



New South Wales

Occupational Health and Safety Amendment Regulation 1997

under the

Occupational Health and Safety Act 1983

His Excellency the Lieutenant-Governor, with the advice of the Executive Council, has made the following Regulation under the *Occupational Health and Safety Act 1983*.

J. W. Shaw

Minister for Industrial Relations

Explanatory note

The object of this Regulation is to amend:

- (a) the *Occupational Health and Safety (Certificates of Competency) Regulation 1996* with respect to competency assessments outside New South Wales by industry rather than public authorities and to create certain offences relating to false assessments of competency,
- (b) the *Occupational Health and Safety (Hazardous Substances) Regulation 1996* to add the New South Wales Volunteer Rescue Association to the list of emergency services that are entitled to access an employer's records of hazardous substances as well as to clarify certain provisions, and
- (c) the *Occupational Health and Safety (Penalty Notices) Regulation 1996*:
 - (i) to add a number of offences relating to the handling of dangerous goods in ports under Part 11 of the *Dangerous Goods Regulation 1978* to the list of offences that may be dealt with by penalty notice, and

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- (ii) to add offences under section 18 (relating to the duties of manufacturers and suppliers of plant and substances) of the *Occupational Health and Safety Act 1983*, and a number of offences under the *Occupational Health and Safety (Certificates of Competency) Regulation 1996*, to the list of offences that may be dealt with by penalty notice, and
- (iii) to increase the penalty notice penalty for breaches of section 31R of that Act (ie breaches of improvement notices issued by inspectors).

This Regulation is made under the *Occupational Health and Safety Act 1983*, including sections 45 and 51B.

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1 Name of Regulation

This Regulation is the *Occupational Health and Safety Amendment Regulation 1997*.

2 Amendment of Occupational Health and Safety (Certificates of Competency) Regulation 1996

The *Occupational Health and Safety (Certificates of Competency) Regulation 1996* is amended as set out in Schedule 1.

3 Amendment of Occupational Health and Safety (Hazardous Substances) Regulation 1996

The *Occupational Health and Safety (Hazardous Substances) Regulation 1996* is amended as set out in Schedule 2.

4 Amendment of Occupational Health and Safety (Penalty Notices) Regulation 1996

The *Occupational Health and Safety (Penalty Notices) Regulation 1996* is amended as set out in Schedule 3.

5 Notes

The explanatory note does not form part of this Regulation.

Schedule 1 Amendment of Occupational Health and Safety (Certificates of Competency) Regulation 1996

(Clause 2)

[1] Clause 7 Recognised qualifications

Omit “corresponding law.” from clause 7 (1) (d).
Insert instead “corresponding law,”.

[2] Clause 7

Insert after clause 7 (1) (d):

- (e) a certificate of competency (however described) issued by a training provider in a State other than New South Wales or in a Territory or in New Zealand, being a certificate approved by Workcover for the purposes of this clause.

[3] Clause 15 Assessment of competency

Omit clause 15 (3). Insert instead:

- (3) An assessor (other than Workcover) who does any of the following is guilty of an offence:
 - (a) assesses an applicant’s competency to do scheduled work otherwise than in accordance with the guidelines issued by Workcover in relation to the conduct of assessments,
 - (b) issues a notice of satisfactory assessment without assessing the applicant as being competent to do the scheduled work specified in the notice,
 - (c) falsely assesses an applicant as being competent to do scheduled work,
 - (d) assesses an applicant’s competency to do scheduled work, being aware that the applicant has been assessed in relation to the same kind of work within the previous 21 days,

- (e) refuses to issue a notice of satisfactory assessment in respect of scheduled work despite having assessed the applicant as being competent to do the work.

Maximum penalty: 50 penalty units.

[4] Clause 28 Supervisor's obligations

Omit clause 28 (2) (b). Insert instead:

- (b) must check the record on each date on which the scheduled work is done by the trainee, and:
 - (i) if satisfied that the record is correct in respect of that date, must sign the record on that date, or
 - (ii) if not so satisfied, must make and sign on that date a note to that effect on the record.

[5] Schedule 1 Work for which qualifications required

Omit "fences" from items 1.1 (i) and 1.2 (d) wherever occurring.
Insert instead "shutters".

Schedule 2 Amendment of Occupational Health and Safety (Hazardous Substances) Regulation 1996

(Clause 3)

**[1] Clause 13 Disclosure of ingredients on request by other
persons**

Omit “on the application” from clause 13 (4).
Insert instead “in response to the application”.

[2] Clause 13 (5)

Insert at the end of the subclause “However, the manufacturer or importer may refuse the application if the applicant has not signed a written undertaking in connection with the disclosure in accordance with subclause (4).”.

[3] Dictionary, definition of “emergency service”

Insert after paragraph (h):

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- (i) the New South Wales Volunteer Rescue Association Incorporated.

[4] Dictionary, definition of “type I ingredient”

Omit the definition. Insert instead:

type I ingredient means an ingredient present in a particular hazardous substance in a quantity that exceeds the lowest relevant concentration cut-off level specified for the hazard classification of the substance in the document entitled “Approved Criteria for Classifying Hazardous Substances” published by Worksafe Australia, being an ingredient that:

- (a) is a substance that is, according to that document:
 - (i) carcinogenic, mutagenic or teratogenic, or
 - (ii) a skin or respiratory sensitiser, or
 - (iii) corrosive, very corrosive, toxic or very toxic, or
 - (iv) a harmful substance that can cause irreversible effects after acute exposure, or
 - (v) a harmful substance that can cause serious damage to health after repeated or prolonged exposure, or
- (b) is a substance for which an exposure standard is listed in the document entitled “Exposure Standards for Atmospheric Contaminants in the Occupational Environment”, published by WorksafeAustralia.

[5] Dictionary, definition of “type II ingredient”

Omit the definition. Insert instead:

type II ingredient means an ingredient present in a particular hazardous substance in a quantity that exceeds the lowest relevant concentration cut-off level specified for the hazard classification of the substance in the document entitled “Approved Criteria for Classifying Hazardous Substances,” published by Worksafe Australia, being an ingredient that:

- (a) is a harmful substance according to that document, and
- (b) is not a type I ingredient.

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Schedule 3

Amendment of Occupational Health and Safety (Penalty Notices)
Regulation 1996

**Schedule 3 Amendment of Occupational Health
and Safety (Penalty Notices)
Regulation 1996**

(Clause 4)

[1] Clause 7 Authorised office—dangerous goods offences

Omit “(other than an offence under clause 85 (2))” from clause 7 (2).

Insert instead “(other than an offence under clause 85 (2) or Part 11)”.

[2] Clause 7 (3)

Insert after clause 7 (2):

(3) The following officers are declared to be authorised officers under section 51B of the Act in relation to an offence under Part 11 of the *Dangerous Goods Regulation 1978* that is prescribed by this Regulation and that is committed in an area where a Port Corporation exercises port safety functions for which it is licensed under the *Ports Corporatisation and Waterways Management Act 1995*:

- (a) an officer referred to in subclause (2) (a), and
- (b) a member of the staff of the relevant Port Corporation to whom the Corporation has issued written authorisation for the purposes of this, Regulation.

[3] Schedule 1 Penalty notice offences

Omit the matter relating to the *Occupational Health and Safety Act 1983*.

Insert instead:

<i>Occupational Health and Safety Act 1983</i>	Sections 15 (1), 16 (1) and (2), 18 (2) and (3), 19 (a) and (b), 20 and 27 (1)	0.5 penalty units (in the case of a person who commits the offence in his or her capacity as an employee) or 5 penalty units (in any other case)
	Section 31R (5)	0.8 penalty units (in the case of a person who commits the offence in his or her capacity as an employee) or 10 penalty units (in any other case)
<i>Occupational Health and Safety (Certificates of Competency) Regulation 1996</i>	Clauses 8 (1) and (2), 27 (3), 28 (1) and (2) and 38 (2)	0.5 penalty units (in the case of a person who commits the offence in his or her capacity as an employee) or 5 penalty units (in any other case)

[4] Schedule 1

Insert at the end of the matter relating to the *Dangerous Goods Regulation 1978*:

The following provisions of Part 11: clauses 299 (1), 300, 311 (3), 314 (1) and (2), 315 (1), 329 (2) and 367	5 penalty units
The following provisions of Part 11: clauses 302 (1) and 303 (1)	2 penalty units