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

Statutory Rules 2001 No. /²

326

I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*, the *Occupational Health and Safety (Maritime Industry) Act 1993* and the *Workplace Relations Act 1996*.

Dated - 6 DEC 2001 2001

PETER HOLLINGWORTH
Governor-General

By His Excellency's Command

TONY ABBOTT
Minister for Employment and Workplace Relations

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1 Name of Regulations

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

2 Commencement

These Regulations commence on 15 December 2001.

2	<i>Employment and Workplace Relations Legislation Amendment (Application of Criminal Code) Regulations 2001 (No. 1)</i>	2001, 1	326 1
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- 3 Amendment of Occupational Health and Safety (Commonwealth Employment) Regulations 1991**
 Schedule 1 amends the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*.
- 4 Amendment of Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994**
 Schedule 2 amends the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994*.
- 5 Amendment of Occupational Health and Safety (Maritime Industry) Regulations 1995**
 Schedule 3 amends the *Occupational Health and Safety (Maritime Industry) Regulations 1995*.
- 6 Amendment of Workplace Relations Regulations 1996**
 Schedule 4 amends the *Workplace Relations Regulations 1996*.

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**Schedule 1 Amendments of *Occupational
Health and Safety
(Commonwealth Employment)
Regulations 1991***
(regulation 3)

[1001] Subregulation 22A (3)

substitute

- (3) A person must comply with a direction given to him or her under subregulation (1).

Penalty: 5 penalty units.

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

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

- (5) It is a defence to a prosecution for an offence against subregulation (3) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the question whether he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

[1002] Subregulation 31 (2), penalty

substitute

Penalty: 10 penalty units.

[1003] After subregulation 31 (2), including the penalty

insert

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

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

[1004] Subregulation 32 (5), penalty

substitute

Penalty: 10 penalty units.

[1005] After subregulation 32 (5), including the penalty

insert

- (6) An offence against subregulation (5) is an offence of strict liability.

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

[1006] Regulation 35

substitute

35 Alteration or disturbance of site of accident or dangerous occurrence

- (1) An employer commits an offence if:
- (a) the employer 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 dangerous occurrence arising out of an undertaking by the employer; and
 - (b) at the time of the conduct:
 - (i) an investigation of the accident or dangerous occurrence had not been completed; and

- (ii) the investigator had not given permission for the alteration or disturbance of the site.

Penalty: 10 penalty units.

- (2) It is a defence to a prosecution for an offence against subregulation (1) if the employer had a reasonable excuse.

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

- (3) It is a defence to a prosecution for an offence against subregulation (1) if, at the time of the conduct, the employer had given a notice of the accident or dangerous occurrence to Comcare in accordance with section 68 of the Act and:
 - (a) Comcare had given notice that investigation of the accident or dangerous occurrence was not required; or
 - (b) an investigator had not entered the workplace where the site of the accident or dangerous occurrence is located in response to the notice within 1 working day of the employer giving notice to Comcare.

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

- (4) Without limiting subregulation (2), an employer has a **reasonable excuse** if the employer engages in, or allows another person to engage in, the conduct that results in the alteration or disturbance of the site of an accident or dangerous occurrence in the course of:
 - (a) the rescue, or attempted rescue, of an injured person; or
 - (b) the retrieval, or attempted retrieval, of the body of a deceased person; or
 - (c) the protection, or attempted protection, of the health or safety of a person; or

-
- (d) the prevention, or attempted prevention, of
damage being done to a substance or thing;
if the alteration or disturbance is unavoidable.

[1007] Subregulation 37A (1), penalty

omit

[1008] Subregulation 37A (2)

substitute

- (2) An employer must give a notice required by subsection 68 (1) of the Act within the time required by subregulation (1).

Penalty: 10 penalty units.

- (3) Strict liability applies in subregulation (2) to the physical element that a notice is required by subsection 68 (1).

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

- (4) It is a defence to a prosecution for an offence against subregulation (2) that it was not reasonably practicable for the defendant to give the notice within the time required.

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

[1009] Subregulation 37D (1), penalty

omit

[1010] Subregulation 37D (3)

substitute

- (3) An employer must give a report required by subsection 68 (1) of the Act within the time required by this regulation.

Penalty: 10 penalty units.

- (4) Strict liability applies in subregulation (3) to the physical element that a report is required by subsection 68 (1).

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

- (5) It is a defence to a prosecution for an offence against subregulation (3) that it was not reasonably practicable for the defendant to give the report within the time required.

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

**Schedule 2 Amendments of Occupational
Health and Safety
(Commonwealth Employment)
(National Standards)
Regulations 1994**

(regulation 4)

[2001] Part 2, Division 2, before regulation 2.06

insert

2.05A Qualified employees and qualified contractors

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

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

[2002] Regulations 2.06 and 2.07

substitute

2.06 Performing the work of a regulation 2.03 occupation

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

Penalty: 10 penalty units.

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

Penalty: 10 penalty units.

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

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

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

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

Penalty: 10 penalty units.

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

Penalty: 10 penalty units.

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

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

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

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

[2003] Paragraph 2.07B (2) (c)

omit

, as far as practicable,

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

insert

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

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

[2005] Paragraph 2.07B (4) (c)

omit

, as far as practicable,

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

insert

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

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

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

insert

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

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

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

insert

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

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

[2009] After subregulation 2.08 (2), including the penalty

insert

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

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

[2010] After subregulation 2.12 (2)

insert

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

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

[2011] Subregulation 3.08 (1)

omit

, as far as reasonably practicable,

[2012] After subregulation 3.08 (1), including the penalty

insert

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

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

[2013] Subregulation 3.08 (2)

omit

, as far as reasonably practicable,

[2014] After subregulation 3.08 (2), including the penalty

insert

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

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

[2015] Subregulation 3.08 (3), Step 1 and Step 2

omit

, as far as reasonably practicable,

[2016] After subregulation 3.08 (3), including the penalty

insert

- (3A) It is a defence to a prosecution for an offence against subregulation (3) if the employer:

- (a) implemented engineering noise controls in accordance with **STEP 1**; and

-
- (b) implemented administrative noise controls in accordance with **STEP 2**;
as far as reasonably practicable.

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

[2017] After subregulation 3.08 (4), including the penalty

insert

- (4A) 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*).

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

- (4B) Strict liability applies to the physical element in paragraph (4) (b) that the appropriate personal hearing protector is in accordance with the requirements of Australian Standard AS 1269 (*Acoustics — Hearing Conservation*).

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

[2018] Subregulation 3.09 (1)

omit

must, as far as reasonably practicable:

insert

must:

[2019] After subregulation 3.09 (1), including the penalty

insert

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

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

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

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

[2020] Subregulation 3.10 (1)

omit

must, as far as reasonably practicable:

insert

must:

[2021] After subregulation 3.10 (1), including the penalty

insert

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

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

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

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

[2022] After subregulation 4.04 (1), including the penalty

insert

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

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

[2023] After subregulation 4.04 (2), including the penalty

insert

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

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

[2024] After subregulation 4.05 (1), including the penalty

insert

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

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

[2025] After subregulation 4.05 (2), including the penalty

insert

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

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

[2026] Paragraph 4.05 (4) (b)

omit

for the purpose of rectifying

insert

on how to rectify

[2027] After subregulation 4.07 (1), including the penalty

insert

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

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

[2028] Subregulation 4.07 (2)

omit

as far as reasonably practicable

[2029] After subregulation 4.07 (2), including the penalty

insert

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

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

[2030] Regulation 4.08

omit

A supplier of used plant

insert

- (1) A supplier of used plant

[2031] Regulation 4.08

after the notes, insert

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

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

[2032] After subregulation 4.09 (1), including the penalty

insert

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

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

[2033] After subregulation 4.09 (2), including the penalty

insert

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

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

[2034] After subregulation 4.10 (1), including the penalty

insert

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

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

[2035] After subregulation 4.11 (1), including the penalty

insert

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

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

[2036] After subregulation 4.11 (2), including the penalty

insert

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

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

[2037] After subregulation 4.11 (3), including the penalty

insert

- (3A) Strict liability applies to the physical element in subregulation (3) that the risks associated with the

hazard are assessed in accordance with Division 7 and subregulation (4).

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

[2038] After subregulation 4.12 (1), including the penalty

insert

(1A) Strict liability applies to the physical element in subregulation (1) that:

- (a) the risk assessment is conducted for the purposes of subregulation 4.11 (3) or (7); and
- (b) the risk is minimised in accordance with Division 7 and subregulation (2).

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

[2039] After subregulation 4.14 (1), including the penalty

insert

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

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

[2040] After subregulation 4.15 (1), including the penalty

insert

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

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

[2041] Paragraph 4.15 (2) (a)*substitute*

- (a) if the plant is operated by an employee at work, or a contractor of the employer — the employee or contractor:
 - (i) receives necessary information and training in the operation of the plant; and
 - (ii) is supervised to the extent necessary to minimise the risk to health and safety; and

[2042] Paragraph 4.15 (2) (c)*substitute*

- (c) the plant is used solely for the purpose for which it was designed; and

[2043] After subregulation 4.15 (2), including the penalty*insert*

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

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

[2044] Subregulation 4.15 (4)*substitute*

- (4) The employer must ensure that plant at work is not available for use if:
 - (a) the function or condition of the plant is impaired or damaged; and

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

Penalty: 10 penalty units.

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

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

[2045] After subregulation 4.19 (1), including the penalty

insert

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

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

[2046] After subregulation 4.19 (3), including the penalty

insert

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

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

[2047] Subregulation 4.19 (4)

omit

employer, unless the plant is being sold for scrap or as spare parts for other plant.

insert

employer.

[2048] After subregulation 4.19 (4), including the note

insert

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

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

[2049] After subregulation 4.20 (1), including the penalty

insert

- (1A) Strict liability applies to the physical elements in subregulation (1) that:
- (a) the pressure equipment is the equipment referred to in AS 1200 (*SAA Boiler Code*); and
 - (b) the inspection is in accordance with AS 3788 (*Boiler and Pressure Vessels — In-Service Inspection*).

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

[2050] After subregulation 4.20 (2), including the penalty

insert

- (2A) Strict liability applies to the physical element in subregulation (2) that the inspection is in accordance with AS 2030 (*SAA Gas Cylinders Code*).

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

[2051] After subregulation 4.20 (3), including the penalty

insert

- (3A) 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*).

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

[2052] After subregulation 4.20 (4), including the penalty

insert

- (4A) Strict liability applies to the physical elements in subregulation (4) that the cylinder:
- (a) bears a current inspection mark in accordance with AS 2030 (*SAA Gas Cylinders Code*); and
 - (b) is filled in accordance with AS 2030 (*SAA Gas Cylinders Code*).

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

[2053] Regulation 4.21

substitute

4.21 Plant with moving parts

- (1) If a risk assessment identifies a risk to health and safety arising from the moving parts of plant used at

work, the employer must take all reasonably practicable steps to ensure that:

- (a) the plant is not cleaned, maintained or repaired while the plant is operating; and
- (b) if the guarding of a moving part does not completely eliminate the risk of entanglement, a person does not operate, or pass in close proximity to, the plant.

Penalty: 10 penalty units.

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

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

[2054] Subregulation 4.22 (4)

omit

commences, unless the tractor:

insert

commences.

[2055] Paragraphs 4.22 (4) (a) and (b)

omit

[2056] After subregulation 4.22 (4), including the penalty

insert

- (4A) It is a defence to a prosecution for an offence against subregulation (4) if the tractor:
- (a) was manufactured, or imported into Australia, before 1 January 1981, and was not operated by an employee; or
 - (b) was installed in a fixed position, and in a manner, that no longer allowed it to be used as powered mobile plant.

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

- (4B) 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.

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

[2057] After subregulation 4.22 (6), including the penalty

insert

- (6A) Strict liability applies to the physical element in subregulation (6) that the machinery is of a kind referred to in AS 2294 (*Protective Structures for Earthmoving Machines*).

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

[2058] After subregulation 4.22 (7), including the penalty*insert*

- (7A) Strict liability applies to the following physical elements:
- (a) 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*);
 - (b) in subparagraph (7) (b) (i) — that the protective structure is designed in accordance with the performance requirements of AS 2294 (*Protective Structures for Earthmoving Machines*);
 - (c) in subparagraph (7) (b) (iii) — that the information is required by AS 2294 (*Protective Structures for Earthmoving Machines*).

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

[2059] Regulation 4.24*omit*

An employer must

insert

- (1) An employer must

[2060] Paragraph 4.24 (f)*omit*

on the day on which this Regulation commences.

insert

on 31 March 1995.

[2061] Regulation 4.24

after the penalty, insert

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

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

[2062] Regulation 4.25

omit

An employer must

insert

- (1) An employer must

[2063] Paragraph 4.25 (b)

substitute

- (b) for plant that is not specifically designed for the lifting or suspending of individuals — individuals are not lifted or suspended by the plant, or an attachment to the plant; and

[2064] Paragraph 4.25 (f)

substitute

- (f) for plant other than a crane or hoist — the plant is not used to suspend a load; and

[2065] Paragraph 4.25 (i)

substitute

- (i) for an industrial life truck or tractor — no individual other than the operator is permitted to ride on the truck or tractor.

[2066] Regulation 4.25

after the penalty, insert

- (2) It is a defence to a prosecution for an offence against paragraph (1) (b) if:
 - (a) the use of another method was not practicable; and
 - (b) a suitable and adequate personnel box or carrier, designed for the purpose, was used and securely attached to the plant; and
 - (c) the plant was fitted with a means by which the personnel box or carrier may be safely lowered in the event of an emergency or the failure of the power supply; and
 - (d) the plant was suitably stabilised at all times while the personnel box or carrier is in use; and
 - (e) a suitable safety harness, securely attached to a suitable point, was provided to and worn by all individuals who are in a suspended personnel box or carrier, unless the personnel box or carrier is fully enclosed.
- (3) It is a defence to a prosecution for an offence against paragraph (1) (f) if:
 - (a) the use of a crane or hoist was not practicable; and
 - (b) the load was only travelled with the lifting arm of the plant fully retracted; and
 - (c) stabilisers were provided and used where necessary to achieve stability of the plant; and
 - (d) relevant persons were not permitted to be under the load; and
 - (e) a welded lug was used as the lifting point; and
 - (f) if a bucket operated by a trip-type catch was used — the catch was bolted or otherwise positively engaged; and

-
- (g) an appropriate load chart was provided and all lifting was carried out within the safe working load limits of the plant; and
 - (h) safe working load limits were displayed clearly on the plant; and
 - (i) a load was lifted using attachments suitable to the task to be performed.
- (4) It is a defence to a prosecution against paragraph (1) (i) if:
- (a) the individual was seated in a seat specifically designed for carrying a passenger; and
 - (b) the seat was fitted with suitable seat restraints; and
 - (c) the seat was located within the area protected by the required operator protective devices.

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

[2067] Subregulation 4.26 (1)

omit

equipment unless suitable controls and systems of work are in place for the control of risk in relation to the robot or equipment.

insert

equipment.

[2068] After subregulation 4.26 (1), including the penalty

insert

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

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

[2069] Regulation 4.27

omit

An employer must

insert

(1) An employer must

[2070] Paragraph 4.27 (a)

omit

unless it has been classified

insert

if it has not been classified

[2071] Regulation 4.27

after the note, insert

- (2) Strict liability applies to the following physical elements:
- (a) in paragraph 4.27 (1) (a) — that the laser or laser product has been classified and labelled in accordance with AS 2211 (*Laser Safety*);
 - (b) in paragraph 4.27 (1) (b) — that the laser or laser product is for the purposes of AS 2211 (*Laser Safety*);
 - (c) 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*).

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

[2072] Subregulation 4.28 (1)

omit

; until the employer has obtained written confirmation from a competent person that the scaffold, or the relevant part or portion of the scaffold, is complete

[2073] After subregulation 4.28 (1), including the penalty

insert

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

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

[2074] After subregulation 4.28 (2), including the penalty

insert

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

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

[2075] Regulation 4.30

omit

An employee at work

insert

- (1) An employee at work

[2076] Regulation 4.30

after the penalty, insert

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

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

[2077] Subregulation 4.37 (3)

substitute

- (3) Subregulation (4) applies if:
- (a) plant used at work is designed to be operated or attended by 2 or more persons; and
 - (b) the plant is fitted with 2 or more operational controls for this purpose.
- (4) A person who is required to control a risk relating to plant mentioned in subregulation (3) must take all reasonably practicable steps to ensure that:
- (a) the operational controls are of the kind commonly known as *stop and lock-off*; and
 - (b) the plant cannot be restarted after a stop control has been used until each stop control has been reset.

Penalty: 10 penalty units.

[2078] Subregulation 4.40 (1)

substitute

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

- (b) the employer is not:
 - (i) licensed to operate the plant; or
 - (ii) exempted under paragraph 4.40A (4) (a).

Penalty: 10 penalty units.

- (1A) Strict liability applies in subregulation (1) to the following physical elements:
 - (a) in subparagraph (1) (a) (ii) — that the plant is specified in column 2 of an item in Part 2 of Schedule 6;
 - (b) in subparagraph (1) (b) (ii) — that the employer is not exempted under paragraph 4.40A (4) (a).

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

[2079] Subregulation 4.49 (1)

substitute

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

Penalty: 10 penalty units.

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

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

[2080] Regulation 4.50

omit

If an employer

insert

- (1) If an employer

[2081] Regulation 4.50

after the penalty, insert

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

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

[2082] Subregulation 4.54 (1)

substitute

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

Penalty: 10 penalty units.

[2083] Subregulation 5.02 (1)

omit

, as far as reasonably practicable,

[2084] Subregulation 5.02 (2)

omit

, as far as reasonably practicable,

[2085] After subregulation 5.02 (2), including the penalty

insert

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

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

[2086] After subregulation 5.03 (2), including the penalty

insert

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

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

[2087] Subregulation 5.04 (1)

omit

, as far as reasonably practicable,

[2088] After subregulation 5.04 (1), including the penalty

insert

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

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

[2089] Subregulation 5.05 (1)

omit

, as far as reasonably practicable,

[2090] After subregulation 5.05 (1), including the penalty

insert

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

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

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

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

[2091] Subregulation 5.05 (2)

omit

, as far as reasonably practicable,

[2092] After subregulation 5.05 (2), including the penalty

insert

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

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

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

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

[2093] After subregulation 6.04 (1), including the penalty

insert

- (1A) 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)].
- (1B) Strict liability applies to the physical element in paragraph (1) (b) that the substance is a hazardous substance in accordance with the Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (1999)].

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

[2094] After subregulation 6.04 (2), including the penalty

insert

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

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

[2095] Regulation 6.07

omit

A supplier of hazardous substance

insert

- (1) A supplier of hazardous substance

[2096] Regulation 6.07

after the note, insert

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

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

[2097] Subregulation 6.12 (4)

omit

, as far as reasonably practicable,

[2098] After subregulation 6.12 (4), including the penalty

insert

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

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

[2099] Paragraph 6.13 (1) (b)

omit

, as far as reasonably practicable,

[2100] After subregulation 6.13 (1), including the penalty

insert

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

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

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

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

[2101] After subregulation 6.13 (3), including the penalty

insert

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

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

[2102] After subregulation 6.14 (2), including the penalty

insert

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

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

[2103] After subregulation 6.17A (1)

insert

- (1A) Strict liability applies to the following physical elements in subregulation (1):
- (a) that the carcinogenic substance is a scheduled carcinogenic substance;
 - (b) that the circumstance in relation to that substance is the circumstance mentioned in the relevant item in column 3 of Schedule 1A.

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

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

insert

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

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

[2105] After subregulation 6.19 (2), including the penalty

insert

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

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

[2106] After subregulation 6.20 (1), including the penalty

insert

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

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

[2107] After subregulation 6.20 (2), including the penalty

insert

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

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

[2108] After subregulation 6.21 (1), including the penalty

insert

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

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

[2109] After subregulation 6.21 (2), including the penalty

insert

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

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

[2110] Paragraph 6.21 (6) (b)

omit

as far as reasonably practicable,

[2111] After subregulation 6.21 (6), including the penalty

insert

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

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

[2112] After subregulation 6.22 (4), including the penalty

insert

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

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

[2113] Regulation 6.23

omit

An employer must ensure

insert

- (1) An employer must ensure

[2114] Regulation 6.23

after the penalty, insert

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

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

[2115] After subregulation 7.06 (1), including the penalty

insert

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

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

[2116] After subregulation 7.06 (2), including the penalty

insert

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

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

[2117] Subregulations 7.07 (1) and (2)

substitute

- (1) An employer must ensure that a person does not enter a confined space if:
- (a) the confined space is under the control of the employer; and
 - (b) it is not reasonably practicable to provide a safe oxygen level in the confined space; and
 - (c) the person is not equipped with suitable personal protective equipment, including, if necessary air-supplied respiratory equipment.

Penalty: 10 penalty units.

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

Penalty: 10 penalty units.

[2118] After subregulation 7.07 (3), including the penalty*insert*

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

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

[2119] Paragraph 7.07 (4) (a)*omit*

unless at least 1 stand-by person is present

insert

without at least 1 stand-by person being present

[2120] After subregulation 7.07 (4), including the penalty*insert*

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

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

[2121] After subregulation 7.07 (5), including the penalty*insert*

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

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

[2122] Paragraph 7.08 (1) (c)*omit*

, if reasonably practicable,

[2123] After subregulation 7.08 (1), including the penalty

insert

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

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

[2124] After subregulation 7.08 (2), including the penalty

insert

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

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

[2125] Subregulation 7.10 (1)

omit

unless at least 1 stand-by person is present

insert

without at least 1 stand-by person being present

[2126] After subregulation 7.10 (1), including the penalty

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

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

[2127] Regulation 7.12, note

omit

[2128] After subregulation 7.12 (5), including the penalty*insert*

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

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

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

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

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

Schedule 3 **Amendments of *Occupational Health and Safety (Maritime Industry) Regulations 1995***
(regulation 5)

[3001] Regulation 9

substitute

9 **Alteration or disturbance of site of accident or dangerous occurrence**

- (1) A person in command of a prescribed ship or prescribed unit commits an offence if:
- (a) the person in command 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 a dangerous occurrence on the ship or unit; and
 - (b) at the time of the conduct:
 - (i) an inspector had not inspected the site; and
 - (ii) the inspector had not given permission in writing for the alteration or disturbance of the site.

Penalty: 10 penalty units.

- (2) It is a defence to a prosecution for an offence against subregulation (1) if the person in command had a reasonable excuse.

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

- (3) It is a defence to a prosecution for an offence against subregulation (1) if, at the time of the conduct, the

person in command had given a notice of the accident or dangerous occurrence, and:

- (a) the Inspectorate had notified the person in command in writing that an inspection of the site of the accident or dangerous occurrence by an inspector was not required; or
- (b) the ship or unit was in an Australian port when notice was given of the accident or dangerous occurrence and an inspector did not visit the site within 24 hours of notice being given;
- (c) the ship or unit was at sea and proceeding to an Australian port when notice was given of the accident or dangerous occurrence, and an inspector did not visit the site within 24 hours of the arrival of the ship or unit at the port; or
- (d) the ship or unit was at sea and not proceeding to an Australian port when notice of the accident or dangerous occurrence was given.

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

- (4) Without limiting subregulation (2), a person in command had a ***reasonable excuse*** if either:
 - (a) the alteration or disturbance was unavoidable; or
 - (b) the person engaged in, or allowed another person to engage in, the conduct that resulted in the alteration or disturbance of the site of an accident or dangerous occurrence as a result of:
 - (i) the rescue, or attempted rescue, of an injured person; or
 - (ii) the retrieval, or attempted retrieval, of the body of a deceased person; or
 - (iii) the protection, or attempted protection, of the health or safety of a person; or
 - (iv) the prevention, or attempted prevention, of damage being done to a substance or thing; or

- (v) the restoration, or attempted restoration, of a workplace to safe working conditions; or
- (vi) the performance, or attempted performance, of a task necessary for the proper operation of the ship or unit.

[3002] Paragraph 16 (1) (b)

omit

year;

insert

year.

[3003] Subregulation 16 (1)

omit

unless it is not reasonably practicable for the operator to report within that period.

[3004] After subregulation 16 (1), including the penalty

insert

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

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

- (1B) It is a defence to a prosecution for an offence against subregulation (1) if it is not reasonably practicable for the operator to report within the period required by subregulation (1).

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

**Schedule 4 Amendments of *Workplace
Relations Regulations 1996***
(regulation 6)

[4001] Subregulation 43 (1), at the foot

insert

Penalty: 10 penalty units.

[4002] Subregulation 43 (2)

substitute

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

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

- (3) It is a defence to a prosecution for an offence against subregulation (1) if the defendant had a reasonable excuse.

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

[4003] Subregulation 60A (6)

substitute

- (6) If a copy of a roll, or part of a roll, has been provided under this regulation, a person must not use the information obtained for a purpose that is not:
- (a) a purpose in connection with the election; or
 - (b) to monitor the accuracy of the information contained in the roll.

Penalty: 10 penalty units.

[4004] Subregulation 64 (8), at the foot

insert

Penalty: 10 penalty units.

[4005] Subregulation 64 (9)

substitute

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

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

- (10) It is a defence to a prosecution for an offence against subregulation (8) if the defendant had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (10) (see section 13.3 of the *Criminal Code*).

[4006] Subregulation 81 (2B)

substitute

- (2B) If a copy of a roll, or part of a roll, has been provided under this regulation, a person must not use the information for a purpose that is not:
- (a) a purpose in connection with the election; or
 - (b) to monitor the accuracy of the information contained in the roll.

Penalty: 10 penalty units.

[4007] Subregulation 83 (2)

substitute

- (2) A person must not refuse or fail to comply with a direction lawfully given to him or her under subregulation (1).

Penalty:

- (a) for an individual — 5 penalty units; and
- (b) for a body corporate — 10 penalty units.

- (3) Strict liability applies to the physical element of failing to comply in subregulation (2).

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

- (4) It is a defence to a prosecution for an offence against subregulation (2) if the person had a reasonable excuse.

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

[4008] Subregulation 95 (8)

substitute

- (8) A person must comply with a direction given to him or her under subregulation (7).

Penalty: 5 penalty units.

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

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

- (10) It is a defence to a prosecution for an offence against subregulation (8) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (10) (see section 13.3 of the *Criminal Code*).

[4009] Subregulation 98B (2)

omit

wilfully

[4010] Subregulation 98D (3)

omit

wilfully

[4011] Subregulation 98O (2B)

substitute

(2B) If a copy of a roll or part of a roll, has been provided under this regulation, a person must not use the information obtained for a purpose that is not:

- (a) a purpose in connection with the election; or
- (b) to monitor the accuracy of the information contained in the roll.

Penalty: 10 penalty units.

[4012] Subregulation 98P (2)

substitute

(2) A person must not contravene a direction lawfully given to him or her under subregulation (1).

Penalty:

- (a) for an individual — 5 penalty units; and
- (b) for a body corporate — 10 penalty units.

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

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

(4) It is a defence to a prosecution for an offence against subregulation (2) if the person had a reasonable excuse.

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

[4013] Subregulation 98Y (10)*substitute*

- (10) A person must not contravene a direction given to him or her under subregulation (9).

Penalty: 5 penalty units.

- (11) An offence against subregulation (10) is an offence of strict liability.

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

- (12) It is a defence to a prosecution for an offence against subregulation (10) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (12) (see section 13.3 of the *Criminal Code*).

[4014] Subregulation 98ZE (2)*omit*

wilfully

[4015] Subregulation 98ZG (3)*omit*

wilfully

[4016] Regulation 118*substitute***118 Elections or ballots conducted by the Australian Electoral Commission — no unauthorised action**

- (1) If:
- (a) an election for an office in an organisation or branch of an organisation is conducted by the Australian Electoral Commission under the Act; or
 - (b) a secret postal ballot of the members of an organisation is conducted by the Australian Electoral Commission under the Act;
- a person other than the person conducting that election or ballot, as the case may be, must not do, or purport to do, any act in the conduct of the election or ballot as the case may be.

Penalty: 2 penalty units.

- (2) Strict liability applies to the physical element in subregulation (1) that the election or ballot is conducted under the Act.

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

- (3) It is a defence to a prosecution for an offence against subregulation (1) if the person was authorised or directed by the person conducting the election or ballot to do the act in the conduct of the election or ballot.

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

[4017] Regulation 128*substitute***128 False statement in document**

- (1) A person must not make a false statement in a document lodged in the Industrial Registry under these Regulations.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element in subregulation (1) that the document was lodged under these Regulations.

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

[4018] After subregulation 131A (1), including the penalty*insert*

- (1AA) Strict liability applies to the physical element in subregulation (1) that the record is in accordance with this Part.

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

[4019] After subregulation 131A (2), including the penalty*insert*

- (3) Strict liability applies to the physical element in paragraph (2) (a) that the particular is of a kind mentioned in regulation 131D or paragraph 131H (f).

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

[4020] Subregulation 131K (1)

substitute

- (1) Subject to subregulation (2) or (3), an employer must not alter a record, or allow a record to be altered.

Penalty: 10 penalty units.

[4021] Paragraph 131L (1) (b)

omit

(except in relation to an employee employed under an AWA);

insert

in relation to an employee that is not employed under an AWA;

[4022] After subregulation 131M (1), including the penalty

insert

- (1A) Strict liability applies to the physical element in subregulation (1) that the employer is an employer to whom subregulation 131L (1) applies.

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

[4023] After subregulation 131N (2), including the penalty

insert

- (2AA) Strict liability applies to the physical element in subregulation (2) that the records are required to be kept under regulation 131A.

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

[4024] Subregulation 131U (1)*substitute*

- (1) A person commits an offence if:
 - (a) the person makes, or makes use of, an entry in any record required to be kept under this Part; and
 - (b) the person does so knowing that the entry is false or misleading.

Penalty: 10 penalty units.

[4025] After subregulation 131U (2), including the penalty*insert*

- (3) Strict liability applies to the physical element in subregulations (1) and (2) that the record is required to be kept under this Part.

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

[4026] After subregulation 132A (2), including the penalty*insert*

- (3) Strict liability applies to the physical element in subregulation (2) that the particulars are specified in regulation 132B.

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

[4027] Subregulation 132E (1)

substitute

- (1) An employer who employs, as an employee in Victoria, a person who is not employed under an award, a certified agreement, an AWA or an old IR agreement must give to the employee a written payslip in accordance with subregulation (2) at the time of giving the employee his or her pay.

Penalty: 10 penalty units.

[4028] Subregulation 135 (2)

substitute

- (2) A person must not refuse or fail to comply with a summons served on him or her for the purposes of paragraph (1) (a).

Penalty: 5 penalty units.

- (2A) Strict liability applies in subregulation (2) to the physical element of failing to comply.

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

- (2B) It is a defence to a prosecution for an offence against subregulation (2) if the person had a reasonable excuse.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (2B) (see section 6.1 of the *Criminal Code*).

Notes

1. These Regulations amend (in Schedule 1) Statutory Rules 1991 No. 266, as amended by 1992 No. 244; 1993 Nos. 5 and 112; 1994 No. 22; 1998 Nos. 115 and 355; 2001 Nos. 54, 90 and 270.

These Regulations also amend (in Schedule 2) Statutory Rules 1994 No. 414, as amended by 1995 Nos. 53, 98 and 337; 1996 Nos. 129 and 288; 1997 No. 227; 1999 Nos. 66, 86 and 189; 2000 No. 289.

These Regulations also amend (in Schedule 3) Statutory Rules 1995 No. 17, as amended by 1999 No. 101.

These Regulations also amend (in Schedule 4) Statutory Rules 1989 No. 12, as amended by 1989 Nos. 107 and 288; 1990 Nos. 328 and 461; 1991 Nos. 9, 11, 73, 137 and 366; 1992 Nos. 81, 139, 158, 232, 274, 339, 351, 357, 435 and 436; 1993 Nos. 22, 23, 41, 61, 128 and 330; 1994 Nos. 68, 79, 185, 244, 287 and 386; 1995 Nos. 376 and 434; 1996 Nos. 80, 168, 269, 307, 328, 329 and 351; 1997 Nos. 48, 56, 101 (regulation 4 was disallowed by the Senate on 26 June 1997), 246, 281, 313, 314 (disallowed by the Senate on 25 March 1998) and 424; 1998 Nos. 187, 338 (disallowed by the Senate on 16 February 1999), 353 (disallowed by the Senate on 16 February 1999) and 354; 1999 Nos. 42, 43, 67, 195, 205, 244, 297, 336 and 337; 2000 Nos. 121 (disallowed by the Senate on 17 August 2000), 258 and 328 (disallowed by the Senate on 27 June 2001); 2001 No. ~~225~~ ^{5 and 323}

2. Notified in the *Commonwealth of Australia Gazette* on *13* 2001. *13 December*