



Occupational Health and Safety (Commonwealth Employment) (National 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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Part 1 Introduction**1.01 Name of Regulations** [see Note 1]

These Regulations are the *Occupational Health and Safety (Commonwealth Employment) (National 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

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- (b) the person could not reasonably be expected to have control.

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;

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- (f) discussions with designers, manufacturers, suppliers, importers, employers, employees or other relevant parties;
 - (g) a quantitative hazard analysis.
- (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.

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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.

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_STANDARD.pdf.

2.02 Interpretation of Part 2

In this Part, unless the contrary intention appears:

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.

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.

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

- (a) declared by NOHSC under subsection 38 (1) of the *National Occupational Health and Safety Commission Act 1985*; and
- (b) as in force on 26 September 2001.

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Note The National Standard can be found on the Internet at http://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
- (b) referred to in the National Standard.

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 the National Standard 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

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- (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
 - (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 the National Standard; and
- (b) the translation of those classes to classes in the National Standard.

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).

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- (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:
 - (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.

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- (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

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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.

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.

Regulation 2.07F

- (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

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(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.

- (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 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

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- (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.
- (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,

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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.
- (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:

Regulation 2.11

- (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 the National Standard; and
 - (c) recommends to Comcare that the certificate should be suspended or cancelled; andComcare 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 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.
- (3) The value of $L_{C, peak}$ must be determined by using sound-measuring equipment with a peak detector-indicator

Regulation 3.04

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
 - (b) represents no risk to their health.

Penalty: 10 penalty units.

Regulation 3.06

- (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
 - (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.

Regulation 3.07

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
(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.

Regulation 3.08

- (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.

Penalty: 10 penalty units.

Regulation 3.08

- (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'.

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

Regulation 3.09

- (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*).

- (2) If an employee is given a personal hearing protector, the employee must:

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- (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.

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- (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 4.03

4.03 Relevant persons

In this Part, a reference to a relevant person is a reference to any of the following persons:

- (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.

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*.

Regulation 4.05

- (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*.

- (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.

Regulation 4.05

- (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;
 - (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.

Regulation 4.06

- (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

Regulation 4.07

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.

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*.

Regulation 4.07A

- (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.

Regulation 4.07B

- (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.
- (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

Regulation 4.09

- (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:

Regulation 4.09

- (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*.

- (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.

- (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*.

Regulation 4.11

- (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.

Penalty: 10 penalty units.

- (2A) Strict liability applies to the physical elements in subregulation (2) that:
- (a) the plant was in use before the commencement of subregulation (2); and
 - (b) the hazards were identified in accordance with Division 7.

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

- (3) If a hazard is identified, the employer must ensure that the risks associated with the hazard are assessed in accordance with Division 7 and subregulation (4).

Penalty: 10 penalty units.

- (3A) Strict liability applies to the physical element in subregulation (3) that the risks associated with the hazard are assessed in accordance with Division 7 and subregulation (4).

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

- (4) In carrying out a risk assessment, the employer must take all reasonably practicable steps to:
- (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*.

Regulation 4.14

- (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:

Regulation 4.15

- (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:

Regulation 4.15

- (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

Regulation 4.17

- (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.

Regulation 4.18

(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

Regulation 4.19

- (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 in subregulation (2).

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

Regulation 4.19

- (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.

Regulation 4.20

- (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'.

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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

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- (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

Regulation 4.25

- (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

Regulation 4.25

- (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
 - (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.

- (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.

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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.

- (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

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- (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;

Regulation 4.29

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.

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 10.01 (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

Regulation 4.31

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
 - (b) tell his or her employer, as soon as practicable, of any defect of which the employee is aware in any plant located at the place at which the employee carries out the work.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element in paragraph (1) (a) that the requirement relating to plant was implemented in accordance with this Part.

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

- (1) A person who is required to identify any hazard to health and safety associated with plant, or a system of work associated with plant, must identify all reasonably foreseeable hazards.

Penalty: 10 penalty units.

- (2) Without limiting the operation of subregulation (1), the person must identify hazards arising from the following matters to the extent that they are relevant to the design, manufacture, erection, installation, commissioning, or use of plant:

Regulation 4.31

- (a) the suitability of the kind of plant for the task that is to be carried out;
- (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, 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;

Regulation 4.33

- (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:

- (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

Regulation 4.34

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.
- (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

Regulation 4.36

- (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.

4.36 Guarding

- (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

Regulation 4.36

- (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.

Penalty: 10 penalty units.

- (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
 - (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

Regulation 4.37

- (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
 - (d) able to be locked in the *off* position to enable the disconnection of all motive power and forces.

Penalty: 10 penalty units.

- (2) If it is not reasonably practicable to eliminate the need for plant used at work to be operated while it is being maintained or cleaned, the person who is required to control a risk relating to the plant must take all reasonably practicable steps to ensure that the operational controls of the plant permit controlled operation of the plant.

Penalty: 10 penalty units.

- (3) Subregulation (4) applies if:
 - (a) plant used at work is designed to be operated or attended by 2 or more persons; and
 - (b) the plant is fitted with 2 or more operational controls for this purpose.
- (4) A person who is required to control a risk relating to plant mentioned in subregulation (3) must take all reasonably practicable steps to ensure that:

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- (a) the operational controls are of the kind commonly known as *stop and lock-off*; and
- (b) the plant cannot be restarted after a stop control has been used until each stop control has been reset.

Penalty: 10 penalty units.

4.38 Emergency stops and warning devices

- (1) A person who is required to control a risk relating to plant must take all reasonably practicable steps to ensure that each emergency stop device of the plant:
 - (a) is prominent; and
 - (b) is clearly and durably marked; and
 - (c) is immediately accessible to each operator of the plant; and
 - (d) has handles, bars or push buttons that are coloured red; and
 - (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
 - (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.

Regulation 4.40B

- (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
 - (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.

Regulation 4.40C

- (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:

Regulation 4.40D

- (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:

- (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

Regulation 4.43

- (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.

Regulation 4.43

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
 - (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.

Regulation 4.45

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 date that the renewal of the licence comes into force;
 - (b) the period for which the licence is effective;
 - (c) the amount of the licence fee to be paid, and the date by which the fee must be paid.
- (6) For paragraphs (4) (d) and (5) (b), the Commission may specify a period of up to 4 years.
- (7) For paragraphs (4) (f) and (5) (c), the amount of the licence fee is the amount that the Commission estimates to be the cost of:
 - (a) issuing or renewing the licence; and
 - (b) monitoring the employer's performance of its obligations under the licence.
- (8) For paragraphs (4) (f) and (5) (c), the Commission may provide that a licence fee is to be paid in specified instalments.
- (9) A notice under paragraph (1) (c) or (2) (c) in relation to a refusal to grant or renew a licence must set out the reasons for the refusal.

4.44 Commencement of a licence

A licence granted under subregulation 4.43 (1) comes into force on the day on which it is granted.

4.45 Conditions of a licence

- (1) A licence to operate plant is subject to the following conditions:
 - (a) the employer to whom the licence is granted must comply with the requirements set out in this Division;
 - (b) the employer must ensure that evidence of the licence is displayed on or near the plant to which the licence relates;

Regulation 4.46

- (c) the employer must pay the fee set out in a notice under paragraph 4.43 (1) (c) or (2) (c), or 4.46 (3) (c), by the time stated in the notice;
 - (d) the employer must comply with a direction given by the Commission that the Commission considers necessary for ensuring the safe operation of the plant.
- (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) plant that an employing authority is licensed to operate is altered; or
 - (b) in the case of plant that is normally fixed in one location — the plant is relocated; or
 - (c) the name of the employer is changed; or
 - (d) 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.

Regulation 4.46

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

Regulation 4.47

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.
- (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.

Regulation 4.48

- (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.
- (3) In addition to subregulation (2), if a tower crane is relocated, 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 since the last notice for the tower crane was given under this subregulation or subregulation (2).

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.

- (4) A notice for a tower crane under subregulation (2) or (3):
 - (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:
 - (i) the end of the period to which it relates; or
 - (ii) the tower crane is relocated;as the case requires; and
 - (c) must include:
 - (i) the employer's licence number; and
 - (ii) a statement to the effect that the tower crane has been maintained in a safe condition and is safe to operate.

Regulation 4.49

4.49 Certain plant design to be registered

- (1) Subject to subregulation (2), an employer must not use plant, or allow employees at work to use plant, if the plant:
- (a) is specified in column 2 of an item in Part 1 of Schedule 6; and
 - (b) does not have a current design registration number issued by the Commission under this Division.

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

Regulation 4.51

- (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.
- (3) The application must:
 - (a) be in writing, using the form (if any) approved by the Commission; and
 - (b) include a representational drawing of the plant design; and
 - (c) include a statement, signed by or for the manufacturer of the plant, to the effect that the design of the plant complies with the provisions of this Part, relating to the design of plant, that apply to manufacturers of plant; and
 - (d) include a statement, signed by a design verifier:
 - (i) to the effect that the design of the plant has been verified in accordance with subregulation (4); and
 - (ii) that sets out the name, business address and qualifications of the design verifier; and
 - (iii) if the design verifier is employed by a person — that sets out the name, business address and qualifications of the employer of the design verifier.
- (4) An employer that wishes to apply to the Commission for registration of a plant design must ensure that:
 - (a) for pressure equipment — the design of the equipment has been verified in accordance with the standards mentioned in items 7 and 8 of Schedule 5; and
 - (b) for other plant — the design of the plant has been verified by a design verifier as complying with each standard, specified in column 2 of an item in Schedule 5, that applies to the plant.
- (5) For the purposes of this regulation, a design verifier is a competent person who:

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- (a) is responsible for advising a person whether the design of plant complies with the provisions of this Part; and
- (b) is not a person who has had any involvement in the design of the plant; and
- (c) is not employed or engaged by the employer who owns the plant, unless the employer uses a quality system, to undertake the design of items of plant, that has been certified by a body accredited or approved by the Joint Accreditation System of Australia and New Zealand (also known as *JAS — ANZ*).

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:

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- (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.

Regulation 4.54

4.54 Alteration of plant design

- (1) Subject to subregulation (2), an employer must not use plant, or allow employees to use plant, if:
- (a) the Commission registers the design of the plant; and
 - (b) the design is subsequently altered by an employer in control of the plant; and
 - (c) the employer has not notified the design of the plant, as altered, to the Commission.

Penalty: 10 penalty units.

- (2) An employer is not required to comply with subregulation (1) if the alteration has been registered by a person administering a law of a State or Territory that corresponds to the Act or these Regulations.

Subdivision B Special licences

4.55 Definitions for Subdivision B

- (1) In this Subdivision:
- defence employing authority* means the Secretary of the Department of Defence and the Chief of the Defence Force.
- licensee* means the defence employing authority, if holding a special licence.
- special licence* means a licence granted under subregulation 4.58 (1) or renewed under subregulation 4.58 (2).
- (2) For this Subdivision:
- (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

Regulation 4.56

- (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.

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 the involved unions of the employees of the Australian Defence Organisation.
- (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
 - (ii) the number of items of each type of plant to be licensed; and

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- (iii) a unique identifying number for each item of plant to be licensed.

4.57 Application for renewal of a special licence

- (1) If the licensee wishes to continue operating the plant to which the special licence relates, the licensee must apply for a renewal of the special licence.
- (2) The application must:
 - (a) be made before the special licence expires; and
 - (b) be in writing, using the form (if any) approved by the Commission; and
 - (c) include:
 - (i) a list of each type of plant to be licensed; and
 - (ii) the number of items of each type of plant to be licensed; and
 - (iii) a unique identifying number for each item of plant to be licensed.
- (3) If the licensee applies for a renewal of the special licence in accordance with this regulation, and the licensee does not receive notice of the Commission's decision before the special licence expires, the licensee may continue to operate the plant to which the special licence relates until the licensee receives the notice.
- (4) If the licensee does not apply for a renewal of the special licence, the licensee must apply for a licence under regulation 4.41 in order to operate plant mentioned in subregulation 4.40 (1).

Note Under regulation 4.40D, regulation 4.40 does not apply to an employer in relation to an item of plant if the item is hired by the employer for less than 12 months and certain other requirements are met.

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

Regulation 4.58

- (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
 - (b) in deciding to grant or renew, or refuse to grant or renew, the licence, the Commission must consider the information.

Regulation 4.58

- (4) A notice under paragraph (1) (c) in relation to the grant of a special licence must set out the following:
 - (a) a statement to the effect that the special licence applies only to the Australian Defence Organisation;
 - (b) each item of plant that the licensee is licensed to operate, and the unique identifying number for each item;
 - (c) the day on which the special licence comes into force;
 - (d) the period for which the special licence is in force;
 - (e) the conditions to which the special licence is subject under regulation 4.60;
 - (f) the amount of the special licence fee to be paid and the date by which the fee must be paid.
- (5) A notice under paragraph (2) (c) in relation to the renewal of a special licence must set out the following:
 - (a) the day on which the renewal of the special licence comes into force;
 - (b) the period for which the special licence is effective;
 - (c) the amount of the special licence renewal fee to be paid and the date by which the fee must be paid.
- (6) For paragraphs (4) (d) and (5) (b), the Commission may specify a period of up to 4 years.
- (7) For paragraphs (4) (f) and (5) (c), the amount of the fee is the amount that the Commission estimates to be the cost of:
 - (a) issuing or renewing the special licence; and
 - (b) monitoring the performance by the Australian Defence Organisation of its obligations under the special licence.
- (8) A notice under paragraph (1) (c) or (2) (c) in relation to a refusal to grant or to renew a special licence must set out the reasons for the refusal.
- (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;
 - (f) the Australian Defence Organisation must ensure that the unique identifying number for an item of plant is displayed on the item;
 - (g) the Australian Defence Organisation must pay the fee set out in a notice under paragraph 4.58 (1) (c) or (2) (c) by the time stated in the notice;
 - (h) the Australian Defence Organisation must comply with a direction given by the Commission that the Commission

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considers necessary for ensuring the safe operation of the plant.

- (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.

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

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- (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.
- (3) On receipt of an application made in accordance with subregulation (2), the Commission:
 - (a) must consider the application; and
 - (b) must:
 - (i) vary the special licence to reflect the event mentioned in the application; or
 - (ii) refuse to vary 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 vary the special licence; and

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- (c) must notify the licensee of the Commission's decision as soon as practicable, but not later than 14 days, after making it.
- (4) 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
 - (b) in deciding to vary, or refuse to vary, the special licence, the Commission must consider the information.
- (5) A notice under paragraph (3) (c) in relation to a variation of a special licence must set out the following:
 - (a) each item of plant that the licensee is licensed to operate;
 - (b) the unique identifying number for each item of plant that the licensee is licensed to operate;
 - (c) the amount of the fee to be paid, and the date by which the fee must be paid.
- (6) For paragraph (5) (c), 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 special licence must set out the reasons for refusing to vary the licence.
- (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.

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- (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.

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;

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- (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;
- (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

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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:

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

Penalty: 10 penalty units.

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- (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

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- (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.

- (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).

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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) cosmetics;
 - (b) food within the meaning of the *Food Standards Australia New Zealand Act 1991*;
 - (c) a substance that is therapeutic goods within the meaning of the *Therapeutic Goods Act 1989*;
 - (d) tobacco and substances made from tobacco;
 - (e) toilet products;
 - (f) toiletries.
- (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:

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ADG Code means Australian Code for the Transport of Dangerous Goods by Road and Rail, 6th edition, published by the Federal Office of Road Safety in 1998.

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.

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);
- (e) crocidolite (blue asbestos);
- (f) tremolite asbestos.

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 ($\mu\text{mol} / \text{L}$) or micrograms per decilitre ($\mu\text{g} / \text{dL}$).

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

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- (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.

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.

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.

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.

ingredient means a component of a substance that is a mixture or a combination, and includes an impurity in the substance.

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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.

MSDS means a Material Safety Data Sheet.

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.

retailer means a person who sells goods to persons who are not engaged in the resale of the goods.

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

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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
- (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:

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- (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 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.

use, in relation to a substance at a workplace, means to produce, handle, store, transport or dispose of the substance at the workplace.

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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.
- (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*.

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- (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. Guidance on the preparation and use of a MSDS can be obtained from the National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC:2007 (1994)] and the National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (1994)].

- (2) An MSDS must:
- (a) set out the name, and Australian address and telephone numbers (including an emergency number), of the manufacturer or importer; and
 - (b) for the hazardous substance to which it relates:
 - (i) clearly identify the substance in accordance with the National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (1994)]; and
 - (ii) set out its recommended uses; and
 - (iii) describe its chemical and physical properties; and
 - (iv) disclose information relating to each ingredient to the extent prescribed by regulation 6.08; and

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- (v) set out the substance's risk and safety phrases and any relevant health hazard information about the substance that is reasonably practicable for the manufacturer to provide; and
 - (vi) set out information concerning the precautions to be followed in relation to its safe use and handling.
- (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.

- (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:

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- (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:
 - (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)].

Regulation 6.08

- (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

- (1) An MSDS must set out:
- (a) for each type I ingredient included in the substance — its chemical name; and
 - (b) for each type II and type III ingredient:
 - (i) its chemical name; or
 - (ii) if the identity of the ingredient is commercially confidential — its generic name.
- (2) If a manufacturer considers that compliance with subparagraph (1) (b) (ii) would not provide sufficient commercial protection for a type III ingredient, other than an ingredient which has a known synergistic effect or which is a hazardous substance, the MSDS may indicate this by the use of the phrase “Other ingredients determined not to be hazardous” in place of the chemical or generic name of the ingredient.
- (3) A label that relates to a hazardous substance must set out:
- (a) for each type I ingredient included in the substance — its chemical name; and
 - (b) for each type II ingredient:
 - (i) its chemical name; or
 - (ii) if the identity of the ingredient is commercially confidential — its generic name.

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

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- (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
 - (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

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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.

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

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- (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.

Regulation 6.12

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)].

- (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:

Regulation 6.12

- (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:
- (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 (1994)];
 - (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.

Regulation 6.13

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*).

- (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.

Regulation 6.14

- (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.

- (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*.

Regulation 6.15

- (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
- (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.

Regulation 6.16A

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);
 - (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);

Regulation 6.17

- (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
 - (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:

Regulation 6.17

- (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
 - (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

Regulation 6.17A

- (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.

- (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

Regulation 6.17A

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.

- (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*.

Regulation 6.18

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)].

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

Regulation 6.20

- (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.

- (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)].

Regulation 6.21

- (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
- (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)].

Regulation 6.21

- (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*.

- (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.

Regulation 6.21

- (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:
- (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.

Regulation 6.22

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
 - (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

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- (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*.

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*.

Regulation 7.01

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.

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

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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
- (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.

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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.

- (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.

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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.
- (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.

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- (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
 - (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*.

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- (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.

- (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.

Regulation 7.07

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
 - (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

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- (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
 - (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:

Regulation 7.08

- (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.

- (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.

Regulation 7.09

- (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
 - (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.

Regulation 7.10

- (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*.

- (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.

Regulation 7.11

- (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
 - (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.

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- (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.

- (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

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- (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**

[There are as yet no provisions in this Part]

Part 9 **Major hazard facilities**

[There are as yet no provisions in this Part]

Regulation 10.01

Part 10 Definitions

10.01 Interpretation

(1) In these Regulations:

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*).

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

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- (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
- (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.

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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.

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;

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- (d) a tractor;
- (e) an industrial robot;
- (f) a conveyor;
- (g) building maintenance equipment.

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.

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 installation means:

- (a) electrical wiring; and
- (b) accessories; and
- (c) fittings; and
- (d) consuming devices; and
- (e) control and protective gear; and
- (f) other equipment;

that is associated with an object situated in or on a workplace or a place at which employees are at work.

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.

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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).

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

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- (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
- (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.

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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.

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 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.

Regulation 10.01

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.

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
- (b) a falling object protective structure; and
- (c) an operator restraining device; and
- (d) a seat belt.

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.

Regulation 10.01

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
- (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.

repair:

- (a) means the restoration of plant to an operating condition; and
- (b) does not include routine maintenance, replacement or alteration.

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.

scaffold means a temporary structure specifically erected to support one or more access or working platforms.

Regulation 10.01

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, in relation to plant, means 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.

Regulation 10.01

- (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:
 - (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.

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: <ul style="list-style-type: none"> (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.<ol style="list-style-type: none">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 |

| | |
|------------|---|
| 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 |
|------------------|--|---|
| 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. |

| 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. |

| | |
|------------|---|
| 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 |
|------------------|---|---|
| | | <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 |
|--------------------------|--|--|
| | | <ol style="list-style-type: none">5. Disturbance of naturally occurring tremolite that is incidental to operations not related to the extraction or processing of tremolite, for example, roadworks.6. Use (without disturbance) of tremolite in products that are in situ. |

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:

defence employing authority means the Secretary of the Department of Defence and the Chief of the Defence Force.

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.

(2) For this Part:

(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.

(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: <ol style="list-style-type: none"> (a) for use with: <ol 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 | <p>31 December 2004</p> <p>31 December 2006</p> |
| 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: <ol style="list-style-type: none"> (a) a vane for rotary vacuum pumps; or (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 | 31 December 2007 |
| 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 |

| Item | Uses for which exemption may be granted | Date exemption ceases |
|-------------|---|------------------------------|
| 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
 - (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.
- (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.

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- (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 Standard respiratory function tests including, for example, FEV1, FVC and FEV1/FVC |

| Column 1 Item | Column 2 Substance | Column 3 Description of health surveillance |
|------------------|-----------------------|---|
| | | Urinary cadmium and β 2-microglobulin |
| 5 | Crystalline silica | Demographic, medical and occupational history Completion of a standardised respiratory questionnaire Standardised respiratory function test, such as FEV ₁ , FVC or FEV ₁ /FVC Chest X-ray, full size PA view |
| 6 | Inorganic arsenic | Demographic, medical and occupational history Exposure record Health advice Physical examination with emphasis on the peripheral nervous system and skin |
| 7 | Inorganic mercury | Urinary total arsenic Demographic, medical and occupational history Health advice Physical examination with emphasis on dermatological, gastrointestinal, neurological and renal systems |
| 8 | Isocyanates | Urinary inorganic mercury 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 |

| Column 1 Item | Column 2 Substance | Column 3 Description of health surveillance |
|--------------------------|----------------------------------|--|
| 9 | Organophosphate pesticides | <p>Baseline examination of red cell and plasma cholinesterase activity levels</p> <p>Estimate of red cell and plasma cholinesterase activity towards the end of the working day on which organophosphate pesticides have been used</p> <p>Medical and occupational history</p> <p>Physical examination</p> |
| 10 | Polycyclic aromatic hydrocarbons | <p>Exposure record</p> <p>Demographic, medical and occupational history</p> <p>Health advice including recognition of photochemical burns and skin changes</p> <p>Physical examination</p> |
| 11 | Thallium | <p>Demographic and occupational history</p> <p>Physical examination</p> <p>Urinary thallium</p> |
| 12 | Vinyl chloride | <p>Occupational and demographic data</p> <p>Record of personal exposure</p> |
| 13 | Benzene | <p>Demography, occupational and medical history and health advice</p> <p>Baseline blood sample for haematological profile</p> <p>Records of personal exposure</p> |

| Column 1 Item | Column 2 Substance | Column 3 Description of health surveillance |
|--------------------------|-------------------------------|---|
| 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' |
| | AS 2030.4-1985 | 'The verification, filling, inspection, testing and maintenance of cylinders for storage and |

| Item | Australian Standard | Title |
|-------------|---|---|
| | | 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 good 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.

Table of Instruments

Notes to the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994*

Note 1

The *Occupational Health and Safety (Commonwealth Employment) (National 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 | — |

Table of Instruments

| Year and number | Date of notification in Gazette or FRLI registration | Date of commencement | Application, saving or transitional provisions |
|------------------------|---|-----------------------------|---|
| 2001 No. 326 | 13 Dec 2001 | 15 Dec 2001 | — |
| 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 | — |
| 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 | — |

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 |
| 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 |
| 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 |
| 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 |
| R. 2.12 | am. 2001 No. 326 |
| R. 2.13 | rs. 1995 No. 53 |
| 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 |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---------------------------|--|
| 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 |
| 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 |
| 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 |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---------------------------|--|
| R. 4.18 | ad. 1996 No. 129 |
| R. 4.19 | ad. 1996 No. 129 am. 2001 No. 326 |
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| 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 |
| 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 |
| 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 |

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ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| | 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) |
| 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) |
| 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 |
| 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 |
| Subdivision B | |
| Heading to Subdiv. B of Div. 8 of Part 4 | ad. 2004 No. 378 |
| R. 4.55 | ad. 1996 No. 129 |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---------------------------|---|
| | rs. 2004 No. 378 |
| R. 4.55A..... | ad. 2004 No. 378 |
| R. 4.56 | ad. 1996 No. 129 rs. 2004 No. 378 |
| 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 |
| 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 |
| 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 | |
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| R. 5.05 | ad. 1995 No. 98 am. 2001 No. 326 |
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| Part 6 | ad. 1995 No. 337 |

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ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|---|
| 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 |
| 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 |
| 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 |
| 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 |
| R. 6.07 | ad. 1995 No. 337 am. 2001 No. 326 |
| R. 6.08 | ad. 1995 No. 337 |
| 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 |
| R. 6.13 | ad. 1995 No. 337 am. 2001 No. 326; 2003 No. 286 |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|---|--|
| 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 |
| 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 |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision affected | How affected |
|----------------------------|---|
| 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 10 | |
| R. 10.01 | am. 1995 Nos. 98 and 337; 1996 No. 129; 2003 No. 314; 2004 No. 378 |
| 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 |
| 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 |

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*.