



# Occupational Health and Safety (Safety Standards) Amendment Regulations 2008 (No. 1)<sup>1</sup>

## Select Legislative Instrument 2008 No. 201

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I, QUENTIN BRYCE, 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 Act 1991*.

Dated 3 October 2008

QUENTIN BRYCE  
Governor-General

By Her Excellency's Command

JULIA GILLARD  
Minister for Employment and Workplace Relations

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**1 Name of Regulations**

These Regulations are the *Occupational Health and Safety (Safety Standards) Amendment Regulations 2008 (No. 1)*.

**2 Commencement**

These Regulations commence on the day after they are registered.

**3 Amendment of *Occupational Health and Safety (Safety Standards) Regulations 1994***

Schedule 1 amends the *Occupational Health and Safety (Safety Standards) Regulations 1994*.

**4 Application of amendments**

- (1) This regulation applies in relation to the following certificates of competency:
  - (a) a certificate of competency that is:
    - (i) issued on or before 30 June 2007; and
    - (ii) in effect on the day on which this regulation commences;
  - (b) a certificate of competency that is:
    - (i) issued by a State or Territory authority in the period:
      - (A) starting on 1 July 2007; and
      - (B) ending immediately before the implementation by the State or Territory of the National Standard for Licensing Persons Performing High Risk Work; and
    - (ii) in effect on the day on which this regulation commences.

*Note* The National Standard for Licensing Persons Performing High Risk Work can be found at <http://www.ascc.gov.au>.

- (2) The person holding the certificate is to be treated as if he or she were licensed to perform the work authorised by the certificate of competency.
- (3) The certificate is to be treated as if it were a licence.
- (4) Subregulations (2) and (3) cease to apply in relation to a certificate when the certificate:
  - (a) expires; or
  - (b) is cancelled or suspended by the State or Territory authority.

## Schedule 1      Amendments

(regulation 3)

### [1]      Regulation 1.03, including the note

*substitute*

#### 1.03      Definitions located in Part 20

Part 20 contains definitions of certain expressions that are used in these Regulations.

*Note* Part 20 defines expressions that are generally used in more than one Part of these Regulations. If an expression is used in only one Part, it will be defined at the start of that Part.

In addition, a number of expressions that are used in these Regulations are defined in subsection 5 (1) of the *Occupational Health and Safety Act 1991*, including ***contractor***, ***employee***, ***employer*** and ***workplace***.

**[2] Part 2***substitute***Part 2 Licensing arrangements for high risk work****Division 1 Introduction****2.01 Object of Part 2**

The object of this Part is to minimise the incidence and severity of injuries associated with performing high risk work by requiring employers to ensure that employees and contractors are not permitted to perform the work unless licensed to do so by a State or Territory authority.

*Note* The regulations in this Part should be read with the National Standard for Licensing Persons Performing High Risk Work. The Standard can be found at <http://www.ascc.gov.au>.

**2.02 Definitions for Part 2**

In this Part, unless the contrary intention appears:

***certificate of competency*** means a document that:

- (a) identifies the competency of the person to whom it is issued; and
- (b) is issued by an authority of a State or a Territory that has the power, under a law of the State or Territory, to issue a certificate that relates to the performance of high risk work; and
- (c) is issued prior to the implementation by that State or Territory of the National Standard for Licensing Persons Performing High Risk Work; and
- (d) authorises a person to perform high risk work.

***high risk work*** means any of the following classes of work:

- (a) scaffolding work;
- (b) rigging (including dogging) work;
- (c) crane and hoist operation;

- (d) forklift operation;
- (e) pressure equipment operation.

*Note* The classes of work listed above are consistent with those classes of work in the schedule to the National Standard for Licensing Persons Performing High Risk Work as in force at the date of commencement of these Regulations.

**licence** means a document that is issued by a licensing authority in accordance with the National Standard for Licensing Persons Performing High Risk Work authorising a person to perform one or more classes of high risk work.

**licence holder** means the person who is named on a licence as authorised to perform high risk work.

**licensing authority** means the government authority responsible for the administration of the licensing system set out in the National Standard for Licensing Persons Performing High Risk Work.

**National Standard for Licensing Persons Performing High Risk Work** means the National Standard for Licensing Persons Performing High Risk Work:

- (a) declared by the Australian Safety and Compensation Council in accordance with subsection 6(1) of the *Australian Workplace Safety Standards Act 2005*; and
- (b) as in existence immediately before the commencement of this regulation.

*Note* The Standard can be found at <http://www.ascc.gov.au>.

## 2.03 Preservation of State and Territory laws

- (1) For subsection 4(3) of the Act, and subject to subregulation (2), the following laws are prescribed:
  - (a) a law of a State or Territory that relates to the issue, suspension, cancellation, renewal or exemption of a licence for a class of high risk work (whether or not the work is described in that law as high risk work);
  - (b) a law of a State or Territory that relates to the imposition of rights or obligations on employees in relation to a class of high risk work (whether or not the work is described in that law as high risk work).

- (2) A law mentioned in subregulation (1) is not prescribed to the extent that it imposes rights or duties on an employer.

## **Division 2                      Duties relating to the performance of work**

### **2.04      Allowing persons to perform high risk work**

- (1) Subject to subregulations (3) and (4), an employer must not allow or direct an employee or a contractor to perform a class of high risk work at a workplace if the employee or contractor does not hold a licence to perform the class of high risk work.

Penalty: 150 penalty units.

- (2) The penalty in subregulation (1) is a civil penalty.
- (3) Subregulation (1) does not apply if :
- (a) the employee or contractor has been exempted by a licensing authority from the requirement to hold a licence to perform the class of high risk work; or
  - (b) the employee or contractor is otherwise exempt from the requirement to hold a licence to perform the class of high risk work.
- (4) Subregulation (1) does not apply if the employee or contractor is undertaking training to obtain a licence to perform that class of high risk work, and the employer:
- (a) ensures that the employee or contractor is given directions and demonstrations relating to the class of high risk work that:
    - (i) are appropriate to the tasks assigned to the employee or contractor; and
    - (ii) are appropriate to the competence of the employee or contractor; and
  - (b) ensures, as far as practicable, that the directions and demonstrations referred to in paragraph (a) will allow the employee or contractor to perform the class of high risk work in a manner that is safe and without risk to health and safety; and

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- (c) ensures that the employee or contractor will be directly supervised by a person holding a current licence to perform the class of high risk work, unless the employer can demonstrate that:
    - (i) the circumstances of a particular task make this degree of supervision impractical or unnecessary; or
    - (ii) the level of the employee's or contractor's competence is such that direct supervision can be reduced; or
    - (iii) a lesser degree of supervision would not place the employee or contractor, or any other person at risk; and
  - (d) ensures that the employee's or contractor's performance of the task will be appropriately monitored.

## **2.05 Employer to provide training**

- (1) If:
  - (a) an employee or contractor becomes the holder of a licence at the employer's workplace; or
  - (b) a licence holder is new at the employer's workplace; the employer must provide the employee, contractor or licence holder with training, instruction and information on the equipment operation, hazards, risks and control measures relevant to the employer's workplace.

Penalty: 150 penalty units.
- (2) If:
  - (a) new equipment is installed in the employer's workplace; or
  - (b) changes are made to the operation, risks and control measures of existing equipment in the employer's workplace; or
  - (c) new information becomes available on the safe operation of the equipment at the employer's workplace;

the employer must, when necessary, provide the holder of a licence with training, instruction and information on the equipment operation, hazards, risks and control measures relevant to the employer's workplace.

Penalty: 150 penalty units.

- (3) The penalties in subregulations (1) and (2) are civil penalties.

## **2.06 Production of a licence for inspection**

- (1) An investigator may ask an employee or a contractor, who holds a licence, to produce the licence to the investigator.
- (2) The employee or contractor must produce the licence to the investigator within a reasonable period after being asked.

Penalty: 50 penalty units.

- (3) The penalty in subregulation (2) is a civil penalty.

## **Division 3                      Suspension or cancellation of licence**

### **2.07 Recommendation to a licensing authority for the suspension or cancellation of a licence**

Comcare may recommend the suspension or cancellation of a licence to the licensing authority that issued the licence if Comcare has evidence that:

- (a) the licence was given to a person as a result of the provision of false or misleading information; or
- (b) the licence holder is no longer competent to carry out the class of high risk work to which the licence relates without risk to:
- (i) the licence holder's health or safety; or
  - (ii) the health or safety of another person; or
- (c) the licence holder has contravened a requirement of the Act or these Regulations, or of a corresponding law of a State or Territory, applying to the person.



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**Note**

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