

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 8

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

Occupational Health and Safety (Commonwealth Employment) Act 1991

*Occupational Health and Safety (Commonwealth Employment) (National Standards)
Amendment Regulations 2007 (No. 1)*

The *Occupational Health and Safety (Commonwealth Employment) Act 1991* (the Act) establishes a framework for the regulation of employers, employees and practices at Commonwealth workplaces to protect the health and safety of employees at work.

The *OHS and SRC Legislation Amendment Act 2006* received Royal Assent on 14 September 2006. That Act makes a number of amendments to the Act and the *Safety, Rehabilitation and Compensation Act 1988* (the SRC Act). The amendments include: extending the coverage of the Act so that it applies to those private corporations licensed under the SRC Act; excluding the operation of certain State and Territory laws relating to occupational health and safety; and changing the name of the Act to the *Occupational Health and Safety Act 1991*.

Subsection 82(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, that prescribe matters required or permitted by the Act or that are necessary or convenient for carrying out or giving effect to the Act. Subsection 23(1) of the Act provides that regulations may make provisions relating to any matter affecting, or likely to affect, the occupational health and safety of employees or contractors, or other persons at or near a workplace.

The *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994* (the Principal Regulations) give legislative force to national standards declared by the Australian Safety and Compensation Council and, previously, the National Occupational Health and Safety Commission (NOHSC).

The Regulations is to insert three new parts into the Principal Regulations that:

- give effect to the National Standard for the Control of Major Hazard Facilities (the National Standard) declared by the NOHSC in 1996 – Part 9. The National Standard contains controls designed to eliminate the underlying and immediate causes of major accidents at major hazard facilities and limit their consequences for employees, the community and the environment;
- impose specific duties on employers and employees regarding the safe use of electricity in the workplace – Part 10; and
- require the implementation of, and compliance with, suitable plans to manage the fatigue of heavy vehicle drivers in order to ensure the safety of those drivers and the public with whom they share the roads – Part 11.

The Regulations contain duties and responsibilities. They do not, however, establish any specific offences for contravention of the Principal Regulations. An amendment to the Act is proposed to extend the civil penalty enforcement framework found in the Act to breaches of the regulations made under the Act. Once this amendment is made, further amendments will be made to the Principal Regulations to insert civil penalty

offences. In the meantime, the proposed Regulations would supplement the offences and enforcement regime established in the Act.

The Regulations also change the name of the Principal Regulations to the *Occupational Health and Safety (Safety Standards) Regulations 1994*.

This change comes about because:

- the name of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* is being changed to the *Occupational Health and Safety Act 1991*;
- the Principal Regulations now include matters that do not give effect to National Standards determined by the Australian Safety and Compensation Council; and
- the jurisdiction of the Act is no longer confined to Commonwealth employment.

Details of the Regulations are set out in Attachment A.

Consultation on the Regulations occurred with Commonwealth employers via a working group established by Comcare to discuss issues arising from their development.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence immediately after the commencement of items 1 to 50 of the *OHS and SRC Legislation Amendment Act 2006*, which is six months after that Act received Royal Assent.

ATTACHMENT A

Details of the Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2007 (No. 1)

Regulation 1 – Name of Regulations

This regulation provides that the title of the regulations is the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2007 (No. 1)*.

Regulation 2 – Commencement

Regulation 2 provides that

- Regulations 1, 2 and 3 and Schedule 1 commence on the commencement of items 1 to 50 of the *OHS and SRC Legislation Amendment Act 2006*;
- Regulation 4 and Schedule 2 commence immediately after the commencement of Schedule 1; and
- Regulation 5 and Schedule 3 commence immediately after the commencement of Schedule 2.

Regulation 3 – Amendment of Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994

Regulation 3 provides that the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994* (the Principal Regulations) are amended as set out in Schedule 1.

Regulation 4 – Further amendment of Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994

Regulation 4 provides that the Principal Regulations are further amended as set out in Schedule 2.

Regulation 5 – Further amendment of Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994

Regulation 5 provides that the Principal Regulations are further amended as set out in Schedule 3.

Schedule 1 – Amendment of Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994

Item [1] – Part 10

Item [2] – Regulation 10.01

Currently, Part 10 contains the definitions for terms used in more than one part of the Principal Regulations. The effect of these items is to renumber Part 10 of the Principal Regulations as Part 20.

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

Item [1] – Regulation 4.29, note 1

The amendment contained in this item is consequential to the amendments in Schedule 1.

Item [2] – Part 9

This item inserts three new Parts into the Principal Regulations dealing with:

- the control of major hazard facilities;
- the safe use of electricity in the workplace; and
- the control of fatigue in drivers of heavy vehicles.

Part 9 Major hazard facilities

Part 9 contains a framework for the regulation of major hazard facilities.

Major hazard facilities are:

- facilities that store, handle or process specific hazardous materials in quantities above a threshold amount; or
- facilities that in the opinion of the relevant regulatory body – in this case, the Safety Rehabilitation and Compensation Commission (the Commission) – have the potential to trigger a major accident.

The regulatory framework gives effect to the National Standard for the Control of Major Hazard Facilities (the National Standard) declared by the National Occupational Health and Safety Commission (NOHSC) in 1996. Although NOHSC was abolished by the *National Occupational Health and Safety Commission Act (Repeal, Consequential and Transitional Provisions) Act 2005*, section 7 of that Act preserves standards declared by NOHSC.

The objective of the National Standard is to prevent the occurrence of major accidents and near misses at a facility, and to minimise the effects of any major accidents or near misses that do occur.

The Part gives effect to the National Standard by:

- providing for the notification and classification of potential major hazard facilities (Division 9.2);
- the licensing of major hazard facilities (Division 9.3);
- imposing duties on an employer in control of a major hazard facility (Division 9.4) and on employees and contractors of the employer (Division 9.5). In particular, the regulations require employers (in consultation with employees) to identify hazards, assess and control through the implementation of a safety management system and the preparation of a safety report.

The diagrams at Appendix 1 set out the regulatory framework for major hazard facilities.

The regulations contained in this Part require employers to determine if they are in control of a potential major hazard facility and to notify the Commission about the facility. The regulations also empower the Commission to advise an employer in control of a facility if the Commission believes, on reasonable grounds, that an activity undertaken at an existing facility could cause a major accident; this then triggers a requirement for the employer in control of that facility to notify the Commission about the facility.

On notification, the Commission must decide whether a facility should be classified as a major hazard facility. If the facility is classified as a major hazard facility the employer in control of the facility is required to:

- obtain either a licence to operate the facility or – if the facility is concurrently regulated by another Commonwealth law – a certificate of compliance; and
- identify hazards, assess and control risks of major accidents occurring through the implementation of a safety management system and the development of a safety report for the facility (assessed by an approved assessor) that demonstrates that hazards and major accident risks are understood and controlled.

The Part also provides transitional arrangements in respect of employers in control of a major hazard facility that, prior to the commencement of the regulations, are regulated under State or Territory law but will migrate to the Commonwealth scheme on commencement of the Part. These facilities will be automatically classified and will be given a bridging licence pending their application for a licence under the regulations. The bridging licence will be subject to licence conditions that reflect the applicable State or Territory licensing requirements.

The Part also establishes an approval scheme for persons who can assess the safety report prepared by an employer in control of a major hazard facility (Division 9.6).

Division 9.1 Preliminary

Regulation 9.01 – Object of Part 9

Regulation 9.01 sets out the objects of Part 9, which are broadly to prevent the occurrence of major accidents at a major hazard facility or a potential major hazard facility and, if a major accident occurs, to minimise its effect. Important measures for achieving these objectives include requiring employers who control potential major hazard facilities to:

- notify the Commission;
- be licensed;
- identify and control hazards;
- implement major accident prevention measures; and
- investigate major accidents.

Regulation 9.02 – Application of Part 9

Regulation 9.02 defines the scope of Part 9. Part 9 applies in relation to a major hazard facility or potential major hazard facility, of which an employer is in control. Being *in control* means having responsibility for the day to day operations of the facility (see regulation 9.03).

Regulation 9.03 – Definitions for Part 9

Regulation 9.03 recites a number of definitions specific to Part 9 including the following terms of note:

- Definitions of aggregate threshold quantity and threshold quantity
Aggregate threshold quantity, in relation to 2 or more materials specified in Part 2 of Schedule 9, is the sum of the threshold quantity for each material.
Threshold quantity, in relation to a material specified in an item in Part 2 of Schedule 9, is the quantity specified in column 4 of that item.

These definitions are important because if material is present at a facility in quantities that equal or exceed the aggregate threshold quantity or the threshold quantity, then notification requirements are triggered. Additionally, the facility must be classified as a major hazard facility.

- Definition of approved assessor
Approved assessor is a person, organisation or statutory authority approved by the Commission to assess the safety report of a major hazard facility. Regulation 9.47 requires employers to prepare a safety report. Regulation 9.49 requires employers to have that report assessed by an approved assessor. Division 9.6 provides a framework for the approval and revocation of approval of safety report assessors.

- Definition of bridging licence
An employer in control of a facility operating immediately before the commencement of Part 9 under an identified State or Territory law is taken to have been issued with a *bridging licence* under regulation 9.30.

- Definition of certificate of compliance
The Commission is able to issue an employer with a *certificate of compliance* in relation to a major hazard facility operating under an existing Commonwealth scheme.

- Definition of major accident
A major accident is defined as a sudden occurrence at a major hazard facility or potential major hazard facility that causes serious danger or harm to persons, property or the environment. Examples of a major accident include a major emission of dangerous goods or hazardous substances from the facility, or a fire or explosion.

- Definitions of major hazard facility, identified major hazard facility and identified State or Territory law
A major hazard facility is defined as a facility classified by the Commission as such under subparagraph 9.07(1)(b)(i) or an identified major hazard facility.

An *identified major hazard facility* is defined as a facility licensed before the commencement of the regulations under the Occupational Health and Safety (Major Hazard Facilities) Regulations 2000 (Vic) (an *identified State or Territory law*), and whose classification as a major hazard facility has not been revoked by the Commission under subparagraph 9.11(1)(b)(i). At present this is the only relevant State or Territory law, however, other laws could be included in the future.

- Definition of nuclear installation

Nuclear installation is defined by reference to section 13 of the *Australian Radiation Protection and Nuclear Safety Act 1998*. Section 13 defines a nuclear installation as a nuclear reactor for research or production of nuclear materials for industrial or medical use; a plant for preparing or storing fuel for use in a nuclear reactor; a nuclear waste storage or disposal facility; or a radioisotope production facility.

- Definition of occupational health and safety competency standards

Occupational health and safety competency standards means standards included in a training program under regulation 9.51. That regulation requires an employer to develop a training program for a major hazard facility including accident prevention procedures; emergency procedures and a standard setting out employee and contractor responsibilities under the safety management system. An employer is required to implement a safety management system under regulation 9.46.

- Definition of potential major hazard facility

A *potential major hazard facility* is defined to mean a proposed or existing major hazard facility other than an identified major hazard facility that is or will be:

- a nuclear installation; or
- a prescribed radiation facility; or
- a laboratory dealing with a biological agent requiring Physical Containment 3 or 4, within the meaning of AS/NZS 2243.3:2002*; or
- a facility at which material or materials specified in Part 2 of Schedule 9 will or may be present in quantities that equal or exceed 10% of the threshold quantity or the aggregate threshold quantities ; or
- a facility that is the subject of a notification issued by the Commission under regulation 9.05.

* Note: AS/NZS 2243.3:2002 is the standard entitled *Safety in Laboratories: Microbiological aspects and containment facilities*. It classifies micro-organisms into four risk groups and specifies safe work requirements for four corresponding physical containment levels. For example, Physical Containment 4 applies to work with dangerous micro-organisms, including Risk 4 micro-organisms, posing a high individual risk of life threatening disease and which may be readily spread to the community.

Regulation 9.04 – Interpretation – quantity equalling or exceeding aggregate threshold quantity

Regulation 9.04 explains when the amount of 2 or more materials specified in Part 2 of Schedule 9 will equal or exceed the amount requiring notification to the Commission and classification as a major hazard facility.

Division 9.2 Notification and classification of a potential major hazard facility

Subdivision A of Division 9.2 imposes notification obligations on the Commission and on employers in relation to potential major hazard facilities. Subdivisions B and C enables the Commission to classify or declassify a facility as a major hazard facility on the basis of prescribed criteria and according to a prescribed process; and require the Commission to notify an employer of a classification or declassification decision. Subdivision D deems an identified major hazard facility to be classified. Classification of a facility requires a facility to be licensed or to hold a certificate of compliance.

Subdivision A Notifications of potential major hazard facilities

Regulation 9.05 – Identification of potential major hazard facility – notification by Commission

Regulation 9.05 enables the Commission to give written notice to the employer in control of a facility or proposed facility if it believes that an activity undertaken or likely to be undertaken at the facility could cause a major accident. Such an employer will then be required to provide the Commission with the information prescribed under regulation 9.06.

Regulation 9.06 – Notification of potential major hazard facility

Regulation 9.06 requires an employer who is in control of or intends to be in control of a potential major hazard facility to notify the Commission about the facility in a form approved by the Commission. This also includes employers who are proposing to purchase a major hazard facility.

Subregulation (2) lists the information that must be included in a notification for an existing facility. Subregulation (3) similarly lists the information that must be included in a notification about a proposed facility. The information that will be required under these subregulations relates to the nature of the facility, the activities performed there, likely consequences of a major accident at the facility, and the materials present at the facility or proposed facility.

Under subregulation (4), if any of the information required under subregulation (2) or (3) is national security information, it may be provided in summary form that has been approved by the Commission.

Subregulation (5) prescribes timeframes for notification.

Regulation 9.07 – Consideration of notification

Regulation 9.07 requires the Commission - once it has received notification of a potential major hazard facility and considered information provided by the employer - to:

- decide whether or not to classify the facility as a major hazard facility; or

- seek additional information from the employer by way of written notice (subregulation (1)).

If the Commission asks the employer for additional information in relation to a notification, subregulation (2) requires the employer to provide it in the period specified by the Commission. The Commission will not be allowed to classify the facility until the information has been received or the period for receiving the information has expired.

In the event that the additional information requested is not provided within the specified period, the Commission can decide whether or not to classify the facility based on the information available to it (subregulation (3)).

Subdivision B Classification of potential major hazard facility

Regulation 9.08 – Classification as major hazard facility

Regulation 9.08 requires the Commission to classify an existing potential major hazard facility as a major hazard facility if:

- an activity is undertaken or is likely to be undertaken there, temporarily or permanently, which involves the processing, production, disposal, handling, use, or storage of material specified in Part 2 of Schedule 9 in quantities equal or exceeding the threshold or aggregate threshold for that material or those materials; or
- the facility is a nuclear installation; or
- the facility is a laboratory that deals with biological agents requiring Physical Containment 4, within the meaning of AS/NZS 2243.3:2002.

Subregulation (2) allows the Commission to classify an existing facility as a major hazard facility if information provided by the employer leads it to believe that an activity undertaken at the facility could cause a major accident.

The *note* provides examples of facilities that could be classified under this subregulation. These include laboratories dealing with biological agents requiring Physical Containment 3 within the meaning of AS/NZS 2243.3:2002 and prescribed radiation facilities. A prescribed radiation facility is a facility prescribed under the *Australian Radiation Protection and Nuclear Safety Regulations 1999*.

Regulation 9.09 – Notification of decision under subparagraph 9.07(1)(b)(i)

Regulation 9.09 requires the Commission to notify the employer or potential employer in writing of its decision to classify or not classify a facility as a major hazard facility.

Notice given under subregulation (1) will, subject to subregulation (3), need to be provided within six months of the Commission receiving notification from the employer. The notice also needs to state the reasons for the Commission's decision, and if the decision is to classify the facility as a major hazard facility, the employer's review rights under regulation 9.67.

Subregulation (3) requires the Commission to advise the employer, by written notice, if it is likely to take more than six months to make a decision. The notice needs to indicate when the decision is likely to be made, and under subregulation (4), the Commission has to make a decision by the date specified in the notice.

Subdivision C Revocation of classification of major hazard facility

The *note* to this Subdivision advises the reader that for the purpose of this Subdivision, an identified major hazard facility is taken to have been classified under subparagraph 9.07(1)(b)(i).

Regulation 9.10 – Application for revocation of classification of major hazard facility

Regulation 9.10 enables the employer in control of a classified major hazard facility to apply to the Commission to have the classification revoked if:

- an activity that lead to the classification will cease or has ceased; or
- the facility ceases to be a nuclear installation; or
- the facility ceases to deal with biological agents requiring Physical Containment 4, within the meaning of AS/NZS 2243.3:2002; or
- if the employer is of the opinion that no activity undertaken at the facility could cause a major accident.

An application made under this regulation will have to be made in a form approved by the Commission and no later than six months before the date on which the employer wishes the revocation to take effect (subregulation (2)).

Regulation 9.11 – Consideration of application for revocation of classification

Regulation 9.11 requires the Commission - once it has received a declassification application from an employer and considered the information provided by the employer - to:

- decide whether or not to declassify the facility; or
- seek additional information from the employer by way of written notice.

If the Commission asks the employer for additional information in relation to an application, subregulation (2) requires the applicant to provide it in the period specified by the Commission. The Commission will not be allowed to make a decision about revoking the classification of the facility until the information has been received or the period for receiving the information has expired.

In the event that the additional information requested is not provided within the specified period, the Commission will be able to decide whether or not to revoke the classification based on the information available to it (subregulation (3)).

Regulation 9.12 – Revocation of classification as major hazard facility

Regulation 9.12 sets out the circumstances where the Commission can declassify a facility as a major hazard facility.

Regulation 9.13 – Notification of decision under subparagraph 9.11(1)(b)(i)

Regulation 9.13 requires the Commission to notify the employer in writing of its decision to revoke or not revoke a classification as a major hazard facility.

Notice given under subregulation (1) needs to be provided within six months of the Commission receiving an application from the employer. The notification also needs to state the reasons for the Commission's decision, and if the decision is not to revoke the classification, the employer's review rights under regulation 9.67 (subregulation (2)).

Subdivision D Classification of identified major hazard facility

Regulation 9.14 – Identified major hazard facility taken to be classified under subparagraph 9.07(1)(b)(i)

Regulation 9.14 specifies that for the purposes of Subdivision C of Division 9.2, an identified major hazard facility is taken to have been classified under subparagraph 9.07(1)(b)(i). As indicated earlier, an identified major hazard facility is a facility licensed before the commencement of Part 9 under the Occupational Health and Safety (Major Hazard Facilities) Regulations 2000 (Vic).

Division 9.3 Licence to operate a major hazard facility

Division 9.3 requires employers in control of a major hazard facility to hold a licence in order to operate the facility. Employers are able to apply for a licence, under Subdivision A, or a certificate of compliance under Subdivision B (for major hazard facilities operating under an existing Commonwealth regime).

Employers in control of a major hazard facility that, prior to the commencement of the Part, is regulated under State or Territory law but which will migrate to the Commonwealth scheme on commencement are taken to have been issued a bridging licence under Subdivision C. Subdivision D provides for the transfer of a licence or certificate of compliance between employers.

Subdivision A Licensing scheme for employers in control of major hazard facilities

Regulation 9.15 - Definition for Subdivision A

Regulation 9.15 provides a definition of *safety report*, for the purposes of the Subdivision.

Regulation 9.16 – Licence to operate a major hazard facility

Regulation 9.17 – Exemptions from licensing requirement

Regulation 9.16 requires an employer that is in control of a major hazard facility to hold a licence to operate the facility. An employer is exempt from this requirement if a bridging licence or certificate of compliance is in force, the application period has not expired or the Commission has not yet notified an employer of its decision to grant or refuse a licence or certificate (regulation 9.17).

Regulation 9.18 - Application for licence

Subregulation (1) provides that, subject to the exemptions contained in regulation 9.17, an employer that is in control of or intends to be in control of a major hazard facility must apply to the Commission for a licence to operate the facility.

The *note* following this subregulation alerts the reader that a licence issued under this Division is in force for a specified period and that the employer must apply for a new licence if the employer intends to continue to be in control of a major hazard facility after the licence has expired.

Subregulation (2) provides a list of requirements for the licence application. These requirements include that the application must be in writing in a form approved by the Commission, must be accompanied by an executive summary of the assessment of the current safety report for the major hazard facility and must be made within the period contained in regulation 9.19.

Subregulation (3) provides a list of the requirements for an executive summary of an assessment of the safety report. These requirements are that the executive summary is prepared by an approved assessor and addresses certain matters which are listed in the subregulation.

Subregulation (4) provides that the employer must ensure that a copy of the safety report and the assessment of the safety report are available for inspection by an investigator.

Regulation 9.19 – Period for making an application for a licence

Regulation 9.19 sets out the periods for making an application for a licence. Generally, an application for a licence must be made within 21 months after the date when the facility was classified as a major hazard facility or within a period approved by the Commission. Subregulation (1) provides that an application for a fresh licence must be made at least 6 months before the date on which an existing licence (including bridging licence) or certificate of compliance will cease to be in force.

Other specified timeframes relate to when an application has been made to transfer control of a facility or a licence from one employer to another employer or when a transfer has taken place.

Regulation 9.20 – Issue of licence

Regulation 9.20 sets out the procedure the Commission must follow once it has received an application for a licence.

Subregulation (1) provides that following an application for a licence by an employer the Commission must either issue a licence or refuse to issue a licence or ask the employer to give the Commission additional information. If the Commission requests additional information it must be given to the Commission within the period specified in the notice and a decision must not be made by the Commission until the information has been received or the period for receiving the information has expired (subregulation (2)).

Subregulation (3) provides that if no additional information is provided within the period specified in the notice, the Commission may decide whether or not to issue a licence on the basis of the available information.

Subregulation (4) lists the factors that the Commission must satisfy itself of before deciding to issue a licence.

Subregulation (5) provides that if the Commission refuses to issue the licence it must give the employer a written notice setting out the reasons why and the employer's review rights under regulation 9.67. Subregulation (6) provides that a notice must be given within six months of receiving the application for the licence.

Subregulations (7) – (9) provide that if the Commission proposes to issue a licence, then the licence must be issued within six months of receiving the application for the licence. If a licence will be issued later than six months after receiving the application for the licence, the Commission must give the employer written notice. If the Commission gives an employer written notice then the licence must be issued within the period specified in the notice.

The *note* relating to this subregulation alerts the reader that an application may be made under regulation 9.34 for the transfer of a licence issued under this regulation.

Regulation 9.21 – Period for which licence is in force

Regulation 9.21 provides that a licence issued under regulation 9.20 must specify the date it takes effect and the period, which can be no longer than five years, it is to be in force.

Regulation 9.22 – Conditions of licence

Regulation 9.22 provides the conditions to which a licence is subject.

Subregulation (2) allows the Commission to add or vary or revoke a condition by giving written notice to the employer. The employer is required to comply with all of the conditions of the licence (subregulation (3)).

Subregulation (4) provides that if a notice has been given to the employer to add or vary or revoke a condition of a licence, the notice must state the reasons for the Commission's decision and the employer's review rights under regulation 9.67.

Regulation 9.23 – Suspension or cancellation of licence

Regulation 9.23 allows the Commission to suspend or cancel a licence if:

- the classification of the major hazard facility is revoked; or
- the Commission has satisfied itself of one of a number of factors listed in paragraph (1)(b).

Subregulation (2) requires the Commission to give the employer written notice of its decision to suspend or cancel an employer's licence. Subregulation (3) lists the matters that the notice must contain including the reasons for the decision and the employer's review rights under regulation 9.67.

Subdivision B Certificate of compliance scheme for employers in control of major hazard facilities

An employer who is in control of a major hazard facility that is regulated under an existing Commonwealth scheme is able to apply for a certificate of compliance under this Subdivision. Until the certificate had been issued by the Commission, the employer is required to fulfil the duties listed in Division 9.4.

Once the certificate had been issued, the employer needs to comply with the conditions of the certificate, but will no longer be required to comply with the employers' duties contained in Subdivision B of Division 9.4. This avoids duplication of duties.

Regulation 9.24 – Definition for Subdivision B

Regulation 9.24, for the purpose of this Subdivision, defines 'existing Commonwealth scheme' as a law of the Commonwealth that has a direct effect or an indirect effect on occupational health and safety.

Some examples of such laws are the *Australian Nuclear Science and Technology Act 1987*, and the *Gene Technology Act 2000*.

Regulation 9.25 – Application for certificate of compliance

Regulation 9.25 enables an employer that is in control of, or intends to be in control of, a major hazard facility to apply for a certificate of compliance if operations at the facility are regulated by an existing Commonwealth scheme when that the application is made.

Subregulation (2) identifies the requirements for the form of the application and associated papers.

The Commission is required, once it has received an application, to issue a certificate of compliance, refuse the application, or provide written notice to the applicant seeking additional information (subregulation (5)).

If the Commission asks an employer to provide additional information in relation to an application the information must be given within the period specified by the Commission. The Commission is not allowed to make a decision until the information has been received or the period for receiving the information has expired (subregulation (3)).

If the additional information requested is not provided within the specified period, the Commission is able to decide whether or not to issue a certificate of compliance based on the information available to it (subregulation (4)).

Under subregulation (6), if the Commission refuses to issue a certificate of compliance, it is required to notify the applicant in writing and include its reasons for refusal and details of the applicant's review rights under regulation 9.67.

Subregulation (7) requires the Commission to notify an applicant of its decision to refuse an application within six months of receiving the application.

Subregulation (8) similarly requires that if the Commission decides to issue a certificate of compliance, the certificate should be issued within six months of receiving the application. However, if it is likely that a certificate of compliance cannot be issued within that period, the Commission is required, under subregulation (9), to give the employer written notice of when it is likely to be issued. Such a notice needs to be provided within six months, and once notice has been provided, subregulation (10) requires that the certificate be issued by the date specified in the notice.

Regulation 9.26 – Issue of certificate of compliance

Regulation 9.26 allows the Commission to issue a certificate of compliance if satisfied of a number of factors listed in the regulation. This includes considering whether under the existing Commonwealth scheme the facility is regulated by is comparable to the scheme set out in the Part. Subregulation (2) includes a non-exhaustive list of matters the Commission must consider when making such a determination.

Regulation 9.27 – Period for which certificate of compliance is in force

Regulation 9.27 provides that a certificate of compliance must specify the date it takes effect and the period it is to be in force.

Regulation 9.28 – Conditions of certificate of compliance

Regulation 9.28 makes each certificate of compliance subject to certain conditions.

Subregulation (2) allows the Commission to add, vary, or revoke a condition specified in the certificate of compliance by providing notice in writing to the employer. A

notice given must state the reasons for the Commission's decision, and the employer's review rights under regulation 9.67 (subregulation (4)).

An employer is required to comply with the conditions to which a certificate of compliance is subject, including any conditions that have been added or varied (subregulation (3)).

Regulation 9.29 – Suspension or cancellation of certificate of compliance

Regulation 9.29 lists the circumstances where the Commission could suspend or cancel a certificate of compliance.

Subregulation (2) provides that if the Commission suspends or cancels a certificate of compliance, it is required to notify the employer of that decision in writing. A notice given under subregulation (2) must state the date from which the certificate is suspended or cancelled, if it is suspended - the period for which it is suspended, the reasons for the Commission's decision, and the employer's review rights under regulation 9.67 (subregulation (3)).

Subdivision C Bridging licence scheme for employers in control of identified major hazard facilities

An employer who is in control of a major hazard facility and holds a licence or equivalent under a State or Territory law immediately before Part 9 comes into effect will be taken to be issued with a bridging licence. Holders of bridging licences will not be required to comply with the employers' duties in Subdivision B of Division 9.4, and instead are to comply with the State or Territory law to which they were previously subject including any conditions attaching to the bridging licence.

A bridging licence will be a temporary alternative to a standard licence or a certificate of compliance. Ultimately, all major hazard facility operators will be required to comply with this Part and hold a standard licence or certificate of compliance.

Regulation 9.30 – Bridging licence taken to be issued to employer in control of identified major hazard facility

Regulation 9.30 provides that an employer in control of a facility that is an identified major hazard facility is deemed to have been issued with a bridging licence.

The *note* to this regulation advises the reader that an application to transfer a bridging licence could be made under regulation 9.34.

Regulation 9.31 – Period for which bridging licence is in force

Regulation 9.31 provides that a bridging licence takes effect on the day on which the definition of *identified major hazard facility* is first applied to the facility. The bridging licence expires at the end of 18 months after that day or at the end of any longer period determined by the Commission.

Regulation 9.32 – Conditions of bridging licence

Regulation 9.32 lists the conditions of a bridging licence. These conditions include compliance with any condition, duty or function prescribed by the identified State or Territory law to which the facility was subject immediately before the day on which Part 9 first applied to the employer in control of the facility.

Subregulation (2) allows the Commission to add, vary, or revoke a condition specified in the bridging licence by providing notice in writing to the employer.

Under subregulation (3), an employer is required to comply with the conditions of a bridging licence, including any conditions that have been changed by the Commission under subregulation (2).

Under subregulation (4), notice given under subregulation (2) needs to state the reasons for the Commission's decision, and the employer's review rights under regulation 9.67.

Regulation 9.33 – Powers, duties and functions under identified State or Territory laws

Regulation 9.33 applies to an identified major hazard facility – ie, a facility regulated under State or Territory law.

It enables the Administrative Appeals Tribunal to review decisions relating to that facility, which would otherwise be reviewable by a non-judicial State or Territory authority. It also enables the Commission to exercise functions that would otherwise be exercisable by a State or Territory authority.

Subdivision D Transfer of licence or certificate of compliance between employers

Regulation 9.34 – Application for transfer of licence or certificate of compliance

Subregulation 9.34(1) enables an application to be made to the Commission by an employer who has or will take control of a major hazard facility for the transfer of a licence, a bridging licence or a certificate of compliance from the employer that currently holds the licence or certificate of compliance. A transfer application can only be made if the licence or certificate has at least 12 months to run.

The *note* to this subregulation refers the reader to further requirements in relation to the change of hands of a major hazard facility in regulation 9.72

Subregulation (2) sets out the requirements for an application to transfer a licence or certificate of compliance.

Subregulation (3) sets a time limit for the making of an application – within six months of the new employer taking control of the facility.

The *note* following this subregulation informs the reader that the application may be made before control of the facility has been transferred.

Regulation 9.35 – Transfer of licence between employers

Regulation 9.35 specifies how the Commission is to treat an application for transfer. It may transfer the licence or certificate with or without conditions, refuse the transfer application or ask the employer for additional information (subregulation (1)).

If the Commission requests additional information it must be provided within the period specified in the notice and a decision must not be made by the Commission until information has been received or the period for receiving the information has expired (subregulation (2)).

If the additional information is not supplied within the specified period, the Commission may decide whether or not to approve the transfer on the basis of information available to it (subregulation (3)).

Subregulation (4) allows the Commission to transfer a licence or a certificate of compliance if it is satisfied that the new employer is able to operate the facility safely and comply with the conditions of the licence or certificate.

Under subregulation (5), if the Commission refuses an application to transfer a licence or certificate of compliance it has to provide the employer with a written notice outlining its reasons for the decision and the employer's review rights under regulation 9.67.

The Commission will have to give notice of the refusal to transfer the licence or certificate of compliance within six months of receiving the application to comply with subregulation (6).

If the Commission decides to transfer a licence or certificate, subregulation (7) requires that the licence or certificate be transferred within six months of receiving the application, subject to subregulations (8) and (9).

Under subregulations (8) and (9), if the Commission is likely to take more than six months to transfer a licence, it needs to advise the employer, in writing before the end of that period, when the transfer will be likely to be made. The Commission then has to transfer the licence by the date specified in the notice.

Regulation 9.36 – Effect of transfer of licence or certificate of compliance

Subregulation 9.36 deals with the transfer of licences and certificates of compliance. The effect of a transfer is that the licence, bridging licence or certificate of compliance is to operate as if it were issued afresh to the new employer under the Part. In addition, any condition imposed on transfer is to operate in the same way as any other condition imposed in regard to the licence or certificate of compliance.

Division 9.4 Duties of an employer

Division 9.4 lists the duties of an employer in control of a major hazard facility. Subdivision B details these duties. An employer is required to identify, assess and eliminate, or if this not possible reduce to the lowest practicable level, all risks associated with a hazard at a major hazard facility. An employer is also required to implement a safety management system, prepare a safety report and have it assessed by an approved assessor, provide information to an at-risk community, provide workplace training and education and prepare an emergency plan.

Subdivision A Duties applying to all employers

Regulation 9.37 – Application of Subdivision A

Regulation 9.37 provides that Subdivision A applies to an employer in control of a major hazard facility.

Regulation 9.38 – Reporting requirements in relation to major accidents at major hazard facilities

Regulation 9.38 requires an employer to prepare a report if a major accident occurs at a major hazard facility. It requires an employer to provide the report to the Commission either within six weeks of the employer becoming aware of the major accident or within a longer period determined by the Commission.

A *note* informs the reader that the employer may also be required to notify the Commission under the *Occupational Health and Safety (Safety Arrangements) Regulations 1991*.

Regulation 9.39 – Form of reports about major accidents

Regulation 9.39 lists the information that must be included in a report.

The *note* following this regulation indicates that Comcare may publish a form to facilitate the preparation of a report under regulation 9.38.

Regulation 9.40 – Service of reports

Regulation 9.40 details the way of providing a report to the Commission.

Regulation 9.41 – Records of major accidents

Regulation 9.41 requires an employer to retain a record of a report for a period of 30 years.

Subdivision B Duties applying to an employer in control of certain major hazard facilities

Regulation 9.42 – Application of Subdivision B

Regulation 9.42 provides that this Subdivision applies to employers in control of a facility classified as a major hazard facility under subparagraph 9.07(1)(b)(i), unless a certificate of compliance is in force.

Subregulation (2) provides that this Subdivision also applies to an employer in control of an identified major hazard facility if a licence issued under regulation 9.20 is in force. Employers who have a bridging licence or a certificate of compliance are exempt from this requirement. This avoids duplication of duties and obligations.

Regulation 9.43 – Hazard identification

Regulation 9.43 provides that an employer must identify, in consultation, all reasonably foreseeable hazards that may cause a major accident at the facility. When doing so the employer is required to identify the kinds of major accident that may occur, the likelihood of a major accident occurring and its likely consequences.

Regulation 9.44 – Risk assessment

Regulation 9.44 requires the employer to assess any risk associated with the hazard or major accident.

Subregulation (2) provides for the review of risk assessments within five years of a risk assessment being carried out. After that, at intervals of not more than five years. A review must also be undertaken before a modification is made to the major hazard facility that may significantly change any risk that has been identified.

Regulation 9.45 – Risk control

Regulation 9.45 requires an employer to ensure that any risk associated with a hazard at the major hazard facility is eliminated, or if it is not practicable, reduced as far as practicable.

Subregulation (2) requires an employer to implement measures to minimise the likelihood of a major accident occurring, and limit the consequences if an accident does occur. This subregulation also requires an employer to establish an emergency plan and procedures in accordance with regulation 9.53.

Regulation 9.46 – Safety management system

Regulation 9.46 requires an employer to prepare and implement a safety management system for managing safety and preventing the occurrence of major accidents at the major hazard facility.

Subregulation (2) provides a list of requirements for the safety management system.

Regulation 9.47 – Safety report

Regulation 9.47 requires an employer to prepare a safety report for the major hazard facility. Subregulation (1) provides time limits for when an employer is required to prepare the safety report. Subregulation (4) provides a list of requirements for the safety report.

Note 1 relating to subregulation (1) alerts the reader that if the report is prepared by an approved assessor, the assessment of the safety report must be carried out by a different approved assessor in accordance with subregulations 9.49(4) and (5).

Note 2 relating to subregulation (2) makes it clear that if the Commission approves a different time limit under subregulation (7) then the Commission may ask the employer to submit a timetable for the preparation of the safety report.

Subregulation (2) requires an employer to give the Commission an outline of the safety report within specified time limits. Subregulation (3) specifies the requirements for the outline of a safety report.

Subregulations (5), (6) and (7) provide for the employer to apply for an extension of the period within which the report is prepared and also allow the Commission to grant an extension of that period.

Subregulation (8) provides that the Commission may ask the employer to prepare a timetable for the preparation of the report if an extension is granted.

Regulation 9.48 – Review of safety report by employer

Regulation 9.48 lists the circumstances in which the employer must internally review and, if necessary, revise the safety report for the major hazard facility. It also lists the matters that the employer must take into account when reviewing the safety report.

Regulation 9.49 – Assessment of safety report by approved assessor

Regulation 9.49 requires an employer to arrange for a safety report for the facility to be assessed if the employer intends to apply, under Division 9.3, for a licence to operate the major hazard facility.

Subregulation (2) provides that subject to subregulations (3), (4) and (5) an external assessment of the safety report must be carried out by an approved assessor. Subregulations (3), (4) and (5) prohibit an approved assessor carrying out an assessment of the safety report in conflict of interest situations – for example, where the assessor is an employee or contractor of the employer or where the assessor prepared the safety report.

Regulation 9.50 – Provision of information to community

Regulation 9.50 requires an employer to ensure that adequate information is given to an at-risk community on the procedures to be followed if a major accident occurs at the major hazard facility.

Subregulation (2) specifies the details that must be included in the information given under subregulation (1).

Regulation 9.51 – Training program

Regulation 9.51 requires an employer to develop an occupational health and safety training program for a ‘relevant person’ at the major hazard facility. ‘Relevant person’ is defined in the Principal Regulations as an employee or any other person at or near a workplace under an employer’s control.

Subregulation (2) lists the standards which must be included in the occupational health and safety training program. Subregulation (3) requires the employer to ensure that the training program is monitored, reviewed, modified, recorded and undertaken in consultation with employees, contractors and health and safety representatives.

Regulation 9.52 – Ongoing training and education

Regulation 9.52 requires an employer to ensure that each relevant person at the major hazard facility takes part in the training program before the person starts work at or visits the major hazard facility. This regulation also specifies when a relevant person at the major hazard facility should receive further education and training.

Regulation 9.53 – Emergency plan

Regulation 9.53 requires an employer to prepare and implement an emergency plan for the major hazard facility.

Subregulation (2) requires an employer to ensure that the emergency plan addresses the consequences of a major accident in relation to the facility and the area surrounding the facility. This subregulation also provides that the employer must consult with the emergency services to establish, maintain and include in the emergency plan, on-site and off-site emergency procedures, which must complement each other.

Subregulation (3) provides that the emergency plan, on-site and off-site emergency procedures must be prepared within three months after the date on which the facility was classified as a major hazard facility under subparagraph 9.07(1)(b)(i) or within three months after the date on which a licence was first issued under regulation 9.20 in the case of identified major hazard facilities.

Subregulation (4) provides a list of requirements the employer must fulfil in relation to the emergency plan.

Regulation 9.54 – Review of emergency plan

Regulation 9.54 specifies the circumstances where an employer must internally review and revise an emergency plan for a major hazard facility, including after a major accident or when requested to do so by the Commission.

Subregulation (2) specifies the matters that an internal review of the emergency plan must take into account.

Regulation 9.55 – Securing the major hazard facility

Regulation 9.55 requires the employer to establish a system for securing the major hazard facility including taking all reasonably practicable steps to protect the major hazard facility from people who are not authorised to have access to the facility.

Subdivision C Additional duty applying to employer in control of identified major hazard facility

Regulation 9.56 – Provision of licence issued under identified State or Territory law

Regulation 9.56 provides that an additional duty of an employer in control of an identified major hazard facility is to provide the Commission with a copy of any licence (within a specified time) that was issued or given to the employer in respect of the identified major hazard facility under an identified State or Territory law.

Division 9.5 Duties of an employee and a contractor

Regulation 9.57 – Duties of an employee and a contractor

Regulation 9.57 specifies the duties of an employee or a contractor in a major hazard facility. These duties include complying with all practices and procedures related to prevention of major accidents and notifying an employer about hazards that may cause a major accident.

Division 9.6 Approval scheme for assessors

Division 9.6 establishes an approval scheme for persons who can assess the safety report prepared by an employer in control of a major hazard facility. It sets out how to apply for approval as an assessor (Subdivision B), how the Commission will decide whether or not to approve an application (Subdivision C), enables approvals to be subject to conditions (Subdivision D), and provides for the revocation of approvals (Subdivision E). It also requires the Commission to establish a register of approved assessors (Subdivision F).

Subdivision A Definition

Regulation 9.58 – Definition for Division 9.6

Regulation 9.58 defines ‘safety report’ for the purpose of the Division.

Subdivision B Requirements for application for approval

Regulation 9.59 – Who may apply for approval?

Regulation 9.59 provides that a person, an organisation, or a statutory authority of a State or Territory is eligible to apply to the Commission for approval to be an assessor of safety reports.

The *note* following this regulation advises potential applicants that there is no fee for making an application for approval.

Regulation 9.60 – Form of application

Regulation 9.60 sets out the requirements of an application to be approved as an assessor.

Regulation 9.61 – Information to be included in application

Regulation 9.61 lists the information that an applicant is required to include in an application.

Subdivision C Decision on application

Regulation 9.62 – Commission to decide application

Regulation 9.62 requires the Commission, once it has received an application, to approve the applicant as an assessor, refuse the application, or provide written notice to the applicant seeking additional information.

If the Commission asks the applicant for additional information in relation to an application, subregulation (2) requires the applicant to provide it in the period specified by the Commission. The Commission is not allowed to decide whether or not to approve the applicant until the information has been received or the period for receiving the information has expired.

In the event that the additional information requested was not provided within the specified period, the Commission may decide whether or not to approve the applicant based on the information available to the Commission (subregulation (3)).

Subregulation (4) provides that the Commission could approve an applicant as an assessor if it was satisfied that the applicant has the necessary skills, training, knowledge and abilities to perform the functions of an approved assessor.

Under subregulation (5), if the Commission refuses to approve an application for approval, it must notify the applicant in writing and include its reason for refusal and details of the applicant's review rights under regulation 9.67.

Subregulations (6) and (7) requires the Commission to notify an applicant of its decision to approve or refuse to approve an application within six months of receiving it.

Regulation 9.63 – Period for which approval is in force

Regulation 9.63 provides that an approval must specify the date on which it takes effect, and the period, not longer than five years, for which it will be in force.

The *note* following the regulation advises that if an approved assessor wishes to continue as an approved assessor after the period of approval expires, they must apply for a new approval.

Subdivision D Conditions of approval

Regulation 9.64 – Conditions of approval

Regulation 9.64 provides that an approval is subject to the conditions specified by the Commission. The Commission is able to add, vary, or revoke the conditions specified in the approval by providing notice in writing to the assessor.

Under subregulation (3), an approved assessor is required to comply with the conditions to which an approval is subject, including any conditions that have been added or varied.

Subdivision E Revocation of approval

Regulation 9.65 – Revocation of approval

Regulation 9.65 allows the Commission to revoke an approval given under regulation 9.62 if it found that the assessor had failed to comply with a condition of approval. It also provides that approval can be revoked if the assessor had given false or misleading information, or failed to disclose particular information, in the application for approval.

Subregulation (2) requires the Commission – if it were of the opinion that an assessor's approval should be revoked – to write to the assessor and advise of its opinion giving its reasons. The Commission also is required to ask the assessor to show cause, in writing, within a specified period of at least 21 days, why the approval should not be revoked. If the assessor failed to provide adequate cause within that timeframe, the Commission is allowed to revoke the approval under subregulation (3).

Subregulation (4) provides that if the Commission revokes the approval of an assessor, it is required to notify the assessor of that decision in writing.

Under subregulation (5), notice given under subregulation (4) needs to state the date from which the approval is revoked, the reasons for the revocation, and the assessor's review rights under regulation 9.67.

Subdivision F Register of approved assessors

Regulation 9.66 – Commission to maintain register of approved assessors

Regulation 9.66 requires the Commission to establish and maintain a register of approved assessors. The register will contain the name and business address of each approved assessor. If the Commission becomes aware that any of the particulars contained in the register were incorrect, it is required to correct them. The Commission is also required to make the register available in electronic form.

Division 9.7 Miscellaneous

Regulation 9.67 – Review of decisions

Regulation 9.67 lists which Commission decisions are reviewable.

The *note* following the regulation flags section 27A of the *Administrative Appeals Tribunal Act 1975*. Section 27A requires an administrative decision-maker to give to any person whose interests are affected by a decision, written notice of the decision and the person's review rights.

Regulation 9.68 – Confidentiality of information

Regulation 9.68 requires the Commission to protect the confidentiality of information given to it by an employer in control of a major hazard facility provided it is satisfied that:

- protecting this confidentiality would not compromise the safety of any person, property or the built or natural environment; or
- the information is national security information.

Regulation 9.69 – Annual report of the Commission

Section 75 of the Act lists what the Commission must include in its annual report. Paragraph (e) of that section states that the Commission must include "such other matters as are prescribed".

Regulation 9.69 requires the Commission's annual report to analyse the operation of the Regulations in relation to facilities that have:

- been classified by the Commission under subregulation 9.07(1)(b)(i); or
- have taken to have been issued with a bridging licence in the financial year to which an annual report of the Commission relates.

Regulation 9.70 – Report to Minister on major accident

Under section 53 of the Act, where an investigator has conducted an investigation, the investigator must, as soon as is reasonably practicable, prepare a written report relating to the investigation to the Commission. Regulation 9.70 requires the Commission to prepare a summary of any report of an investigation into a major accident at a major hazard facility that it has received under that section.

Subregulation (2) requires the Commission to provide a copy of the summary to the Minister along with a statement addressing the list of matters contained in the subregulation.

Regulation 9.71 – Directions to employer

Regulation 9.71 enables the Commission to give a direction to an employer in control of either a major hazard facility or a potential major hazard facility concerning the performance of the employer's duties under the Part.

Under subregulation (2), any direction under this regulation needs to be in the form of a written notice, and be given for the purposes of ensuring the safety of:

- any person inside or outside of the facility;
- any property near the facility; or
- the built or natural environment.

Subregulation (3) requires the employer to comply with the direction.

Under subregulation (4), notice given under subregulation (2) needs to state the reasons for the Commission's decision and the employer's review rights under regulation 9.67.

Regulation 9.72 – Notification of transfer of control of major hazard facility

Regulation 9.72 requires an employer in control of a major hazard facility who held a licence, bridging licence or certificate of compliance in relation to that facility who intends to pass control to another employer to notify the Commission of that fact.

Subregulation (2) allows the Committee to request information from the employer or the person proposing to take control of the facility about the proposal. The request will take the form of a written notice. Under subregulation (3), the information is to be given to the Committee within the period specified in the notice.

Note 1 explains that the provision of advice and information under this regulation allows Comcare to advise operators on the application of Part 9 to the transfer of control.

Note 2 provides that if the licence, the bridging licence, or the certificate of compliance held by the employer in relation to the facility will expire in less than twelve months, it will not be able to be transferred. This is in line with regulation 9.34.

Part 10 Electricity

Occupational health and safety risks – including death and injury – are associated with the use of electricity in the workplace.

The Act imposes general duties that apply across a range of activities including in relation to the use of electricity in the workplace. However, the Act does not provide for specific duties relating to the use of electricity. That is the role of these Regulations.

Part 10 is inserted into the Principal Regulations to control risks to health and safety arising from the use of electricity in the workplace. The objects of new Part 10 is to:

- ensure that persons at a workplace are, as far as reasonably practicable, safe from the risk of death or injury caused by the use of electricity;
- minimise the risk of death or injury from electrical installations at a workplace;
- ensure that electrical installation work is carried out safely; and
- ensure that electrical work is only undertaken by competent persons.

To accomplish these objects, the Regulations impose obligations on employers, employees and contractors.

Division 10.1 Introduction

Regulation 10.01 – Object of Part 10

Regulation 10.01 provides that the object of Part 10 is to address health or safety risks that arise from the use of electricity in a workplace by:

- ensuring that persons at a workplace are, as far as reasonably practicable, safe from the risk of death or injury caused by the use of electricity;
- minimising the risk of death or injury from electrical installations at a workplace;
- ensuring that electrical installation work is carried out safely; and
- ensuring that electrical work is undertaken only by a competent person.

Regulation 10.02 – Definitions for Part 10

Regulation 10.02 defines the following terms for the purposes of Part 10:

- *competent person*, in relation to a specified task, means a person who has, as a result of a combination of training, education and experience, acquired knowledge and skills that enable the person to perform correctly that task. A competent person is also required to satisfy any requirement imposed by a State or Territory law in relation to undertaking that task. Thus, in relation to the latter, if a State or Territory law requires a person to hold a license to perform a specified task, that person will be required to be licensed in order to be a competent person for the purposes of the Part;
- *electrical connection work* means connecting or disconnecting electrical equipment to or from an electricity supply;

- *electrical equipment work* means the repair, alteration or maintenance of electrical equipment;
- *electrical installation work* means the repair, alteration or maintenance of an electrical installation;
- *electrical work* means electrical connection work, electrical equipment work or electrical installation work;
- *employer* in relation to a workplace, employee, equipment, thing or activity means an employer who has management or control of the workplace, employee, equipment, thing or activity.

The terms ‘electrical equipment’ and ‘electrical installation’, which are relevant to Part 10, are defined by regulation 20.01.

Division 10.2 Duty of employers

Regulation 10.03 – Duty to identify risks

Regulation 10.03 requires an employer to identify any risk of injury arising from the existence or use of electricity at a workplace and any risk of injury arising from the existence, operation or use of electrical installations at the workplace. The employer must also record each risk that has been identified.

Regulation 10.04 – Duty to assess and control risks

If a risk is identified under subregulation 10.03(1), subregulation 10.04(1) requires the employer to arrange for an assessment of the risk and either take measures to eliminate the risk or, if it is not reasonably practicable to eliminate the risk, take measures to minimise the risk as far as reasonably practicable.

Subregulation 10.04(2) requires an employer to record each risk that has been assessed and each measure taken to eliminate or minimise the risk.

Regulation 10.05 – Duty to ensure that electrical work is carried out by a competent person

Regulation 10.05 imposes two obligations on employers:

- to take all reasonably practicable steps to ensure that electrical work is carried out at a workplace only by a person who is a competent person; and
- to take all reasonably practicable steps to ensure that electrical work is carried out at a workplace only in accordance with Australian/New Zealand Standard Wiring Rules (AS/NZS 3000:2000).

Regulation 10.06 – Duty to inspect and test electrical equipment

Regulation 10.06 applies to electrical equipment that is supplied with electricity through an electrical outlet socket *and* that is either used in construction work *or* located at a workplace where its safe operation could be affected by a *hostile working environment*. In such cases, an employer must ensure that the equipment is regularly inspected and tested by a competent person.

The expression *hostile working environment* is defined as an operating environment where the normal use of electrical equipment is subject to operating conditions that are likely to result in damage to the equipment or the compromising of insulation or of other protective measures. A note is included to provide examples. For instance, a hostile working environment includes an operating environment where conditions might cause mechanical damage to the equipment or where conditions might expose the equipment to damage from moisture, heat, vibration, corrosive substances or dust.

Regulation 10.07 – Duty to inspect and test electrical installations

Regulation 10.07 provides that an employer must ensure that each electrical installation at a workplace is inspected and tested by a competent person before it is used for the first time. However, further duties relating to electrical installation work are to be contained in Division 10.4. Regulation 10.07 includes a note referring to these additional duties in Division 10.4.

Regulation 10.08 – Duty to disconnect unsafe electrical equipment and installations

Where electrical equipment or an electrical installation is unsafe or reasonably believed to be unsafe, regulation 10.08 requires an employer, as soon as practicable, to arrange for it to be disconnected and repaired, replaced or removed from use.

Regulation 10.09 – Underground electrical cables

Regulation 10.09 provides that where excavation work is to be carried out at a workplace, an employer must obtain information about the location of all underground electrical cables in the vicinity of the workplace and give this information to all persons who are, or will be, engaged in the excavation.

Regulation 10.10 - Overhead electrical lines

Except as provided by subregulation (2), regulation 10.10(1) requires an employer to ensure that employees, plant, tools, other equipment and material used in or arising from the work are not in close proximity to overhead electrical lines. Under subregulation (2), this requirement does not apply to work done in accordance with all of the following: a written risk assessment, a safe work method assessment, and the requirements of the relevant electricity supply authority.

Regulation 10.11 - Cords, cables and fittings

Regulation 10.11 requires an employer to ensure that electrical cables, cords and fittings are located where they are unlikely to be damaged, are protected from damage and are not laid across a passageway unless they can be protected.

Regulation 10.12 - Hazard warning signs

Regulation 10.12 requires an employer to ensure that hazard warning signs are displayed at or near an area of a workplace where there is a risk of exposure to

electrical hazards. Each sign must warn of the hazard and, if necessary, restrict access of employees, contractors and other persons at the workplace to the area.

Division 10.3 Duty to keep records

Regulation 10.13 - Record-keeping

In addition to keeping the records required under Division 10.2, regulation 10.13 requires an employer to keep a record of all maintenance carried out on electrical equipment and electrical installations and all inspections and tests carried out under regulations 10.06 and 10.07. Such records must include the name of the person who did the work, the date and result of the work, and the date when the next inspection or test is to be carried out and must be kept for at least 5 years.

Division 10.4 Electrical installations

Regulation 10.14 – Electrical installations not energised

Subregulation 10.14(1) requires an employer to ensure that electrical installation work at a workplace is not carried out while a circuit or apparatus of the installation is energised. Subregulation 10.14(2) identifies the circumstances in which subregulation 10.14(1) does not apply.

Regulation 10.15 – Electrical installation work — safe system of work

If subregulation 10.14(1) applies, subregulation 10.15(1) requires an employer to ensure that electrical installation work is carried out using a safe system of work that includes checks to ensure that each circuit or apparatus of the installation is not energised when the work commences and does not become energised until the work is completed.

In either case, subregulation 10.15(3) requires a safe system of work to include procedures to eliminate or minimise the risk that those carrying out the work may inadvertently contact part of the installation that is energised, another electrical installation or electrical equipment.

Division 10.4 Duties of employees

Regulation 10.16 – Duty to undertake electrical work

Regulation 10.16 requires an employee not to undertake electrical work unless the employee is a competent person in relation to that work.

Division 10.5 Duties of contractors

Regulation 10.17 – Duty to undertake electrical work

Regulation 10.17 requires a contractor not to undertake electrical work unless the contractor is a competent person in relation to that work.

Part 11 Driver fatigue

The purpose of Part 11 is to control fatigue in drivers of heavy trucks, buses and commercial vehicles. In the case of drivers who are employees or drivers who are (natural person) contractors, it requires an employer to:

- identify, record and assess any risk of serious injury or death related to driver fatigue;
- develop and implement a driver fatigue management plan in consultation with drivers. The plan must address prescribed matters – one of which is that, in general, a driver's driving time, work time and rest time must be consistent with the hours specified in the *National Transport Commission (Road Transport Legislation — Driving Hours Regulations) Regulations 2006*; and
- keep records of a driver's driving time, work time, rest time and record odometer readings.

The Part adopts an outcomes-based approach rather than simply prescribing hours and kilometres. The latter does not, of itself, control fatigue in drivers of heavy vehicles.

Part 11 also applies in consignment situations and thus impose duties on employers in their capacity as consignors or consignees including where the employer engages an incorporated contractor. In these cases, an employer must not contract for the transport of goods or people unless satisfied that the timetable for the transport is reasonable with regard to the risk of serious injury or death resulting from driver fatigue.

These provisions do not diminish or otherwise detract from or limit the obligations imposed on employers, contractors and drivers under the general law including State and Territory road rules.

Division 11.1 Introduction

Regulation 11.01 - Object of Part 11

The objective of Part 11 is to control driver fatigue and ensure the safety of drivers and other people with whom they share the road by requiring:

- the implementation and compliance of plans to manage fatigue in drivers of heavy trucks, buses and commercial buses; and
- consignors, consignees and others not to impose unreasonable timeframes on drivers.

Regulation 11.02 - Application of Part 11

Regulation 11.02 applies Part 11 to employers engaged in the transportation business and to those who may not be in the transportation business but use a heavy truck, bus or commercial bus to transport people or goods on a regular basis.

The regulation will also apply Divisions 11.1 and 11.4 to an employer in a consignment situation including where an employer contracts directly with an incorporated owner-driver to deliver people or goods on the employer's behalf.

Regulation 11.03 - Definitions for Part 11

Regulation 11.03 provides a number of definitions specific to Part 11 including the following terms of note:

- *bus* means a motor vehicle capable of carrying 12 or more seated adults (including the driver) that is not operated as part of a commercial business.
- *commercial bus* means a motor vehicle capable of carrying 12 or more seated adults (including the driver) that is operated as part of a commercial business.
- *consignee* means an employer who engages or proposes to engage a person who is not an employee, either directly or through an intermediary, in order to transport goods or people to the employer by road.
- *consignor* means an employer who engages or proposes to engage a person who is not an employee, either directly or through an intermediary, for the purpose of transporting by road: goods from the employer; or people from a workplace or people from another place for the employer's purposes. The regulatory framework applies in consignment situations and thus imposes duties on employers in their capacity as consignors or consignees including where the employer engages an incorporated owner-driver.
- *driver* means a person who drives a heavy truck, bus or commercial truck for the purposes of an employer, irrespective of whether the driver is an employee.
- *driving* includes but is not limited to being in a stationary heavy truck, bus or commercial bus while the engine is running and being in such a vehicle while instructing or supervising another person's driving.
- *driving time* means the amount of time a driver spends driving on a road or road-related area within the meaning of the *National Transport Commission (Road Transport Legislation – Driving Hours Regulations) Regulations 2006*.
- *work time* means the total time the driver spends driving and includes other prescribed activities. These activities include loading or unloading, inspecting, servicing or repairing a heavy truck, bus or commercial bus; attending to passengers; cleaning or refuelling a heavy truck, bus or commercial bus; performing marketing activities; helping with or supervising any of the above activities; as well as time spent complying with record-keeping obligations.

Division 11.2 Duties of employers

Division 11.2 contains the duties of an employer to identify, record and assess any significant risk of serious injury or death related to driver fatigue. It also requires the development and implementation of a driver fatigue management plan in consultation with drivers.

Regulation 11.04 - Duty to assess and manage fatigue of drivers

Regulation 11.04 requires an employer to identify and record any significant risk of serious injury or any risk of death related to driver fatigue.

Regulation 11.05 - Duty to assess risks

In relation to a risk identified under regulation 11.04, regulation 11.05 requires an employer to assess the risk and take measures to either eliminate or minimise it as far as reasonably practicable. An employer is also required to record such risks and each measure taken to eliminate or minimise them.

Regulation 11.06 - Duty to ensure that driver does not risk fatigue

Regulation 11.06 provides that an employer must not allow an employee driver to transport people or goods in a heavy truck, bus or commercial bus unless the employer has complied with regulations 11.04 and 11.05.

Regulation 11.07 - Duty to develop and implement driver fatigue management plan

Regulation 11.07 requires an employer to develop and implement a driver fatigue management plan. Such a plan must deal with all drivers who are employees or contractors. It must be prepared in consultation with employee drivers and, as far as practicable, in consultation with contracted drivers (subregulation (2)).

Subregulation (3) prescribe matters that must be contained in a management plan. These include rosters, medical examinations, training and education of employees about fatigue management, procedures for managing incidents relating to fatigue, and establishing and maintaining safe workplace conditions.

Subregulation (4) requires the management plan to include arrangements for the scheduling and conduct of transport including arrangements relating to loading and unloading of heavy trucks, buses or commercial buses; arrangements for determining timeframes for safe transportation; arrangements for rest periods; arrangements for managing the cumulative effects of fatigue; and arrangements for managing the cumulative effects of daytime and night-time driving.

Subregulation (5) requires the plan to address the management of work and rest times. In particular, it requires an employer to ensure, as far as reasonably practicable, that a driver's driving time, work time and rest time are calculated in accordance with the hours specified in Part 2 of Schedule 1 to the *National Transport Commission (Road Transport Legislation — Driving Hours Regulations) Regulations 2006*. If an employer does not comply with this requirement, the employer must record the reasons for requiring the different driving time, work time or rest time; record the hours that are required; and record the measures taken to control the risk of serious injury or death resulting from fatigue.

Subregulation (6) requires the management plan to contain an implementation timetable and an explanation of the responsibilities of those involved in the plan's implementation.

Subregulation (7) requires an employer to keep its management plan current; review the plan at least once every three years; keep accurate records relating to the implementation, operation and review of the plan; make a copy of the plan available

to each driver; and make a copy of the plan available on request to a person who may be at risk of physical harm or death as a result of driver fatigue.

Division 11.3 Additional duty of employer to keep records

In addition to the records that must be kept under Division 11.2, Division 11.3 imposes further record keeping duties on employers.

Regulation 11.08 - Record-keeping

Subregulation (1) requires employers to record on a daily basis an employee driver's driving time, work time and rest time. An employer is also required to record the final destination each day of each driver who is required to drive a heavy truck, bus or commercial bus.

Subregulation (2) requires employers to record the odometer reading at the end of each period of work time for each heavy truck, bus or commercial bus.

Subregulation (3) requires employers to keep Divisions 11.2 and 11.3 records in a clear and systematic manner and for at least five years.

Division 11.4 Duty of employer in the capacity of consignee or consignor

Regulation 11.09 – Consignee or consignor

Regulation 11.09 imposes a duty on an employer in his/her capacity as a consignee or consignor. The purpose of this regulation is to ensure that an employer consignee or consignor does not impose unreasonable timeframes on the driver for the delivery of people or goods.

This regulation also applies to a situation where the employer contracts with an incorporated owner-driver to deliver people or goods on the employer's behalf. Subregulation (2) requires the consignor or consignee to keep a record of the reasons why they consider any timetable to be reasonable.

Division 11.5 Duty of drivers who are employees

Regulation 11.10 - Cooperation with driver fatigue management plan

Regulation 11.10 requires employee drivers to perform their work in accordance with the applicable driver fatigue management plan, to cooperate with the employer to ensure that the plan complies with regulation 11.07 and attend a medical examination that has been arranged by the employer in compliance with that regulation.

Division 11.6 Duty of drivers who are contractors

Regulation 11.11 – Cooperation with driver fatigue management plan

Regulation 11.11 requires contracted drivers to perform their work in accordance with the applicable driver fatigue management plan, and to cooperate with the employer to ensure that the plan complies with regulation 11.07.

Item [3] – Regulation 20.01, definition of *electrical installation*

A definition of ‘electrical equipment’ is inserted into regulation 20.01 of the Principal Regulations. Regulation 20.01 is the definitions provision in the Regulations.

Electrical equipment means an appliance, wire, fitting, cable, conduit, meter, insulator, apparatus, material or other electrical article that generates, uses, conveys or controls electricity.

The current definition of electrical installation in regulation 20.01 is also replaced with a new definition. *Electrical installation* means electrical equipment that is fixed or intended to be fixed, in, on, under or over land.

Item [4] – Subregulation 20.01 (1), paragraph (b) of definition of *relevant person*

This item makes a minor technical amendment to the definition of *relevant person* within the *Occupational Health and Safety (Commonwealth Employees) (National Standards) Regulations 1994* to better align the definition with that of ‘contractor’ in section 9A of the *OHS and SRC Legislation Amendment Act 2006*.

Item [5] – After Schedule 8

Item 5 inserts two new schedules into the Principal Regulations - Schedule 9 and Schedule 9A.

Schedule 9 is relevant to regulations 9.03, 9.06 and 9.08. The Schedule will be used by an employer in control of a facility to determine whether to notify the Commission in relation to that facility, or whether the Commission classifies a facility as a major hazard facility.

The Schedule also explains how to calculate the quantities of scheduled materials present, how to select the appropriate threshold quantity and how to calculate the aggregation formula.

Schedule 9A is relevant to paragraph 9.47(4)(c) and lists the information to be included in a safety report. The information relates to:

- the details of the major hazard facility;
- the details of the areas surrounding the facility;
- the details of control measures at the facility, including the procedures for preventing or limiting the consequences of major accidents, key personnel and resources (internal and external) available to intervene in the event of any failure of a control measure, and the emergency plan for the major hazard facility;

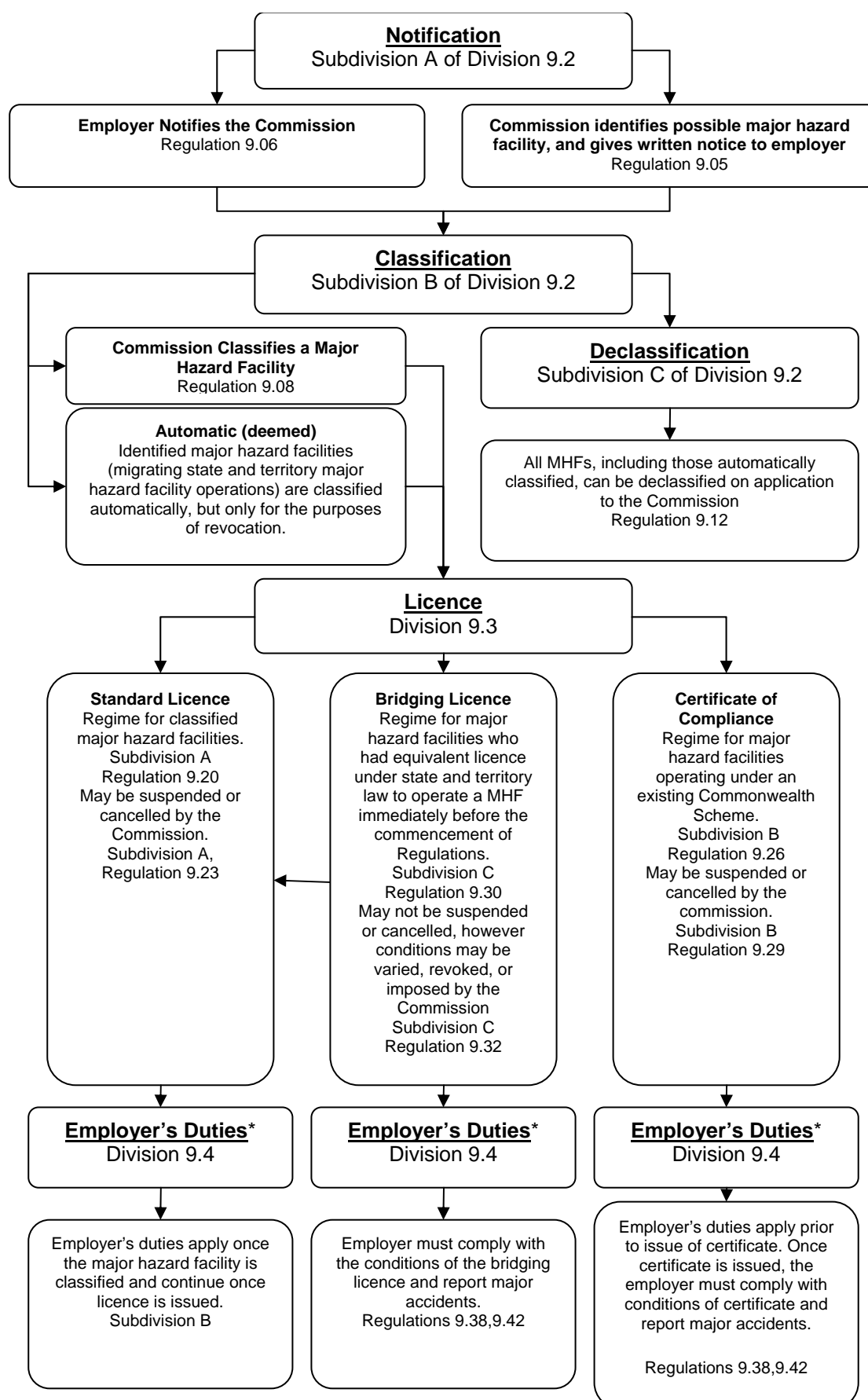
- the details of the performance standards to be met by the safety management system and relevant performance indicators;
- the details of safety and reliability of plant at the facility; and
- the details of the accident history of the facility.

Schedule 3 Further amendment of *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994*

Item [1] – Regulation 1.01 Name of regulations

This item re-names the Principal Regulations to the *Occupational Health and Safety (Safety Standards) Regulations 1994*. This change is due to the change of name of the *Occupational Health and Safety (Commonwealth Employment) Act 1991* to the *Occupational Health and Safety Act 1991* and because the Principal Regulations will include matters that do not give effect to National Standards determined by the Australian Safety and Compensation Council.

Operation of Major Hazard Facility regulatory framework



* Employer's Duties set out in Figure B

Figure A

Employer’s Duties

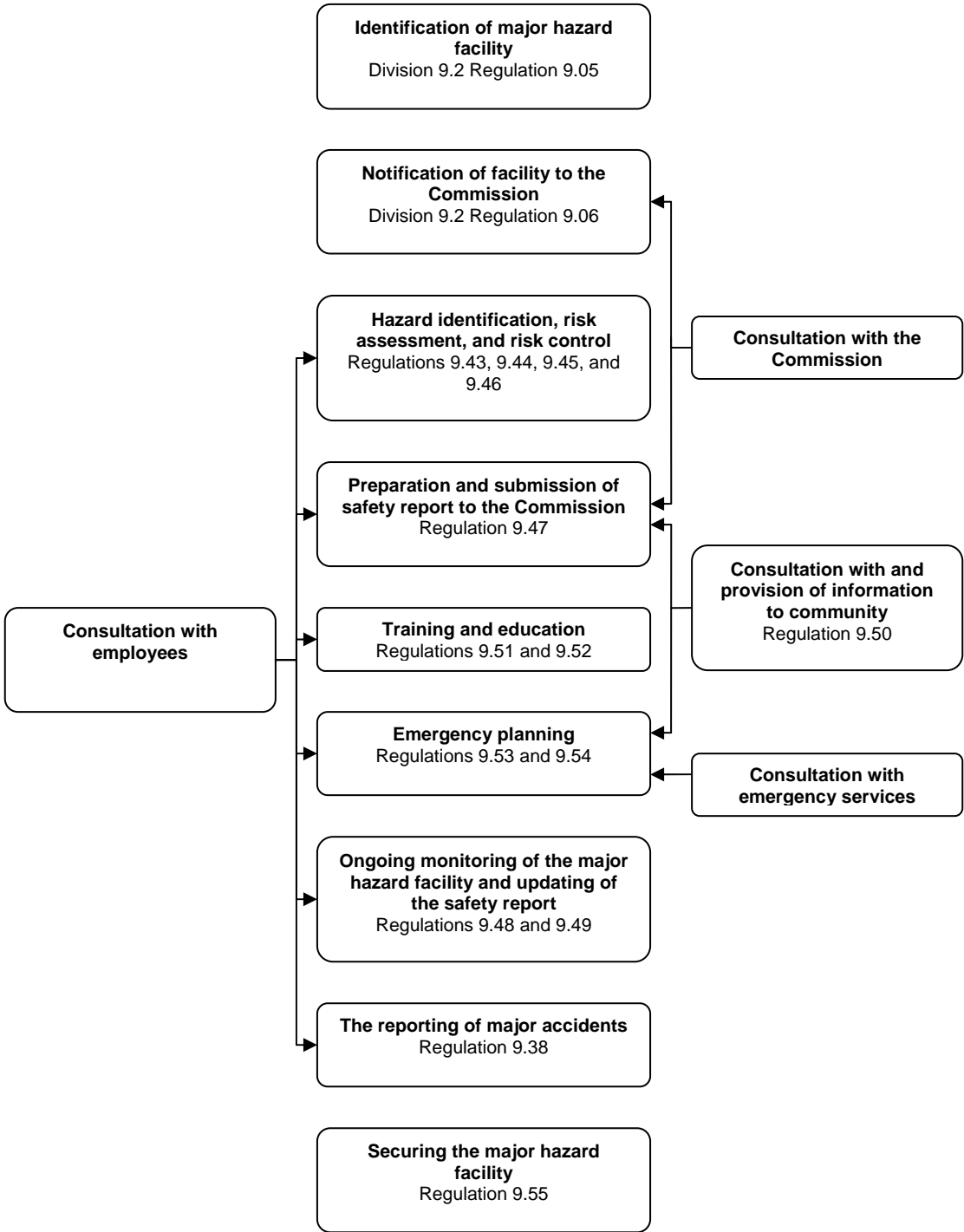


Figure B