional

- (1) Regulations 6.16B to 6.16D of the principal Regulations, as in force immediately before 31 December 2003, continue to apply to an exemption granted under regulation 6.16A of the principal Regulations before 31 December 2003.
- (2) Paragraph 6.16D (a) of the principal Regulations, as in force immediately before 31 December 2003, continues to apply to a decision made under paragraph 6.16A (4) (b) of the principal Regulations before 31 December 2003 to refuse to grant an exemption.
- (3) An old application is taken to be an application made under clause 2.01 of Schedule 1B of the principal Regulations as amended by these Regulations.
- (4) In this regulation:

old application means an application:

 - (a) that was made under subregulation 6.16A (3) of the principal Regulations before 31 December 2003 in relation to a hazardous substance referred to in column 2 of Schedule 1 of the principal Regulations as in force immediately before 31 December 2003; and
 - (b) in relation to which the Commission has not made a decision under subregulation 6.16A (4) of the principal Regulations before 31 December 2003 whether to grant or refuse the exemption.

principal Regulations means the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994*.