

Employment and Workplace Relations Legislation Amendment (Application of *Criminal Code*) Regulations 2001 (No. 1) 2001 No. 326

EXPLANATORY STATEMENT

Statutory Rules No. 326 of 2001

Issued by the authority of the Minister for Employment and Workplace Relations

Occupational Health and Safety (Commonwealth Employment) Act 1991

Occupational Health and Safety (Maritime Industry) Act 1993 Workplace Relations Act 1996

Employment and Workplace Relations Legislation Amendment (Application of *Criminal Code*) Regulations 2001 (No. 1)

The Governor-General has power under the specified provisions of the following Acts to make regulations prescribing matters that are required or permitted by those Acts to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to those Acts:

- section 82 of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*;
- section 121 of the *Occupational Health and Safety (Maritime Industry) Act 1993*; and,
- section 359 of the *Workplace Relations Act 1996*.

The purpose of the Employment and Workplace Relations Legislation Amendment (Application of *Criminal Code*) Regulations 2001 (the Regulations) is to amend offence provisions in employment and workplace relations portfolio regulations to harmonise them with the *Criminal Code*.

The Code, which is contained in the *Criminal Code Act 1995*, establishes general principles of criminal responsibility and a standard approach to the formulation of Commonwealth criminal offences. It commences on 15 December 2001. The Code may inadvertently change the operation of some offences that were drafted prior to its development. These offences need to be harmonised with the Code by amending them in a way that ensures that they continue to operate in the way originally intended after the Code commences.

The regulations that are amended by these Regulations are:

- *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*;
- *Occupational Health and Safety (Maritime Industry) Regulations 1995*;
- *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994*; and
- *Workplace Relations Regulations 1996*.

The Regulations harmonise the above regulations with the Code in the following ways.

- Offences of strict liability, that is offences in respect of which a fault element need not be proven at present, are expressly identified as offences *of* strict liability. In the absence of an express statement identifying an offence as a strict liability offence, section 5.6 of the Code will impose a default fault element, regardless of the previous operation of the provision.
- All offence provisions containing the defence of reasonable excuse will be restructured to put the defence into a new stand-alone subregulation. This is to avoid the defence being mistakenly interpreted to be part of the element of the offence.
- The Code provides fault elements of intention, knowledge, recklessness and negligence and prescribes the manner in which each fault element can be applied to a physical element of an offence. The Regulations replace inappropriate fault elements - particularly "knowledge" and "recklessness" - with the Code fault element of "intention" and, where necessary, reconstruct offence provisions to preserve the operation of previous fault elements.

More details of the Regulations are set out in the attachment.

The Regulations commence on 15 December 2001.

ATTACHMENT

DETAILS OF THE EMPLOYMENT AND WORKPLACE RELATIONS AMENDMENT (APPLICATION OF CRIMINAL CODE) REGULATIONS 2001 (NO. 1)

Regulation 1 - Name of Regulations

Regulation 1 sets out the name of the Regulations.

Regulation 2 - Commencement

Regulation 2 provides for the commencement of the Regulations on 15 December 2001.

Regulation 3 - Amendment of *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*

Regulation 3 is a formal provision, stating that the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991* are amended as provided for in Schedule 1.

Regulation 4 - Amendment of *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994*

Regulation 4 is a formal provision, stating that the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994* are amended as provided for in Schedule 2.

Regulation 5 - Amendment of *Occupational Health and Safety (Maritime Industry) Regulations 1995*

Regulation 5 is a formal provision, stating that the *Occupational Health and Safety (Maritime Industry) Regulations 1995* are amended as provided for in Schedule 3.

Regulation 6 - Amendment of *Workplace Relations Regulations 1996*

Regulation 6 is a formal provision, stating that the *Workplace Relations Regulations 1996* are amended as provided for in Schedule 4.

SCHEDULE 1 - AMENDMENTS OF *OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) REGULATIONS 1991*

Authority: *Occupational Health and Safety (Commonwealth Employment) Act 1991*, Section 82.

Item 1001 Subregulation 22A(3)

This item substitutes a new subregulation 22A(3) which creates an offence of failing to comply with a direction given under subregulation 22A(1).

This item also inserts subregulation 22A(4) which identifies strict liability in relation to the physical element of conduct that a person complies with a direction given to him or her under subregulation 22A(1). The change clarifies that an offence against subregulation 22A(3) is an offence of strict liability. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

This item will also insert subregulation 22A(5) which restates the defence of reasonable excuse in relation to subregulation 22A(3). A note advising that the defendant bears an evidential burden follows the new subregulation.

Item 1002 Subregulation 31(2), penalty

A series of amendments in the Regulations will convert fines expressed in monetary terms to penalty units.

Penalty units were introduced in 1992. They are a way of adjusting fines for inflation without having to amend every piece of legislation. Section 4AB of the *Crimes Act* 1914 converts fines expressed in dollar amounts to penalty units. This has the effect of increasing the maximum penalties, as in 1997 the value of a penalty unit was increased from \$100 to \$110.

Only recently enacted or recently amended offences are expressed as penalty units, which explains why there are units for some offences and dollar amounts for others. This is an unsatisfactory and potentially confusing situation, particularly as the fines expressed as dollar amounts do not accurately convey the true maximum penalty. The Regulations accordingly amend references to pecuniary penalties and express fines as penalty units.

Item 1002 will convert the penalty in subregulation 31(2) into penalty units.

Item 1003 After subregulation 31(2)

This item inserts subregulation 31(3) which identifies strict liability in relation to the physical element of conduct that a person who ceases to be an investigator must return, as soon as practicable, his or her identity card to Comcare as required by subregulation 31(2). The offence will carry a maximum penalty of 10 penalty units. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Item 1004 Subregulation 32(5), penalty

This item would convert the penalty in subregulation 32(5) to penalty units. (This measure is explained in the notes above on item 2.)

Item 1005 After subregulation 32(5)

This item inserts subregulation 32(6) which identifies strict liability in relation to the physical element of conduct that a person who ceases to be an investigator must return, as soon as practicable, his or her certificate of appointment to the Chief Executive Officer of Comcare as required by subregulation 32(5). The offence will carry a maximum penalty of 10 penalty units. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Item 1006 Regulation 35

This item inserts a new regulation 35. Subregulation 35(1) removes the defence of reasonable excuse from the subregulation to prevent future interpretation that the reasonable excuse element of this provision is an element of the offence, which would have to be disproved in the negative by the prosecution, and puts it beyond doubt that it is a defence to the offence. The defence is recreated in a new subregulation 35(2), which creates a defence of reasonable excuse in relation to an offence against subregulation 35(1).

The new subregulation 35(2) includes a note advising that the defendant bears an evidential burden if a defendant relies upon the reasonable excuse defence. An evidential burden of proof means that the onus is on the defendant to adduce or point to evidence that suggests a reasonable possibility that a matter exists or not.

This item would also introduce new subregulations 35(3) and 35(4) which would replicate the provisions of the previous subregulations 35(2) and 35(3) making minor changes consequential to those outlined above.

Item 1007 Subregulation 37A(1), penalty

Item 1007 omits the pecuniary penalty from subregulation 37A(1). Penalty units are to be included in subregulation 37A(2) by the following item. (This measure is explained in the notes above on item 2.)

Item 1008 After subregulation 37A(2)

This item inserts subregulations 37A(2), (3) and (4).

Subregulation 37A(2) would impose the requirement on employers to provide the notice required for the purposes of subsection 68(1) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, within the time frame set out in subregulation 37A(1). The offence would carry a maximum penalty of 10 penalty units.

Subregulation 37A(3) provides that strict liability applies to the physical element of a notice being required by subsection 68(1). The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Subregulation 37A(4) provides that it is a defence to an offence against subregulation (2) if it was not reasonably practicable for the defendant to give the notice within the time required. A note makes it clear that the defendant bears the evidential burden of establishing this defence.

Item 1009 Subregulation 37D(1), penalty

Item 1009 omits the pecuniary penalty from subregulation 37D(1). Penalty units are to be included in subregulation 37D(3) by the following item. (This measure is explained in the notes above on item 2.)

Item 1010 Subregulation 37D(3)

This item inserts new subregulations 37D(3), (4) and (5) which identify strict liability in relation to the physical element that the report is given for the purposes of subsection 68(1) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, as required by subregulation 37D(1). The offence will carry a maximum penalty of 10 penalty units. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Subregulation 37D(3) would impose the requirement on employers to provide the report required for the purposes of subsection 68(1) of the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, within the time frame set out in the regulation. The offence would carry a maximum penalty of 10 penalty units.

Subregulation 37D(4) provides that strict liability applies to the physical element that a report is required by subsection 68(1). The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Subregulation 37D(5) provides that it is a defence to an offence against subregulation (3) if it was not reasonably practicable for the defendant to give the notice within the time required. A note makes it clear that the defendant bears the evidential burden of establishing this defence.

SCHEDULE 2 - AMENDMENT OF *OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) (NATIONAL STANDARDS) REGULATIONS 1994*

Authority: *Occupational Health and Safety (Commonwealth Employment) Act 1991*, Section 82.

Item 2001 Part 2, Division 2, before regulation 2.06

This item inserts a new regulation 2.05A which provides a list of circumstances in which an employee is qualified for an occupation, and a list of circumstances in which a contractor is qualified for an occupation. This change is to ensure that the lists of qualifications, which previously appeared in regulations 2.06 and 2.07, are not to be interpreted as defences, and each matter in the lists is a part of the offence which the prosecution must prove.

Item 2002 Regulations 2.06 and 2.07

This item inserts new regulations 2.06 and 2.07 which are consequential to the introduction of regulation 2.05A, outlined at item 2001.

New regulation 2.06 provides that it is an offence for an employee, or contractor, to perform the work of a regulation 2.03 qualification if the employee, or contractor, is not qualified. New subregulation 2.06(3) also provides that strict liability applies in subregulations (1) and (2) to the physical element that the work is of a regulation 2.03 qualification.

New regulation 2.07 provides that it is an offence for an employer to allow an employee, or contractor, to perform the work of a regulation 2.03 qualification if the employee, or contractor, is not qualified. New subregulation 2.07(3) also provides that strict liability applies in subregulations (1) and (2) to the physical element that the work is of a regulation 2.03 qualification.

The application of strict liability in this instance is required because a knowledge of law issue arises. Although subsection 9.3(1) of the *Criminal Code* provides that mistake or ignorance of statute law is no excuse, subsection 9.3(2) provides that subsection 9.3(1) does not apply if the particular Act is expressly or impliedly to the contrary effect. Subsections 9.4(1) and 9.4(2) of the *Criminal Code* apply in a similar manner to subordinate legislation. Applying strict liability to the physical element in this circumstance avoids any implication that subsections 93(1) and (2) of the *Criminal Code* do not apply. The effect is that the prosecution need not prove fault and need only prove that the physical element of the offence did occur. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after these provisions.

Item 2003 Paragraph 2.07B(2)(c)

This item removes the phrase "as far as practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2004 After subregulation 2.07B(2), including the penalty

This item inserts a new subregulation 2.07B(2A) which is consequential to item 2003. The new subregulation clarifies that it is a defence that the employer ensured as far as was practicable 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.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2005 Paragraph 2.07B(4)(c)

This item removes the phrase "as far as practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2006 After subregulation 2.07B(4), including the penalty

This item inserts a new subregulation 2.07B(4A) which is consequential to item 2005. The new subregulation clarifies that it is a defence that the employer monitored the trainee's performance of tasks as far as was 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.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2007 After subregulation 2.07B(5), including the penalty

This item inserts a new subregulation 2.07B(6), which applies strict liability to the physical element set out in subregulations (1) and (2) that the work performed by the trainee is a regulation 2.03 occupation.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the *Criminal Code* (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the Criminal Code, which governs strict liability, is also added after this provision.

Item 2008 After subregulation 2.07F(7), including the penalty

This item inserts a new subregulation 2.07F(8) to provide that an offence against subregulation (7) is an offence of strict liability. Subregulation 2.07F(7) provides that if Comcare grants an employee or contractor an exemption that is subject to the condition set out in subregulation (6), then the employee or contractor must comply with the condition.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2009 After subregulation 2.08(2), including the penalty

This item inserts a new subregulation 2.08(3) to provide that an offence against subregulation (2) is an offence of strict liability. Subregulation 2.08(2) provides that the employee or contractor must show a certificate, as set out at subregulation (1), to the investigator within a reasonable period after being asked.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2010 After subregulation 2.12(2)

This item inserts a new subregulation 2.12(3) to provide that an offence against subregulation (1) is an offence of strict liability. Subregulation 2.12(1) provides that an employee or contractor who holds a Commonwealth certificate that is cancelled or suspended must return the certificate to Comcare within the time limits prescribed in subregulation (1).

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2011 Subregulation 3.08(1)

This item removes the phrase "as far as reasonably practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2012 After subregulation 3.08(1), including the penalty

This item inserts a new subregulation 3.08(1A) which is consequential to item 2011. The new subregulation clarifies that it is a defence that the place in which an employee performed work, and plant and systems of work, were provided and maintained by the employer, as far as reasonably practicable, in a manner that ensured that the employee was not exposed to noise, at or near the place, that exceeded the exposure standard.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2013 Subregulation 3.08(2)

This item removes the phrase "as far as reasonably practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2014 After subregulation 3.08(2), including the penalty

This item inserts a new subregulation 3.08(2A) which is consequential to item 2013. The new subregulation clarifies that it is a defence that the place in which a contractor performed work, and plant and systems of work, were provided and maintained by the employer, as far as reasonably practicable, in a manner that ensured that the contractor was not exposed to noise, at or near the place, that exceeded the exposure standard.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2015 Subregulation 3.08(3), Step 1 and Step 2

This item removes the phrases "as far as reasonably practicable" (twice occurring) from the previous offence. This is so that the phrases are recast as a defence, which avoids any interpretation that the matters are an element of the offence to be proved by the prosecution.

Item 2016 After subregulation 3.08(3), including the penalty

This item inserts a new subregulation 3.08(3A) which is consequential to item 2015. The new subregulation clarifies that it is a defence that the employer implemented noise controls in accordance with Step 1 as far as reasonably practicable, and implemented administrative noise controls in accordance with Step 2 as far as reasonably practicable.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2017 After subregulation 3.08(4) including the penalty

This item inserts new subregulations 3.08(4A) and (4B) to provide that strict liability applies to the physical element in paragraph (4)(a) that the appropriate personal hearing protector complies with the requirements of Australian Standard AS 1270 (Acoustics - Hearing Protectors), and to the physical element in paragraph (4) (b) that the appropriate personal hearing protector is in accordance with the requirements of Australian Standard AS 1269 (*Acoustics - Hearing Conservation*).

This is to ensure that the prosecution is not required to demonstrate that the defendant possessed any fault in relation to that physical element (that is, that the defendant had knowledge of the particular Australian Standard). If strict liability were not applied the prosecution would have to prove that the defendant possessed the relevant fault element and prosecutions would often fail.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2018 Subregulation 3.09(1)

This item removes the phrase "as far as reasonably practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2019 After subregulation 3.09(1), including the penalty

This item inserts a new subregulation 3.09(1A) to provide that strict liability applies to the physical element in paragraph (1)(a) that the noise control measure is implemented in accordance with this Part.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

This item also inserts a new subregulation 3.09(1B) which is consequential to item 2018. The new subregulation clarifies that it is a defence that the employee complied with the subregulation as far as reasonably practicable.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2020 Subregulation 3.10(1)

This item removes the phrase "as far as reasonably practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2021 After subregulation 3.10(1), including the penalty

This item inserts a new subregulation 3.10(1A) to provide that strict liability applies to the physical element in subregulation (1) that the noise control measure is implemented in accordance with this Part.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

This item also inserts a new subregulation 3.10(1B) which is consequential to item 2020. The new subregulation clarifies that it is a defence that the employee complied with the subregulation as far as reasonably practicable.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2022 After subregulation 4.04(1), including the penalty

This item inserts a new subregulation 4.04(1A) to provide that strict liability applies to the physical element in subregulation (1) that the hazards are identified in accordance with Division 7.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2023 After subregulation 4.04(2), including the penalty

This item inserts a new subregulation 4.04(2A) to provide that strict liability applies to the physical element in subregulation (2) that the hazards are assessed in accordance with subregulation (3) and Division 7.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2024 After subregulation 4.05(1), including the penalty

This item inserts a new subregulation 4.05(1A) to provide that strict liability applies to the physical element in subregulation (1) that the risk assessment is conducted for the purposes of regulation 4.04 and that the risk is minimised in accordance with Division 7 and subregulation (2).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 93(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2025 After subregulation 4.05(2), including the penalty

This item inserts a new subregulation 4.05(2A) to provide that strict liability applies to the physical element in paragraph (2)(d) that a standard referred to in Schedule 5 is relevant.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2026 Paragraph 4.05(4)(b)

This item amends subregulation 4.05(4)(b). The wording recasts the previous offence in subregulation 4.05(4)(b) in plain English.

Item 2027 After subregulation 4.07(1), including the penalty

This item inserts a new subregulation 4.07(1A) to provide that strict liability applies to the physical element in paragraph (1)(b) that the risk is minimised in accordance with Division 7.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2028 Subregulation 4.07(2)

This item removes the phrase "as far as reasonably practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2029 After subregulation 4.07(2), including the penalty

This item inserts a new subregulation 4.07(2A) which is consequential to item 2028. The new subregulation clarifies that it is a defence that the supplier complied with the subregulation as far as reasonably practicable.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2030 Regulation 4.08

This item amends this regulation to make it subregulation (1) of a larger regulation. The amendment would facilitate the change described in item 2031.

Item 2031 Regulation 4.08

This item inserts a new subregulation 4.08(2) to provide that strict liability applies to the physical element in subregulation (1) that the record is kept for the purposes of the *Occupational Health and Safety (Commonwealth Employment. (National Standards) Regulations 1994*.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2032 After subregulation 4.09(1), including the penalty

This item inserts a new subregulation 4.09(1A) to provide that strict liability applies to the physical element in paragraph (1) that the hazards are identified in accordance with Division 7.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2033 After subregulation 4.09(2), including the penalty

This item inserts a new subregulation 4.09(2A) to provide that strict liability applies to the physical element in paragraph (2) that the risks are assessed in accordance with Division 7.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2034 After subregulation 4.10(1), including the penalty

This item inserts a new subregulation 4.10(1A) to provide that strict liability applies to the physical elements in subregulation (1) that the risk assessment is conducted for the purposes of subregulation 4.09(2) or 5, and the risk is minimised in accordance with Division 7.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 93(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2035 After subregulation 4.11(1), including the penalty

This item inserts a new subregulation 4.11(1A) to provide that strict liability applies to the physical element in subregulation (1) that the hazards are identified in accordance with Division 7.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 93(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2036 After subregulation 4.11(2), including the penalty

This item inserts a new subregulation 4.11(2A) to provide that strict liability applies to the physical elements in subregulation 4.11(2) that the plant was in use before the commencement of subregulation 4.11(2) and that the hazards are identified in accordance with Division 7.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 93(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2037 After subregulation 4.11(3), including the penalty

This item inserts a new subregulation 4.11(3A) to provide that 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).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2038 After subregulation 4.12(1), including the penalty

This item inserts a new subregulation 4.12(1A) to provide that strict liability applies to the physical elements in subregulation (1) that the risk assessment is conducted for the purposes of subregulation 4.11(3) or (7), and the risk is minimised in accordance with Division 7 and subregulation (2).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2039 After subregulation 4.14(1), including the penalty

This item inserts a new subregulation 4.14(1A) to provide that strict liability applies to the physical element in paragraph (1)(b) that the risk is minimised in accordance with Division 7 and subregulation (2).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2040 After subregulation 4.15(1), including the penalty

This item inserts a new subregulation 4.15(1A) to provide that strict liability applies to the physical element in paragraph (1)(b) that the risk is minimised in accordance with Division 7.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2041 Paragraph 4.15(2)(a)

This item replaces previous paragraph 4.15(2)(a) with a new paragraph which has been reworded to ensure that the matters in subparagraphs (i) and (ii) are part of the offence, and are not interpreted as a defence to the offence.

Item 2042 Paragraph 4.15(2)(c)

This item substitutes a new paragraph 4.15(2)(c) which will ensure that the physical element of the offence does not include a determination by the employer, or assessment of a competent person, that a change in purpose does not present an increased risk to the health and safety of a relevant person.

Item 2043 After subregulation 4.15(2), including the penalty

This item inserts a new subregulation 4.15(2A) which is consequential to item 2042. The new subregulation which clarifies that it is a defence to a prosecution under paragraph 4.15(2)(c) that the employer has determined, or a competent person has, 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.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2044 Subregulation 4.15(4)

This item substitutes a new subregulation 4.15(4) which will ensure that the physical element of the offence does not include the control of a risk in accordance with Division 5, or the repair of plant in accordance with regulation 4.16.

This item also proposes a new subregulation 4.15(5) which clarifies that it is a defence that the employer has controlled the risk in accordance with Division 5, or repaired the plant in accordance with regulation 4.16.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2045 After subregulation 4.19(1), including the penalty

This item inserts a new subregulation 4.19(1A) to provide that strict liability applies to the physical element in subregulation (1) that the plant is the plant referred to in subregulation (2).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2046 After subregulation 4.19(3), including the penalty

This item inserts a new subregulation 4.19(3A) to provide that 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 sub-paragraph 4.11(4)(b)(ii).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2047 Subregulation 4.19(4)

This item removes the phrase "unless the plant is being sold for scrap or as spare parts for other plant" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2048 After subregulation 4.19(4), including the note

This item inserts a new subregulation 4.19(5) which is consequential to item 2047. The new subregulation clarifies that it is a defence that the employer sold the plant for scrap or as spare parts for other plant.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2049 After subregulation 4.20(1), including the penalty

This item inserts a new subregulation 4.20(1A) to provide that strict liability applies to the physical element in subregulation (1) that the pressure equipment is the equipment referred to in AS 1200 (SAA Boiler Code) and the inspection is in accordance with AS 3788 (*Boiler and Pressure Vessels - In-service Inspection*).

This is to ensure that the prosecution is not required to demonstrate that the defendant possessed any fault in relation to that physical element (that is, that the defendant had knowledge of the particular Australian Standard). If strict liability were not applied the prosecution would have to prove that the defendant possessed the relevant fault element and prosecutions would often fail.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2050 After subregulation 4.20(2), including the penalty

This item inserts a new subregulation 4.20(2A) to provide that strict liability applies to the physical element in subregulation (2) that the inspection is in accordance with AS 2030 (SAA *Gas Cylinders Code*).

This is to ensure that the prosecution is not required to demonstrate that the defendant possessed any fault in relation to that physical element (that is, that defendant had knowledge of the particular Australian Standard). If strict liability were not applied the prosecution would have to prove that the defendant possessed the relevant fault element and prosecutions would often fail.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2051 After subregulation 4.20(3), including the penalty

This item inserts a new subregulation 4.20(3A) to provide that strict liability applies to the physical element in subregulation (3) that the inspection and testing is in accordance with AS 2030 (SAA *Gas Cylinders Code*) and AS 2337 (*Gas Cylinder Test Stations*).

This is to ensure that the prosecution is not required to demonstrate that the defendant possessed any fault in relation to that physical element (that is, that the defendant had knowledge of the particular Australian Standard). If strict liability were not applied the prosecution would have to prove that the defendant possessed the relevant fault element and prosecutions would often fail.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2052 After subregulation 4.20(4), including the penalty

This item inserts a new subregulation 4.20(4A) to provide that strict liability applies to the physical element in subregulation (4) that the cylinder bears a current inspection mark in accordance with AS 2030 (SAA *Gas Cylinders Code*) and is filled in accordance with AS 2030 (SAA *Gas Cylinders Code*).

This is to ensure that the prosecution is not required to demonstrate that the defendant possessed any fault in relation to that physical element (that is, that the defendant had knowledge of the particular Australian Standard). If strict liability were not applied the prosecution would have to prove that the defendant possessed the relevant fault element and prosecutions would often fail.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2053 Regulation 4.21

This item substitutes regulation 4.21 with a new provision which clarifies that it is a defence to prosecution for an offence against paragraph (a) if there is no other reasonably practicable approach. The new regulation 4.21 would also clarify that it is a defence to prosecution for an offence against paragraph (b) if a safe system of work is introduced, enforced and maintained to minimise the risk of entanglement.

As previously drafted, these defences could be interpreted as part of the physical element of the offence, which must be proved by the prosecution. The purpose of redrafting the regulation is to avoid this interpretation. A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2054 Subregulation 4.22(4)

This item amends this subregulation to facilitate the change described in item 2056.

Item 2055 Paragraphs 4.22(4)(a) and (b)

This item amends these paragraphs to facilitate the change described in item 2056.

Item 2056 After subregulation 4.22(4), including the penalty

This item inserts a new subregulation 4.22(4A) to ensure that it is a defence if the tractor accords with the matters set out in paragraphs (a) and (b). As previously drafted, these defences could be interpreted as part of the physical element of the offence, which must be proved by the prosecution. The purpose of redrafting the regulation is to avoid this interpretation. A note advising that a defendant bears an evidential burden follows the new subregulation.

This item also provides that strict liability applies to the physical element in subregulation (4) that the tractor is of a kind to which the testing requirements of AS 1636 (*Agricultural Wheeled Tractors - Roll-Over Protective Structures Criterion and Tests*) apply.

This is to ensure that the prosecution is not required to demonstrate that the defendant possessed any fault in relation to that physical element (that is, that the defendant had knowledge of the particular Australian Standard). If strict liability were not applied the prosecution would have to prove that the defendant possessed the relevant fault element and prosecutions would often fail.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2057 After subregulation 4.22(6), including the penalty

This item inserts new subregulation 4.22(6A) to provide that strict liability applies to the physical element in subregulation (6) that the machinery is of a kind work is of a kind referred to in AS 2294 (*Protective Structures for Earthmoving Machines*).

This is to ensure that the prosecution is not required to demonstrate that the defendant possessed any fault in relation to that physical element (that is, that the defendant had knowledge of the particular Australian Standard). If strict liability were not applied the prosecution would have to prove that the defendant possessed the relevant fault element and prosecutions would often fail.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2058 After subregulation 4.22(7), including the penalty

This item inserts a new subregulation 4.22(7A) to provide that strict liability applies to the physical element in paragraph (7)(a) that the structure complies with AS 1636 (*Agricultural Wheeled Tractors - Roll-over Protective Structures Criterion and Tests*) or AS 2294 (*Protective Structures for Earthmoving Machines*). New subregulation 4.22(7A) will also provide that strict liability applies to the physical element in paragraph (7)(b)(i) that the protective structure is designed in accordance with the performance requirements of AS 2294 (*Protective Structures for Earthmoving Machines*), and that strict liability applies to the physical element in paragraph (7)(b)(iii) that the information is required by AS 2294 (*Protective Structures for Earthmoving Machines*).

This is to ensure that the prosecution is not required to demonstrate that the defendant possessed any fault in relation to that physical element (that is, that the defendant had knowledge of the particular Australian Standard). If strict liability were not applied the prosecution would have to prove that the defendant possessed the relevant fault element and prosecutions would often fail.

The standard note referring to section 6.1 of the Criminal Code, which governs strict liability, is also added after these provisions.

Item 2059 Regulation 4.24

This item amends this regulation to make it subregulation (1) of a larger regulation. The amendment would facilitate the change described in item 2060.

Item 2060 Paragraph 4.24(f)

This item would clarify that control options for the plant must comply with the requirements of the relevant electrical supply authority, as in force on 31 March 1995.

Item 2061 Regulation 4.24

This item provides that 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.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal

Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2062 Regulation 4.25

This item amends this regulation to make it subregulation (1) of a larger regulation. The amendment would facilitate the change described in item 2066.

Item 2063 Paragraph 4.25(b)

This item substitutes a new paragraph 4.25(b) to distinguish more clearly what are the elements of the offence to be proved by the prosecution and what comprises the defence which might be raised by a defendant. The considerations set out at paragraphs (i)-(v) are removed from the body of the offence and recast in a separate subregulation and clearly identified as a defence.

Item 2064 Paragraph 4.25(f)

This item substitutes a new paragraph 4.25(f) to distinguish more clearly what are the elements of the offence to be proved by the prosecution and what comprises the defence which might be raised by a defendant. The considerations set out at paragraphs (i)-(ix) are removed from the body of the offence and recast in a separate subregulation and clearly identified as a defence.

Item 2065 Paragraph 4.25(1)

This item substitutes a new paragraph 4.25(i) to distinguish more clearly what are the elements of the offence to be proved by the prosecution and what comprises the defence which might be raised by a defendant. The considerations set out at paragraphs (i)-(iii) are removed from the body of the offence and recast in a separate subregulation and clearly identified as a defence.

Item 2066 Regulation 4.25

This item inserts a new subregulation 4.25(2) which is consequential to items 2063 to 2065. The new subregulation clarifies defences to specific offences set out in paragraphs (1)(b), (f) and (i). The defences previously appeared in the provision creating the offence, and have been separately set out to avoid the interpretation that the criteria form part of the physical element of the offence.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2067 Subregulation 4.26(1)

This item removes the reference to suitable controls and systems of work that are in place for the control of risk in relation to the robot or equipment from the previous offence and recast this in a separate subregulation and clearly identified as a defence.

Item 2068 After subregulation 4.26(1), including the penalty

This item inserts a new subregulation 4.26(1A) which is consequential to item 2067. The new subregulation clarifies that it is a defence that suitable controls and systems of work are in place for the control of risk in relation to the robot or equipment.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2069 Regulation 4.27

This item provides for the introduction of subregulations within this regulation, to the change described in item 2071.

Item 2070 Paragraph 4.27(a)

This item substitutes a new phrase in paragraph 4.27(a). The phrase clarifies the elements of the offence.

Item 2071 Regulation 4.27(1)

This item inserts new subregulation 4.27(2) to provide that strict liability applies to the physical element in paragraph 4.27(1)(a) that the laser or laser product has been classified and labelled in accordance with AS 2211. The new provision also provides that strict liability applies to the physical element in paragraph 4.27(1)(b) that the laser or laser product is for the purposes of AS 2211 (*Laser Safety*), and the physical element in paragraph 4.27(1)(c) that the use of the laser or laser product is in accordance with AS 2397 (*Guide to the Safe Use of Lasers in the Construction Industry*).

This is to ensure that the prosecution is not required to demonstrate that the defendant possessed any fault in relation to that physical element (that is, that the defendant had knowledge of the particular Australian Standard). If strict liability were not applied the prosecution would have to prove that the defendant possessed the relevant fault element and prosecutions would often fail.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2072 Regulation 4.28(1)

This item removes a phrase from the previous offence, in order that the circumstance it describes is not interpreted as a descriptor in the physical element of conduct.

Item 2073 After subregulation 4.28(1)

This item inserts a new subregulation 4.28(1A) which is consequential to item 2072. The new subregulation clarifies that it is a defence that the employer has obtained written confirmation from a competent person that the scaffold, or the relevant part or portion of the scaffold, is complete.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2074 After subregulation 4.28(2), including the penalty

This item inserts a new subregulation 4.28(1A) which provides that strict liability applies to the physical element in subregulation (2) that the scaffold is of a kind referred to in subregulation (1).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal

Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2075 Regulation 4.30

This item amends this regulation to make it subregulation (1) of a larger regulation. The amendment would facilitate the change described in item 2076.

Item 2076 Regulation 4.30

This item inserts a new subregulation 4.30(2) which provides that strict liability applies to the physical element in paragraph (1)(a) that the requirement relating to plant was implemented in accordance with this Part.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note, referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2077 Subregulation 4.37(3)

This item replaces subregulation 4.37(3) with new subregulations to clarify that the requirement to take all reasonably practicable steps to ensure that the operational controls are of the kind commonly known as stop and lock-off, and that the plant cannot be restarted after a stop control has been used until each stop control has been reset are elements of the offence.

Item 2078 Subregulation 4.40(1)

This item reconfigures subregulation 4.40(1) to ensure that the requirement that the employer is licensed to operate the plant, or that the employer has been exempted under paragraph 4.40A(4)(a), are a part of the offence to be proved by the prosecution.

This item also provides that strict liability applies to the physical element in subparagraph (1)(a)(ii) that the plant is specified in column 2 of an item in Part 2 of Schedule 6, and that strict liability also applies to the physical element in subparagraph (1)(b)(ii) that the employer is not exempted under paragraph 4.40A(4)(a).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2079 Subregulation 4.49(1)

This item reconfigures subregulation 4.49(1) to ensure that the requirement that the plant has a current design registration number issued by the Commission under this Division is a part of the offence to be proved by the prosecution.

This item also provides that strict liability applies to the physical element in paragraph (1)(a) that the plant is specified in column 2 of an item in Part 2 of Schedule 6.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 93(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Item 2080 Regulation 4.50

This item amends this regulation to make it subregulation (1) of a larger regulation. The amendment would facilitate the change described in item 2081.

Item 2081 Regulation 4.50

This item inserts a new subregulation 4.50(2) to provide that an offence against subregulation (1) is an offence of strict liability.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2082 Subregulation 4.54(1)

This item substitutes a new subregulation 4.54(1) to ensure that the requirement that the employer has notified the design of the plant, as altered, to the Commission, is a part of the offence to be proved by the prosecution.

Item 2083 Subregulation 5.02(1)

This item removes the phrase "as far as reasonably practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2084 Subregulation 5.02(2)

This item removes the phrase "as far as reasonably practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2085 After subregulation 5.02(2), including the penalty

This item inserts a new subregulation 5.02(3) which is consequential to items 2083 and 2084. The new subregulation clarifies that it is a defence to a prosecution against subregulation (1) or (2) that the employer complied with the subregulation as far as reasonably practicable.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2086 After subregulation 5.03(2), including the penalty

This item provides that strict liability applies to the physical element in paragraph (2)(s) that the consultations are required under the Act or these Regulations.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2087 Subregulation 5.04(1)

This item removes the phrase "as far as reasonably practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2088 After subregulation 5.04(1), including the penalty

This item inserts a new subregulation 5.04(1A) which is consequential to item 2088. The new subregulation clarifies that it is a defence to a prosecution for an offence against subregulation (1) that the employer complied with the subregulation as far as reasonably practicable.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2089 Subregulation 5.05(1)

This item removes the phrase "as far as practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2090 After subregulation 5.05(1), including the penalty

This item inserts a new subregulation 5.05(1A) which provides that 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).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

This item also inserts a new subregulation 5.04(1B) which is consequential to item 2089. The new subregulation clarifies that it is a defence to a prosecution for an offence against subregulation (1) that the employer complied with the subregulation as far as reasonably Practicable.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2091 Subregulation 5.05(2)

This item removes the phrase "as far as reasonably practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the' offence to be proved by the prosecution.

Item 2092 After subregulation 5.05(2), including the penalty

This item provides that 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).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

This item also inserts a new subregulation 5.05(4) which is consequential to item 2091. The new subregulation clarifies that it is a defence to a prosecution for an offence against subregulation (2) that the employer complied with the subregulation as far as reasonably practicable.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2093 After subregulation 6.04(1), including the penalty

This item provides that strict liability applies to the physical element in paragraph (1)(a) that the substance is included in the *List of Designated Hazardous Substances* [NOHSC: 10005 (1999)]. The item also provides that 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 (1999)].

This is to ensure that the prosecution is not required to demonstrate that the defendant possessed any fault in relation to that physical element (that is, that the defendant had knowledge of the particular instrument). If strict liability were not applied the prosecution would have to prove that the defendant possessed the relevant fault element and prosecutions would often fail.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2094 After subregulation 6.04(2), including the penalty

This item provides that an offence under subregulation (2) is an offence of strict liability.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2095 Regulation 6.07

This item amends this regulation to make it subregulation (1) of a larger regulation. The amendment would facilitate the change described in item 2096.

Item 2096 Regulation 6.07

This item inserts new subregulation 6.07(2) to provide that 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)].

This is to ensure that the prosecution is not required to demonstrate that the defendant possessed any fault in relation to that physical element (that is, that the defendant had knowledge of the particular instrument). If strict liability were not applied the prosecution would have to prove that the defendant possessed the relevant fault element and prosecutions would often fail.

The item will also insert new subregulation 6.07(to provide that 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.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after these provisions.

Item 2097 Subregulation 6.12(4)

This item removes the phrase "as far as reasonably practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2098 After subregulation 6.12(4), including the penalty

This item also inserts a new subregulation 6.12(4A) which is consequential to item 2097. The new subregulation clarifies that it is a defence to a prosecution for an offence against subregulation (4) that the employer complied with the subregulation as far as reasonably practicable.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2099 Paragraph 6.13(1)(b)

This item removes the phrase "as far as reasonably practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2100 After subregulation 6.13(1), including the penalty

This item inserts new subregulation 6.13(1A) to provide that strict liability applies to the physical element in paragraph 6.13(1)(a) that the container is labelled in accordance with regulation 6.07.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

This item also inserts a new subregulation 6.13(1B) which is consequential to item 2099. The new subregulation clarifies that it is a defence to a prosecution for an offence against subregulation (1) that the employer complied with the subregulation as far as reasonably practicable. A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2101 After subregulation 6.13(3), including the penalty

This item inserts a new subregulation 6.13(3A) to provide that strict liability applies to the physical element in subregulation 6.13(3) that the container is labelled correctly for the purposes of the Regulations.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2102 After subregulation 6.14(2), including the penalty

This item inserts a new subregulation 6.14(2A) to provide that strict liability applies to the physical element in paragraph 6.14(2)(b) that the copy of the MSDS is required under the Regulations.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2103 After subregulation 6.17A(1)

This item inserts a new subregulation 6.17A(1A) to provide that strict liability applies to the physical elements in subregulation 6.17A(1) that the carcinogenic substance is a scheduled carcinogenic substance, and that the circumstance in relation to that substance is the circumstance mentioned in the relevant item in column 3 of Schedule 1A.

Strict liability is applied in these circumstances because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2104 After subregulation 6.17A(3), including the penalty

This item inserts a new subregulation 6.17A(4) to provide that strict liability applies to the physical element in subregulation 6.17A(3) that the carcinogenic substance is a scheduled carcinogenic substance.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2105 After subregulation 6.19(2), including the penalty

This item inserts a new subregulation 6.19(2A) to provide that strict liability applies to the physical element in subregulation 6.19(2) that the risk assessment is carried out under regulation 6.17.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2106 After subregulation 6.20(1), including the penalty

This item inserts a new subregulation 6.20(1A) to provide that strict liability applies to the physical element in subregulation 6.20(1) that the risk assessment is carried out under regulation 6.17.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current, operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2107 After subregulation 6.20(2), including the penalty

This item inserts a new subregulation 6.20(2A) to provide that strict liability applies to the physical element in subregulation 6.20(2) that the regulation is referred to in subregulation 6.14(1).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2108 After subregulation 6.21(1), including the penalty

This item inserts a new subregulation 6.21(1A) to provide that strict liability applies to the physical element in paragraph 6.21(1)(a) that the hazardous substance is listed in Schedule 2.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal

Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2109 After subregulation 6.21(2), including the penalty

This item inserts a new subregulation 6.21(2A) to provide that strict liability applies to the physical element in paragraph 6.21(2)(b) that the relevant procedure is referred to in column 3 of the item in Schedule 2.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2110 Paragraph 6.21(6)(b)

This item amends this paragraph to remove the phrase "as far as practicable" from the previous offence. This is so that the phrase is recast as a defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2111 After subregulation 6.21(6), including the penalty

This item inserts a new subregulation 6.21(7) which is consequential to item 2110. The new subregulation clarifies that it is a defence to a prosecution for an offence against paragraph (6)(b) that the employer complied with the paragraph as far as reasonably practicable.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2112 After subregulation 6.22(4), including the penalty

This item inserts a new subregulation 6.22(5) to provide that an offence under subregulation 6.22(1), (2), (2A), (3) or (4) is an offence of strict liability.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2113 Regulation 6.23

This item amends this regulation to make it subregulation (1) of a larger regulation. The amendment would facilitate the change described in item 2114.

Item 2114 Regulation 6.23

This item inserts a new subregulation 6.23(2) to provide that strict liability applies to the physical element in subregulation 6.23(1) that the records are kept by the employer under this Part.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of

strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2115 After subregulation 7.06(1), including the penalty

This item inserts a new subregulation 7.06(1A) to provide that strict liability applies to the physical element in subregulation 7.06(1) that the risk assessment is undertaken under subregulation 7.05(2).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 93(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2116 After subregulation 7.06(2), including the penalty

This item inserts a new subregulation 7.06(2A) to provide that strict liability applies to the physical element in paragraph 7.06(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.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 93(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2117 Subregulations 7.07(1) and (2)

This item substitutes new subregulations 7.07(1) and (2). The wording clarifies the elements of the offence and updates the provisions in terms of drafting style.

Item 2118 After subregulation 7.07(3), including the penalty

This item inserts a new subregulation 7.07(3A) to provide that strict liability applies to the physical element in paragraph 7.07(3)(b) that the risk assessment is undertaken under subregulation 7.05(2).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 93(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2119 Paragraph 7.07(4)(a)

This item amends paragraph 7.07(4)(a). The wording updates the provision in terms of drafting style.

Item 2120 After subregulation 7.07(4), including the penalty

This item inserts new subregulation 7.07(4A) to provide that strict liability applies to the physical element in subregulation 7.07(4) that the risk assessment is undertaken under subregulation 7.05(2).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2121 After subregulation 7.07(5), including the penalty

This item inserts a new subregulation 7.07(6) to provide that strict liability applies to the physical element in subregulation 7.07(5) that the equipment is provided under this regulation.

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2122 Paragraph 7.08(1)(c)

This item amends the paragraph to remove the phrase "as far as practicable" from the previous offence. This is so that the phrase is recast as a stand-alone defence, which avoids any interpretation that the matter is an element of the offence to be proved by the prosecution.

Item 2123 After subregulation 7.08(1), including the penalty

This item inserts a new subregulation 7.08(1A) which is consequential to item 2122. The new subregulation clarifies that it is a defence to a prosecution against paragraph 7.08(1)(c) that the employer complied with the paragraph as far as reasonably practicable.

A note advising that a defendant bears an evidential burden follows the new subregulation.

Item 2124 After subregulation 7.08(2), including the penalty

This item inserts a new subregulation 7.08(2A) to provide that strict liability applies to the physical element in subregulation 7.08(2) that the risk assessment (if any) is undertaken under subregulation 7.05(2).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2125 Subregulation 7.10(1)

This item amends subregulation 7.10(1). The wording clarifies the elements of the offence.

Item 2126 After subregulation 7.10(1), including the penalty

This item inserts a new subregulation 7.10(1A) to provide that strict liability applies to the physical element in subregulation (1) that the risk assessment (if any) is undertaken under subregulation 7.05(2).

Strict liability is applied in this circumstance because a knowledge of law issue arises. The application of strict liability in this instance reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse. The application of strict liability maintains the current operation of this provision after Chapter 2 of the Criminal Code comes into effect. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 2127 Regulation 7.12, note

This item omits the note to Regulation 7.12, which is reproduced in item 2128.

Item 2128 After subregulation 7.12(5), including the penalty

This item inserts a new subregulation 7.12(6), which provides that an offence under subregulation 7.12(1), (2), (3), (4) or (5) is an offence of strict liability. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision. This item also reproduces the note which previously followed subregulation (5).

SCHEDULE 3 - AMENDMENTS OF *OCCUPATIONAL HEALTH AND SAFETY (MARITIME INDUSTRY) REGULATIONS 1995*

Authority: *Occupational Health and Safety (Maritime Industry) Act 1993*, Section 121.

Item 3001 Regulation 9

This item reformulates regulation 9 which provides that a person in command of a prescribed ship or prescribed unit commits an offence if he or she engages in conduct, or allows another person to engage in conduct that results in the alteration or disturbance of the site of an accident or of a dangerous occurrence on the ship or unit and at the time of the conduct an inspector had not inspect the site, nor given the prescribed permission. The provision provides for a penalty of 10 penalty units.

This reformulation is designed to avoid a reading of the offence such that the defences of reasonable excuse, the circumstances specified in subregulation 9(3) or the fact of whether an inspector has inspected the site or given permission in writing for the site to be altered or disturbed are interpreted as one of the (or part of the) physical elements of the offence which must be proved by the prosecution.

The item also inserts subregulation 9(2), 9(3) and 9(4).

Subregulation 9(2) provides that it is a defence to a charge against subregulation 9(1) if the person has a reasonable excuse.

Subregulation 9(3) provides a defence to subregulation 9(1) if, at the time of conduct the person in command had given a notice of the accident or dangerous occurrence and the circumstances outlined in one of the paragraphs (a) to (d) applies.

Subregulation 9(4) provides that without limiting subregulation 9(2) a person would have a reasonable excuse in a number of circumstances that are mentioned.

The relocation of these provisions in separate stand-alone subregulations makes it clear that they constitute defences to the offence- set out in subregulation 9(1).

The standard note is included after subregulations 9(2) and 9(3) concerning the imposition of an evidential burden on a defendant by subsection 13.3(3) of the *Criminal Code* if a defendant relies on the defences.

Item 3002 Paragraph 16(1)(b)

This item contains an amendment that is consequential to the removal of words by item 3004.

Item 3003 Subregulation 16(1)

This item amends subregulation 16(1). The wording clarifies the elements of the offence.

Item 3004 After subregulation 16(1)

This item inserts new subregulations 16(1A) and 16(1B). Subregulation 16(1A) identifies strict liability in relation to the provision of a written report to the Seafarers Safety, Rehabilitation and Compensation Authority within 30 days of the end of the financial year, as required by subregulation 16(1). The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

This item also inserts a new subregulation 16(1B) which provides that it is a defence to a charge against subregulation (1) if it is not reasonably practicable for the operator to report within 30 days after end of a financial year. The relocation of these provisions in a separate stand-alone subregulation makes it clear that they constitute defences to the offence set out in subregulation 16(1).

The standard note is included after subregulation 9(1A) concerning the imposition of an evidential burden on a defendant by subsection 13.3(3) of the *Criminal Code* if a defendant relies on the defences established by subregulation 9(1A).

SCHEDULE 4 AMENDMENTS OF *WORKPLACE RELATIONS REGULATIONS 1996*

Authority: *Workplace Relations Act 1996*, Section 359.

Item 4001 Subregulation 43(1), at the foot

This item amends subregulation 43(1) to insert a penalty. The effect of the amendment is to move the previous penalty from subregulation 43(2) to the foot of subregulation 43(1). This makes it clear that the substantive offence is contained in subregulation (1). The reference to a fine is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

Penalty units were introduced in 1992. They are a way of adjusting fines for inflation without having to amend every piece of legislation. Section 4AB of the *Crimes Act 1914* converts fines

expressed in dollar amounts to penalty units. This has the effect of increasing the maximum penalties, as in 1997 the value of a penalty unit was increased from \$100 to \$110.

Item 4002 Subregulation 43(2)

This item, which is related to the amendment in item 4001, substitutes new subregulations 43(2) and (3) for previous subregulation 43(2). Previous subregulation 43(2) becomes redundant due to the amendment in item 4001.

Subregulation 43(2) provides that the offence in subregulation (1) is an offence of strict liability. The application of strict liability to this subregulation is effectively an exercise in codification and will not change the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Subregulation 43(3) restates the defence of 'reasonable excuse' in relation to subregulation (1) as a stand-alone provision, to avoid the possibility of the defence being interpreted as an element of the offence. A standard note advising that a defendant bears an evidential burden follows the new subregulation.,

Item 4003 Subregulation 60A(6)

This item substitutes a new subregulation 60A(6). The subregulation restructures subregulation 60A(6) to clarify the elements of the offence.

Item 4004 Subregulation 64(8), at the foot

This item amends subregulation 64(8) to insert a penalty. The effect of the amendment is to move the previous penalty from subregulation 64(9) to the foot of subregulation 64(8). This makes it clear that the substantive offence is contained in subregulation (8). The reference to a fine is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

Item 4005 Subregulation 64(9)

This item, which is related to the amendment in item 4004, substitutes new subregulations 64(9) and (10) for previous subregulation 64(9). Previous subregulation 64(9) becomes redundant due to the amendment in item 4004.

Subregulation 64(9) provides that the offence in subregulation (8) is an offence of strict liability. The application of strict liability to this subregulation is effectively an exercise in codification and will not change the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Subregulation 64(10) restates the defence of 'reasonable excuse' in relation to subregulation (8) as a stand-alone provision, to avoid the possibility of the defence being interpreted as an element of the offence. A standard note advising that a defendant bears an evidential burden follows the new subregulation.

Item 4006 Subregulation 81(2B)

This item substitutes a new subregulation 81(2B). The new subregulation restructures subregulation 81(2B) to clarify the elements of the offence.

Item 4007 Subregulation 83(2)

This item substitutes new subregulations 83(2), (3) and (4) for previous subregulation 83(2).

New subregulation 83(2) restates the offence in previous subregulation 83(2). The defence of 'reasonable excuse' would move to subregulation 83(4) to avoid the possibility of the defence being interpreted as an element of the offence. The reference to a fine is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

Subregulation 83(3) provides that strict liability applies to the physical element 'failing to comply' as described in subregulation 83(2). The application of strict liability to this subregulation is effectively an exercise in codification and will not change the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Subregulation 83(4) restates the defence of 'reasonable excuse' in relation to subregulation (2) as a stand-alone provision, to avoid the possibility of the defence being interpreted as an element of the offence. A standard note advising that a defendant bears an evidential burden follows the new subregulation.

Item 4008 Subregulation 95(8)

This item substitutes new subregulations 95(8), (9) and (10) for previous subregulation 95(8).

New subregulation 95(8) restates the offence in previous subregulation 95(8). The defence of 'reasonable excuse' would move to subregulation 95(10) to avoid the possibility of the defence being interpreted as an element of the offence. The reference to a fine is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

Subregulation 95(9) provides that the offence in new subregulation 95(8) is an offence of strict liability. The application of strict liability to this subregulation is effectively an exercise in codification and will not change the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Subregulation 95(10) restates the defence of 'reasonable excuse' in relation to subregulation (8). A standard note advising that a defendant bears an evidential burden follows the new subregulation.

Item 4009 Subregulation 98B(2)

This item omits the fault element 'wilfully' from the offence in subregulation 98B(2). The term 'wilfully' has effectively the same meaning as 'intentionally'. Intention will be implied as a fault element by the *Criminal Code* and need not be expressly stated.

Item 4010 Subregulation 98D(3)

This item omits the fault element 'wilfully' from the offence in subregulation 98D(3). The term 'wilfully' has effectively the same meaning as 'intentionally'. Intention will be implied as a fault element by the *Criminal Code* and need not be expressly stated.

Item 4011 Subregulation 980(2B)

This item substitutes a new subregulation 980(2B). The subregulation would recast the previous offence in subregulation 980(2B) to clarify the elements of the offence.

Item 4012 Subregulation 98P(2)

This item substitutes new subregulations 98P(2), (3) and (4) for previous subregulation 98P(2).

New subregulation 98P(2) restates the offence in previous subregulation 98P(2). The defence of 'reasonable excuse' would move to subregulation 98P(4) to avoid the possibility of the defence being interpreted as an element of the offence. Subregulation 98P(3) provides that the offence in subregulation 98P(2) is an offence of strict liability. The application of strict liability to this subregulation is effectively an exercise in codification and will not change the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Subregulation 98P(4) restates the defence of 'reasonable excuse' in relation to subregulation (2). A standard note advising that a defendant bears an evidential burden follows the new subregulation.

Item 4013 Subregulation 98Y(10)

This item substitutes new subregulations 98Y(10), (11) and (12) for previous subregulation 98Y(10).

Subregulation 98Y(10) restates the offence in previous subregulation 98Y(10). The defence of 'reasonable excuse' would move to subregulation (12) to avoid the possibility of the defence being interpreted as an element of the offence.

Subregulation 98Y(11) provides that the offence in new subregulation (10) is an offence of strict liability. The application of strict liability to this subregulation is effectively an exercise in codification and will not change the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Subregulation 98Y(12) restates the defence of 'reasonable excuse' in relation to subregulation (10). A standard note advising that a defendant bears an evidential burden follows the new subregulation.

Item 4014 Subregulation 98ZE(2)

This item omits the fault element 'wilfully' from the offence in subregulation 98ZE(2). The term 'wilfully' has effectively the same meaning as 'intentionally'. Intention will be implied as a fault element by the *Criminal Code* and need not be expressly stated.

Item 4015 Subregulation 98ZG(3)

This item omits the fault element 'wilfully' from the offence in subregulation 98ZG(3). The term 'wilfully' has effectively the same meaning as 'intentionally'. Intention will be implied as a fault element by the *Criminal Code* and need not be expressly stated.

Item 4016 Regulation 118

This item substitutes a redrafted regulation 118.

Regulation 118 consists of 3 subregulations.

Subregulation 118(1) restates the previous offence in regulation 118 (unauthorised conduct of elections or ballots) to clarify the elements of the offence. The reference to a fine is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

Subregulation 118(2) provides that strict liability applies to the physical element set out in subregulation (1) that the election or secret postal ballot is conducted under the Act.

Although subsection 9.3(1) of the *Criminal Code* provides that mistake or ignorance of statute law is no excuse, subsection 9.3(2) provides that subsection 9.3(1) does not apply if the particular Act is expressly or impliedly to the contrary effect. Subregulation 9.4(1) and (2) operate in a similar manner in relation to subordinate legislation. Applying strict liability to the physical element that the election or secret postal ballot is conducted under the Act avoids any implication that subsection 9.3(1) or 9.4(1) of the *Criminal Code* do not apply. The effect is that the prosecution need not prove fault in relation to that physical element of the offence, only that it did occur.

The application of strict liability to subregulation 118(1) is effectively an exercise in codification and will not change the current operation of the offence. The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Subregulation 118(3) restates in a stand-alone provision the defence of acting within authority or direction. This avoids the possibility of these words being interpreted as part of the elements of the offence. A standard note advising that a defendant bears an evidential burden follows the new subregulation.

Item 4017 Regulation 128

This item substitutes a new regulation 128.

Regulation 128 consists of 2 subregulations.

Subregulation 128(1) restates the previous offence in regulation 128 (false statement in document) to clarify the elements of the offence. The reference to a fine is replaced with a reference to penalty units. One penalty unit is equivalent to \$110.

Subregulation 128(2) would apply strict liability to the physical element in subregulation (1) that the document was lodged under the Regulations. The application of strict liability to in this way reflects subsections 93(1) and 9.4(1) of the *Criminal Code* (and the common law position) that ignorance of the law is no excuse. The application of strict liability to this subregulation is effectively an exercise in codification and will not change the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Item 4018 After subregulation 131A(1)

This item inserts a new provision, subregulation 131A(1AA). It provides that strict liability applies to one aspect of the offence in 131A(1), which makes it an offence for certain employers not to make a record in accordance with Part 9A.

Subregulation 131A(1AA) provides that strict liability applies to the physical element set out in subregulation (1) that the record is in accordance with Part 9A. The application of strict liability in this way reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse, and maintains the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Item 4019 After subregulation 131A(2)

This item inserts a new provision, subregulation 131(A3). It provides that strict liability applies to one aspect of the offence in 131A(2), which makes it an offence for an employer not to keep certain records for a specified time period. Strict liability would apply to the physical element in paragraph 2(a) that the particular is of a kind mentioned in regulation 131D or paragraph 131H(f), provisions prescribing the contents of certain records.

The application of strict liability in this way reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse, and maintains the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Item 4020 Subregulation 131K(1)

This item substitutes a new subregulation 131K(1). The subregulation restructures subregulation 131K(1) to clarify the elements of the offence. The reference to a fine is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

Item 4021 Paragraph 131L(1)(b)

This item substitutes certain words in paragraph 131L(1)(b) to clarify the elements of the offence.

Item 4022 After subregulation 131M(1)

This item inserts subregulation 131M(1A) which provides that strict liability applies to the physical element that the employer is an employer to whom subregulation 131L(1) applies. The application of strict liability in this way reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse, and maintains the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 4023 After subregulation 131N(2)

This item inserts subregulation 131N(2AA) which provides that strict liability applies to the physical element that records are required to be kept under regulation 131A.

The application of strict liability in this way reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse, and maintains the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 4024 Subregulation 131U(1)

This item substitutes a new subregulation 131U(1), the effect of which is to restructure the subregulation to clarify the elements of the offence.

Item 4025 After subregulation 131U(2)

This item inserts subregulation 131U(3) which provides that strict liability applies to the physical element that a record is kept under Part 9A. The application of strict

liability in this way reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse, and maintains the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 4026 After subregulation 132A(2)

This item inserts subregulation 132A(3) which provides that strict liability applies to the physical element that the particulars are specified in regulation 132B. The application of strict liability in this way reflects subsections 9.3(1) and 9.4(1) of the Criminal Code (and the common law position) that ignorance of the law is no excuse, and maintains the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is also added after this provision.

Item 4027 Subregulation 132E(1)

This item substitutes a new subregulation 132E(1). The effect of this amendment is to restate the previous offence in subregulation 132E(1) to clarify the elements of the offence.

Item 4028 Subregulation 135(2)

This item substitutes new subregulations 135(2), (2A) and (2B) for previous subregulation 135(2).

Subregulation 135(2) restates the previous offence in regulation 135(2) (refusing or failing to comply with a summons) to clarify the elements of the offence. The reference to a fine is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

Subregulation 135(2A) provides that strict liability applies to the physical element 'failing to comply' described in new subregulation 135(2B). The application of strict liability to this subregulation is effectively an exercise in codification and will not change the current operation of the offence.

The standard note referring to section 6.1 of the *Criminal Code*, which governs strict liability, is added after this provision.

Subregulation 135(2B) restates the defence of 'reasonable excuse' in relation to new subregulation (2). A standard note advising that a defendant bears an evidential burden follows the new subregulation.