



Occupational Health and Safety (Maritime Industry) (National Standards) Amendment Regulations 2006 (No. 1)¹

Select Legislative Instrument 2006 No. 338

I, PHILIP MICHAEL JEFFERY, 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 (Maritime Industry) Act 1993*.

Dated 13 December 2006

P. M. JEFFERY
Governor-General

By His Excellency's Command

KEVIN ANDREWS
Minister for Employment and Workplace Relations

1 Name of Regulations

These Regulations are the *Occupational Health and Safety (Maritime Industry) (National Standards) Amendment Regulations 2006 (No. 1)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003*

Schedule 1 amends the *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003*.

Schedule 1 Amendment

(regulation 3)

[1] After Part 2

insert

Part 3 Manual handling

Division 1 Introduction

3.01 Object of Part 3

The object of this Part is:

- (a) to prevent the occurrence of injury, and reduce the severity of injuries, resulting from manual handling tasks; and

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- (b) to require employers to identify, assess and control risks relating to manual handling tasks.

3.02 Definition of manual handling

In this Part:

manual handling means an activity requiring the use of force exerted by a person to lift, lower, push, pull, carry or otherwise move, hold or restrain any person, animal or thing.

Note The regulations in this Part should be read with the *Approved Code of Practice for Manual Handling (Maritime Industry)* as in force on the commencement of this Part.

Division 2 Duties of an employer

3.03 Duties of an employer — general

Employees and other persons at a workplace

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

Penalty: 10 penalty units.

Note 1 Subregulation 3.03 (1) addresses an employer's duties in relation to employees, contractors and other persons at a **workplace** within the meaning of section 4 of the Act.

Note 2 **Plant** is defined in section 4 of the Act to include any machinery, equipment or tool, and any component thereof.

Employees at work

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

Penalty: 10 penalty units.

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

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

3.04 Duties of an employer — risk assessment

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

Penalty: 10 penalty units.

- (2) The employer must take into account as many of the following matters as are relevant in assessing a risk:
- (a) the actions and movements involved in the task;
 - (b) the layout of:
 - (i) the workplace at which the task is carried out; or
 - (ii) the place, other than a workplace, at which the task is carried out;
 - (c) the layout of the workstation at which the task is carried out;

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- (d) the posture and position that must be taken by each individual involved in carrying out the task;
 - (e) the duration of the task;
 - (f) the frequency with which the task is carried out;
 - (g) the location of each load involved in the task;
 - (h) the distance that a load is moved as part of the task;
 - (i) the weight involved in the task;
 - (j) the force required to carry out the task;
 - (k) the characteristics of each load involved in the task;
 - (l) the characteristics of any plant that is used in the course of carrying out the task;
 - (m) the organisation of work at:
 - (i) the workplace at which the task is carried out; or
 - (ii) the place, other than a workplace, at which the task is carried out;
 - (n) the work environment of:
 - (i) the workplace at which the task is carried out; or
 - (ii) the place, other than a workplace, at which the task is carried out;
 - (o) the skills and experience of each individual involved in carrying out the task;
 - (p) the age of each individual involved in carrying out the task;
 - (q) the clothing worn by each individual involved in carrying out the task;
 - (r) the special needs of each individual involved in carrying out the task;
 - (s) if the workplace is, or is on, a vessel — the stability of the vessel;
 - (t) any other matter that is considered relevant following consultations required under the Act or these Regulations.

Penalty: 10 penalty units.

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

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

3.05 Duties of an employer — risk control

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

Penalty: 10 penalty units.

- (2) 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 (2) (see section 13.3 of the *Criminal Code*).

- (3) The employer must:

- (a) subject to subregulation (5) — redesign the task:
- (i) to eliminate or minimise the risk associated with each risk factor assessed under regulation 3.04; or
 - (ii) if it is not practicable to eliminate or minimise an assessed risk factor — to control the risk factor; and
- (b) provide appropriate training to employees involved in carrying out the task, including training in safe manual handling techniques; and
- (c) if possible, schedule the task for the lowest risk period of the operation.

Example for paragraph (c)

When the vessel on which the task is carried out is at dock, rather than at sea.

Penalty: 10 penalty units.

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- (4) If the redesign of a task is reasonably practicable, but cannot be implemented within a reasonable time after a risk is identified, the employer must, as soon as practicable after identifying the risk, and until the task has been redesigned:
- (a) implement as many of the following measures as are appropriate to control the risk factors:
 - (i) the provision of mechanical aids to manual handling;
 - (ii) the provision of personal protective equipment; and
 - (iii) manual handling by team lifting; and
 - (b) provide appropriate training to employees to give effect to each measure implemented under paragraph (a).

Penalty: 10 penalty units.

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

Penalty: 10 penalty units.

Division 3 Duties of an employee

3.06 Duties of an employee — use of training

- (1) An employee who has been given training in safe manual handling techniques in accordance with paragraph 3.05 (3) (b) must carry out manual handling tasks in accordance with the training.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element in subregulation (1) that the training in safe manual handling techniques is in accordance with paragraph 3.05 (3) (b).

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 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 (3) (see section 13.3 of the *Criminal Code*).

- (4) An employee who has been given training to give effect to a measure implemented under subregulation 3.05 (4) or (5) must carry out manual handling tasks in accordance with the training.

Penalty: 10 penalty units.

- (5) Strict liability applies to the physical element in subregulation (4) that the training is to give effect to a measure implemented under subregulation 3.05 (4) or (5).

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

- (6) It is a defence to a prosecution for an offence against subregulation (4) 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 (6) (see section 13.3 of the *Criminal Code*).

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.