



New South Wales

Work Health and Safety Amendment (Miscellaneous) Regulation 2015

under the

Work Health and Safety Act 2011

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Work Health and Safety Act 2011*.

DOMINIC PERROTTET, MP
Minister for Finance and Services

Explanatory note

The object of this Regulation is to amend the *Work Health and Safety Regulation 2011*:

- (a) to make that Regulation consistent with the latest version of the *Model Work Health and Safety Regulations* prepared by Safe Work Australia, and
- (b) to make certain New South Wales-specific changes relating to the persons competent to work on energised electrical equipment or maintain, inspect and test cranes, amusement devices and passenger ropeways and to the disclosure of information to the Coroner, and
- (c) to prescribe certain asbestos-related offences as penalty notice offences for the purposes of that Regulation, and
- (d) to increase fees prescribed under that Regulation, and
- (e) to make amendments of a savings and transitional nature.

This Regulation is made under the *Work Health and Safety Act 2011*, including section 276 of, and Schedule 3 to, that Act (the general regulation-making powers).

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Work Health and Safety Act 2011

1 Name of Regulation

This Regulation is the *Work Health and Safety Amendment (Miscellaneous) Regulation 2015*.

2 Commencement

- (1) Except as provided by subclause (2), this Regulation commences on 13 February 2015 and is required to be published on the NSW legislation website.
- (2) Schedule 1 [77] commences on 1 July 2015.

Schedule 1 Amendment of Work Health and Safety Regulation 2011

[1] Clause 5 Definitions

Omit “microorganisms” from the definition of *airborne contaminant* in clause 5 (1).
Insert instead “micro-organisms”.

[2] Clause 5 (1), definition of “amusement device”

Omit “passengers travel on”. Insert instead “passengers or other users travel or move on”.

[3] Clause 5 (1), definition of “appropriate training in underwater medicine”

Omit the definition.

[4] Clause 5 (1), definition of “boiler”

Omit “*Boilers*, or” from subparagraph (ii) of paragraph (d). Insert instead:

Boilers,

- (iii) AMBSC Part 3—*Australian Miniature Boiler Safety Committee Code for Sub-Miniature Boilers*,
- (iv) AMBSC Part 4—*Australian Miniature Boiler Safety Committee Code for Duplex Steel Boilers*, or

[5] Clause 5 (1)

Insert in alphabetical order:

combustible dust means finely divided solid particles (including dust, fibres or flyings) that are:

- (a) suspended in air or settle out of the atmosphere under their own weight, and
- (b) able to burn or glow in air, and
- (c) able to form an explosive mixture with air at atmospheric pressure and normal temperature.

[6] Clause 5 (1), definition of “competent person”

Omit paragraphs (c) and (d). Insert instead:

- (c) for a major inspection of a mobile crane or a tower crane under clause 235—see clause 235,
- (d) for an inspection of an amusement device or passenger ropeway under clause 241—see clause 241,

[7] Clause 5 (1), definition of “concrete placement unit with delivery boom”

Omit the definition.

[8] Clause 5 (1), definition of “gantry crane”

Omit paragraph (a). Insert instead:

- (a) consists of a bridge beam or beams supported at one or both ends by legs mounted to end carriages, and

[9] Clause 5 (1), definition of “hazardous area”

Omit the definition. Insert instead:

hazardous area means an area in which:

- (a) an explosive gas is present in the atmosphere in a quantity that requires special precautions to be taken for the construction, installation and use of plant, or
- (b) a combustible dust is present, or could reasonably be expected to be present, in the atmosphere in a quantity that requires special precautions to be taken for the construction, installation and use of plant.

[10] Clause 5 (1), definition of “incidental diving work”

Omit “and” from paragraph (b) and omit paragraph (c).

[11] Clause 5 (1)

Insert in alphabetical order:

inflatable device (continuously blown) means an amusement device that is an inflatable device that relies on a continuous supply of air pressure to maintain its shape.

passenger ropeway means a powered ropeway used for transporting, in a horizontal or inclined plane, passengers moved by a carrier that is:

- (a) attached to or supported by a moving rope, or
- (b) attached to a moving rope but supported by a standing rope or other overhead structure,

including, in relation to the powered ropeway, the prime mover, any associated transmission machinery and any supporting structure and equipment, but does not include any of the following:

- (c) a cog railway,
- (d) a cable car running on rails,
- (e) a flying fox or similar device,
- (f) an elevating system for vehicles or boat style carriers associated with amusement devices,

Example. An elevating system for a log ride or boat flume ride.

- (g) a winding system in a mine.

platform height, in relation to an inflatable device (continuously blown), means the height of the highest part of the device designed to support persons using it (the *platform*), as measured from the surface supporting the device to the top surface of the platform when the device is inflated but unloaded.

[12] Clause 5 (1), definition of “primary emergency services organisation”

Omit “*services*”. Insert instead “*service*”.

[13] Clause 5 (1), definition of “safe oxygen level”

Omit “in”. Insert instead “of”.

[14] Clause 5 (1), definition of “specified VET course”

Omit paragraph (b). Insert instead:

- (b) in relation to Class A asbestos removal work—the VET course *Remove friable asbestos*, or

[15] Clause 5 (1), definition of “specified VET course”

Insert at the end of paragraph (e):

, or

- (f) in relation to high risk work—the relevant VET course specified in Schedule 4.

[16] Clause 21 Training for health and safety representatives

Omit “all” from clause 21 (2). Insert instead “any”.

[17] Clause 25 Training requirements for WHS entry permits

Omit “must have regard to all” from clause 25 (3). Insert instead “may have regard to any”.

[18] Clause 43 Duty to prepare, maintain and implement emergency plan

Omit “consider” from clause 43 (3). Insert instead “have regard to”.

[19] Clause 82 Exceptions

Omit clause 82 (1). Insert instead:

- (1) A person who carries out high risk work is not required to be licensed to carry out the work if the work is carried out:
 - (a) in the course of training towards a certification in order to be licensed to carry out the high risk work, and
 - (b) under the supervision of a person who is licensed to carry out the high risk work.
- (1A) A person who holds a certification in relation to a specified VET course for high risk work is not required to be licensed to carry out the work:
 - (a) for 60 days after the certification is issued, and
 - (b) if the person applies for the relevant high risk work licence within that 60-day period, until:
 - (i) the person is granted the licence, or
 - (ii) the expiry of 28 days after the person is given written notice under clause 91 (2) of a decision to refuse to grant the licence.
- (1B) A person who carries out high risk work is not required to be licensed to carry out the work if the work is carried out while an accredited assessor is conducting an assessment of the person’s competency in relation to the work.

[20] Clause 82 (3)

Omit the subclause. Insert instead:

- (3) For the purposes of subclause (2) (a), *moving* includes operating the plant in order to load the plant onto, or unload it from, a vehicle or equipment used to move it.

[21] Clause 84 Duty of person conducting business or undertaking to ensure direct supervision

Omit “clause 82 (1) (a)” from clause 84 (1). Insert instead “clause 82 (1)”.

[22] Clause 85 Evidence of licence—duty of person conducting business or undertaking

Omit clause 85 (2) and (3). Insert instead:

- (2) A person conducting a business or undertaking at a workplace must not direct or allow a worker to carry out high risk work in the circumstances referred to in clause 82 (1) unless the person sees written evidence provided by the worker that the worker is undertaking the course of training referred to in clause 82 (1) (a).

Maximum penalty:

- (a) in the case of an individual—\$3,600, or
(b) in the case of a body corporate—\$18,000.

- (2A) A person conducting a business or undertaking at a workplace must not direct or allow a worker to carry out high risk work in the circumstances referred to in clause 82 (1A) unless the person sees written evidence provided by the worker that the worker:

- (a) in the circumstances referred to in clause 82 (1A) (a)—holds a certification referred to in clause 82 (1A), and
(b) in the circumstances referred to in clause 82 (1A) (b):
(i) holds a certification referred to in clause 82 (1A), and
(ii) has applied for the relevant licence within the period referred to in clause 82 (1A) (b).

Maximum penalty:

- (a) in the case of an individual—\$3,600, or
(b) in the case of a body corporate—\$18,000.

- (3) A person conducting a business or undertaking at a workplace must not direct or allow a worker to supervise high risk work as referred to in clauses 82 (1) and 84 unless the person sees written evidence that the worker holds the relevant high risk work licence for that high risk work.

Maximum penalty:

- (a) in the case of an individual—\$3,600, or
(b) in the case of a body corporate—\$18,000.

[23] Clause 85 (4)

Omit “the written evidence given to the person”.

Insert instead “a record of the written evidence provided”.

[24] Clause 87 Application for high risk work licence

Omit clause 87 (2) (b). Insert instead:

- (b) a photograph of the applicant in the form required by the regulator,

[25] Clause 87 (2) (f) (i)

Omit the subparagraph. Insert instead:

- (i) that is held by the applicant in relation to the specified VET course, or each of the specified VET courses, for the high risk work licence applied for, and

[26] Clause 91A

Insert after clause 91:

91A Conditions of licence

- (1) The regulator may impose any conditions it considers appropriate on a high risk work licence.
- (2) Without limiting subclause (1), the regulator may impose conditions in relation to one or more of the following:
 - (a) control measures that must be implemented in relation to the carrying out of work or activities under the licence,
 - (b) the circumstances in which work or activities authorised by the licence may be carried out.
- (3) The regulator must give the licence holder written notice of any conditions imposed on the licence.

Notes.

- 1 A person must comply with the conditions of a licence (see section 45 of the Act).
- 2 A decision to impose a condition on a licence is a reviewable decision (see clause 676).

[27] Clause 93 Licence document

Omit “recent” from clause 93 (2) (b).

[28] Clause 101 Application for renewal

Omit clause 101 (2) (b) and (c). Insert instead:

- (b) if required by the regulator, a photograph of the applicant in the form required by the regulator,
- (c) any other evidence of the applicant’s identity required by the regulator,

[29] Clause 104 Provisions relating to renewal of licence

Omit “90 and 92 apply as if a reference in clause 89” from clause 104 (1) (b).

Insert instead “90, 91A and 92 apply as if a reference in those clauses”.

[30] Clause 104, note

Omit “high risk work”.

[31] Clause 106 Suspension or cancellation of licence

Insert after clause 106 (1) (a):

- (ab) the licence holder has failed to comply with a condition of the licence,

[32] Clause 106 (3) and (4)

Omit the note after clause 106 (2). Insert instead:

- (3) If the regulator suspends a licence, the regulator may vary the conditions of the licence, including by imposing different or additional conditions.

- (4) A variation of conditions under subclause (3) takes effect when the suspension of the licence ends.

Notes.

- 1 A decision to suspend a licence, to cancel a licence or to disqualify the licence holder from applying for a further licence is a reviewable decision (see clause 676).
- 2 A variation of licence conditions is a reviewable decision (see clause 676).

[33] Clause 108

Omit the clause. Insert instead:

108 Notice to and submissions by licence holder

- (1) Before suspending or cancelling a high risk work licence, the regulator must give the licence holder a written notice of:
 - (a) the proposed suspension or cancellation, and
 - (b) any proposed disqualification, and
 - (c) any proposed variation of licence conditions.
- (2) A notice under subclause (1) must:
 - (a) outline all relevant allegations, facts and circumstances known to the regulator, and
 - (b) advise the licence holder that the licence holder may, by a specified date (being not less than 28 days after giving the notice), make a submission in relation to the proposed suspension or cancellation, any proposed disqualification and any proposed variation of licence conditions.

[34] Clause 109 Notice of decision

Insert after clause 109 (2) (b) (iv):

- (v) if the licence conditions are to be varied—the variation, and
- (vi) if the licence conditions are to be varied—that the variation will take effect when the suspension ends, and

[35] Clause 152

Omit the clause. Insert instead:

152 Application of Division 4

This Division does not apply to work carried out:

- (a) by or on behalf of an electricity supply authority on the electrical equipment, including electric line-associated equipment, controlled or operated by the authority to generate, transform, transmit or supply electricity, or
- (b) by a person accredited to provide contestable services within the meaning of Part 3 of the *Electricity Supply (Safety and Network Management) Regulation 2014*, but only while the accredited person is providing the contestable services or carrying out other work authorised by an electricity supply authority.

[36] Clause 158 Preliminary steps

Insert “in relation” after “circumstances,” in the note to clause 158 (2).

[37] Clause 161 How the work is to be carried out

Insert “and resuscitate” after “rescue” in clause 161 (4) (a) (ii).

[38] Clause 167 Purpose of Part 4.8

Omit “carrying out”. Insert instead “conducting”.

[39] Clause 169 Certificate of medical fitness

Omit “appropriate” from clause 169 (a).

[40] Clauses 171, 171A and 172

Omit clauses 171 and 172. Insert instead:

171 Competence of worker—general diving work—general qualifications

- (1) A person must not carry out any type of general diving work unless the person holds a certificate for general diving work, issued by a training organisation, that demonstrates that the person has acquired the relevant competencies for that type of general diving work.
- (2) This clause does not apply in relation to incidental diving work or limited diving work.
- (3) In subclause (1), *relevant competencies* means the competencies specified in AS 4005.2:2000 (*Training and certification of recreational divers*) or AS/NZS 2815 (*Training and certification of occupational divers*) that are relevant to the type of general diving work to which subclause (1) applies.

Note. See section 44 of the Act.

171A Competence of worker—general diving work—additional knowledge and skill

- (1) In addition to clause 171, a person must not carry out general diving work unless the person has, through training, qualification or experience, acquired sound knowledge and skill in relation to the following:
 - (a) the application of diving physics,
 - (b) the use, inspection and maintenance of diving equipment (including emergency equipment) and air supply of the type to be used in the proposed general diving work,
 - (c) the use of decompression tables or dive computers,
 - (d) dive planning,
 - (e) ways of communicating with another diver and with persons at the surface during general diving work,
 - (f) how to safely carry out general diving work of the type proposed to be carried out,
 - (g) diving physiology, emergency procedures and first aid.

Note. See section 44 of the Act.

- (2) This clause does not apply in relation to incidental diving work or limited scientific diving work.

172 Competence of worker—incidental diving work

- (1) A person must not carry out incidental diving work unless the person:
 - (a) has the knowledge and skill referred to in clause 171A, and
 - (b) has relevant diving experience, and

- (c) is accompanied and supervised in the water by a person who has the competencies referred to in clause 171.

Note. See section 44 of the Act.

- (2) In this clause, a person has *relevant diving experience* if the person has logged at least 15 hours of diving, of which at least 8 hours and 20 minutes were spent diving between 10 metres above and any depth below the maximum depth at which the diving work is to be carried out.

[41] Clause 173 Competence of worker—limited scientific diving work

Omit “clause 171 (b)” from clause 173 (1) (a). Insert instead “clause 171A”.

[42] Clause 174 Competence of competent person supervising general diving work

Omit “clause 171 (a)” from clause 174 (a). Insert instead “clause 171”.

[43] Clause 175 Evidence of competence—duty of person conducting business or undertaking

Omit “as” from clause 175 (2). Insert instead “a”.

[44] Clause 215 Powered mobile plant—specific control measures

Omit “conducting a business or undertaking” from clause 215 (1).

[45] Clause 217 Protective structures on earthmoving machinery

Omit the clause.

[46] Clause 235 Major inspection of registered mobile cranes and tower cranes

Omit clause 235 (2) and (3). Insert instead:

- (2) The person must ensure that a major inspection of the crane is carried out by, or under the supervision of, a competent person:
 - (a) at the end of the design life recommended by the manufacturer for the crane, or
 - (b) if there are no manufacturer’s recommendations—in accordance with the recommendations of a competent person, or
 - (c) if it is not reasonably practicable to comply with paragraph (a) or (b)—every 10 years from the date that the crane was first commissioned or first registered, whichever occurred first.

Maximum penalty:

- (a) in the case of an individual—\$3,600, or
 - (b) in the case of a body corporate—\$18,000.
- (3) A major inspection carried out under and in accordance with an equivalent provision of a corresponding WHS law is taken to be a major inspection for the purposes of this clause.

[47] Clause 235 (4) (a)

Omit the paragraph. Insert instead:

- (a) complies with both of the following:
 - (i) has acquired through training, qualification or experience the knowledge and skills to carry out a major inspection of the plant, and

- (ii) is:
 - (A) registered under a law that provides for the registration of professional engineers, or
 - (B) a member (or is qualified to be a member) of Engineers Australia with the status of Chartered Professional Engineer, or
 - (C) entered on the National Professional Engineers Register administered by the Institution of Engineers Australia.

[48] Clause 235 (6)

Insert after clause 235 (5):

- (6) In this clause, *major inspection* means:
 - (a) an examination of all critical components of the crane, if necessary by stripping down the crane and removing paint, grease and corrosion to allow a thorough examination of each critical component, and
 - (b) a check of the effective and safe operation of the crane.

[49] Chapter 5, Part 5.2, Division 4, Subdivision 2

Omit the Subdivision. Insert instead:

Subdivision 2 Control measures for amusement devices and passenger ropeways

238 Operation of amusement devices and passenger ropeways

- (1) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that the device or ropeway is operated only by a person who has been provided with instruction and training in its proper operation.
Maximum penalty:
 - (a) in the case of an individual—\$6,000, or
 - (b) in the case of a body corporate—\$30,000.
- (2) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that:
 - (a) the amusement device or passenger ropeway is checked before it is operated on each day on which it is to be operated, and
 - (b) the amusement device or passenger ropeway is operated without passengers before it is operated with passengers on each day on which it is to be operated, and
 - (c) the daily checks and operation of the amusement device or passenger ropeway without passengers are properly and accurately recorded in a log book for the device or ropeway.Maximum penalty:
 - (a) in the case of an individual—\$6,000, or
 - (b) in the case of a body corporate—\$30,000.

239 Storage of amusement devices and passenger ropeways

- (1) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that the device or ropeway is stored so as to be without risk to health and safety.

Maximum penalty:

- (a) in the case of an individual—\$3,600, or
(b) in the case of a body corporate—\$18,000.

- (2) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that a person who stores the device or ropeway is a competent person or is under the supervision of a competent person.

Maximum penalty:

- (a) in the case of an individual—\$3,600, or
(b) in the case of a body corporate—\$18,000.

240 Maintenance, inspection and testing of amusement devices and passenger ropeways

- (1) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that the maintenance, inspection and, if necessary, testing of the device or ropeway is carried out:

- (a) by a competent person, and
(b) in accordance with:
(i) the recommendations of the designer or manufacturer or designer and manufacturer, or
(ii) if a maintenance manual for the device or ropeway has been prepared by a competent person, the requirements of the maintenance manual.

Maximum penalty:

- (a) in the case of an individual—\$6,000, or
(b) in the case of a body corporate—\$30,000.

- (2) A person is not a competent person to carry out a detailed inspection of an amusement device or passenger ropeway that includes an electrical installation unless the person is qualified, or is assisted by a person who is qualified, to inspect electrical installations.

241 Annual inspection of amusement devices and passenger ropeways

- (1) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that a detailed inspection of the device or ropeway is carried out at least once every 12 months by a competent person.

Maximum penalty:

- (a) in the case of an individual—\$6,000, or
(b) in the case of a body corporate—\$30,000.

- (2) An annual inspection must include the following:

- (a) a check of information about the operational history of the amusement device or passenger ropeway since the last detailed inspection,
(b) a check of the log book for the amusement device or passenger ropeway,

- (c) a check that maintenance and inspections of the amusement device or passenger ropeway have been undertaken under clause 240,
 - (d) a check that any required tests have been carried out, and that appropriate records have been maintained,
 - (e) a detailed inspection of the amusement device or passenger ropeway to ensure compliance with the Act and this Regulation (including a specific inspection of the critical components of the amusement device or passenger ropeway).
- (3) The regulator may extend the date for an inspection by up to 35 days if an inspection is scheduled to coincide with the same event each year.
- (4) If the date is extended under subclause (3), the new date is the date from which future annual inspections of the amusement device or passenger ropeway are determined.
- (5) In this clause, a *competent person* is a person who:
- (a) in the case of an inflatable device (continuously blown) with a platform height less than 9 metres—has acquired through training, qualification or experience the knowledge and skills to inspect the device, or
 - (b) in the case of any other amusement device or a passenger ropeway:
 - (i) has acquired through training, qualification or experience the knowledge and skills to inspect the plant, and
 - (ii) is:
 - (A) registered under a law that provides for the registration of professional engineers, or
 - (B) a member (or is qualified to be a member) of Engineers Australia with the status of Chartered Professional Engineer, or
 - (C) entered on the National Professional Engineers Register administered by the Institution of Engineers Australia, or
 - (c) in the case of any amusement device or passenger ropeway—is determined by the regulator to be a competent person.
- (6) The regulator may, on the application of a person, make a determination in relation to the person for the purposes of subclause (5) (c) if the regulator considers that exceptional circumstances exist.
- (7) An annual inspection carried out under and in accordance with an equivalent provision of a corresponding WHS law is taken to be an annual inspection for the purposes of this clause.

242 Log book and manuals for amusement devices

- (1) The person with management or control of an amusement device at a workplace, in addition to complying with the record-keeping requirements of clause 237, must ensure that:
- (a) details of the erection or storage of the amusement device (including the date of erection) are recorded in the log book for the amusement device on each occasion on which it is erected or stored, and
 - (b) the log book and operating and maintenance manuals for the amusement device are kept with the amusement device.

Maximum penalty:

- (a) in the case of an individual—\$1,250, or

- (b) in the case of a body corporate—\$6,000.
- (2) The person with management or control of an amusement device at a workplace must ensure that persons involved in the commissioning, installation, use, storage and testing, and the decommissioning, dismantling and disposal, of an amusement device are given:
 - (a) the log book for the amusement device in which details concerning erection, storage, operation and maintenance of the amusement device are recorded, and
 - (b) the operating and maintenance manuals for the amusement device.

Maximum penalty:

- (a) in the case of an individual—\$1,250, or
- (b) in the case of a body corporate—\$6,000.

Note. Clause 237 (5) requires the person with management or control of the amusement device to give the log book and maintenance records to the person being supplied with the plant.

[50] Clause 244 Altered plant designs to be registered

Insert after clause 244 (2):

- (3) This clause does not apply in relation to a tower crane or a gantry crane if:
 - (a) the crane is relocated for use in a different workplace, and
 - (b) the design of the supporting structure or foundations of the crane is altered in accordance with a site-specific design prepared for the purpose of the safe operation of the crane at the new location, and
 - (c) the design of the crane is not altered in any other way.

[51] Clause 252 Who can be the design verifier

Omit clause 252 (2) and (3). Insert instead:

- (2) Despite subclause (1), a person is not eligible to be a design verifier for the design of an item of plant if the person was involved in the production of the design.

[52] Clause 266 Application for registration

Omit clause 266 (2) (f).

[53] Clause 266 (2) (i)

Omit the paragraph. Insert instead:

- (i) the date that the item of plant was first commissioned or was first registered, if known, whichever occurred first,

[54] Clause 269 Decision on application

Insert “item of” before “plant” in clause 269 (2) (b) and (c).

[55] Chapter 5, Part 5.3, Division 6

Insert after Division 5 of Part 5.3 of Chapter 5:

Division 6 Cancellation of registration

288A Application of Division

This Division applies to:

- (a) the registration of a design of an item of plant, and
- (b) the registration of an item of plant.

288B Regulator may cancel registration

The regulator may cancel a registration if satisfied that:

- (a) the registration holder, in applying for the registration:
 - (i) gave information that was false or misleading in a material particular, or
 - (ii) failed to give any material information that should have been given, or
- (b) the design of the item of plant, or the item of plant (as applicable), is unsafe.

Note. A decision to cancel a registration is a reviewable decision (see clause 676).

288C Cancellation process

- (1) Before cancelling a registration, the regulator must give the registration holder written notice:
 - (a) setting out the proposal to cancel the registration and the reasons for it, and
 - (b) advising the registration holder that the registration holder may make a submission to the regulator in relation to the proposed cancellation within a specified period (being not less than 28 days from the date of the notice).
- (2) After the date specified in a notice under subclause (1), the regulator must:
 - (a) if the registration holder has made a submission in relation to the proposed cancellation—consider that submission, and
 - (b) whether or not the registration holder has made a submission, decide:
 - (i) to cancel the registration, or
 - (ii) not to cancel the registration, and
 - (c) within 14 days after making that decision, give the registration holder written notice that:
 - (i) states whether or not the registration is cancelled, and
 - (ii) if a submission was made in relation to the proposed cancellation—sets out the regulator’s reasons for cancelling the registration, and
 - (iii) specifies the date on which the cancellation, if any, takes effect.

Note. A decision to cancel a registration is a reviewable decision (see clause 676).

288D Registration holder to return registration document

A registration holder who receives a cancellation notice under clause 288C must return the registration document to the regulator at the written request of the regulator within the time specified in the request.

Maximum penalty:

- (a) in the case of an individual—\$1,250, or
- (b) in the case of a body corporate—\$6,000.

[56] Clause 318

Omit the clause. Insert instead:

318 Recognition of general construction induction training cards issued in other jurisdictions

- (1) In this Part (other than Division 2), a reference to a general construction induction training card includes a reference to a similar card issued under a corresponding WHS law.
- (2) Subclause (1) does not apply to a card that is cancelled in the corresponding jurisdiction.

[57] Clause 319 Issue of card

Omit “subclause (2) (b) (ii)” from clause 319 (5) (b). Insert instead “subclause (3) (b) (ii),”

[58] Clause 342 Labelling hazardous chemicals—containers

Insert after clause 342 (2):

Maximum penalty:

- (a) in the case of an individual—\$6,000, or
- (b) in the case of a body corporate—\$30,000.

[59] Clause 346 Hazardous chemicals register

Insert after clause 346 (4) (b):

Note. See clause 344 (4).

[60] Clause 348 Regulator must be notified if manifest quantities to be exceeded

Omit “earlier), and” from clause 348 (2) (b). Insert instead “earlier).”.

[61] Clause 348 (2) (c)

Omit the paragraph.

[62] Clause 359 Fire protection and firefighting equipment

Omit “services” from clause 359 (1) (b). Insert instead “service”.

[63] Clause 418

Omit the clause. Insert instead:

418 Health monitoring records

- (1) A person conducting a business or undertaking must ensure that health monitoring reports in relation to a worker carrying out work for the business or undertaking are kept as a confidential record:
 - (a) identified as a record in relation to the worker, and

(b) for at least 30 years after the record is made.

Maximum penalty:

- (a) in the case of an individual—\$1,250, or
- (b) in the case of a body corporate—\$6,000.

(2) The person must ensure that the health monitoring report and results of a worker are not disclosed to another person without the worker's written consent.

Maximum penalty:

- (a) in the case of an individual—\$1,250, or
- (b) in the case of a body corporate—\$6,000.

(3) Subclause (2) does not apply if the record is disclosed under clause 412, 413 or 414 or to a person who must keep the record confidential under a duty of professional confidentiality.

[64] Clause 421 Application of Part 8.3

Insert at the end of the clause:

(2) Clauses 425, 426, 427, 428, 429 and 430 do not apply to any part of residential premises that is used only for residential purposes.

[65] Clause 491 Who may apply for a licence

Omit "493, 494 or 495 (as applicable)" from clause 491 (2). Insert instead "495".

[66] Clause 492 Application for asbestos removal licence or asbestos assessor licence

Omit clause 492 (2) (a). Insert instead:

- (a) the name and address of the applicant,
- (ab) if required by the regulator of an applicant who is an individual, a photograph of the applicant in the form required by the regulator,

[67] Clause 498 Class A asbestos removal licence—regulator to be satisfied about additional matters

Omit "and Class B asbestos removal work" from clause 498 (a) (ii) (B).

[68] Clause 516 Application for renewal

Omit clause 516 (2) (b) and (c). Insert instead:

- (b) if required by the regulator of an applicant who is an individual, a photograph of the applicant in the form required by the regulator,
- (c) any other evidence of the applicant's identity required by the regulator,

[69] Clause 517 Provisions relating to renewal of licence

Omit "unless" from clause 517 (3). Insert instead "if".

[70] Clause 547 Re-notification if quantity of Schedule 15 chemicals increases

Omit clause 547 (1) (c). Insert instead:

- (c) in relation to which the regulator:
 - (i) has not conducted an inquiry under this Division, or
 - (ii) on conducting an inquiry, has not determined the facility or proposed facility to be a major hazard facility under clause 541.

[71] Clause 598 Provisions relating to renewal of licence

Omit “in clause 580” from clause 598 (b). Insert instead “in those clauses”.

[72] Clause 676 Which decisions under this Regulation are reviewable

Omit the table following clause 676 (1). Insert instead:

| Item | Clause under which reviewable decision is made | Eligible person in relation to reviewable decision |
|-----------------------------------|--|--|
| High risk work licences | | |
| 1 | 89—Refusal to grant licence | Applicant |
| 2 | 91—Refusal to grant licence | Applicant |
| 2A | 91A—Imposition of a condition when granting licence | Applicant |
| 2B | 91A—Imposition of a condition when renewing licence | Licence holder |
| 3 | 98—Refusal to issue replacement licence document | Licence holder |
| 4 | 104—Refusal to renew licence | Applicant |
| 5 | 106—Suspension of licence | Licence holder |
| 6 | 106—Cancellation of licence | Licence holder |
| 7 | 106—Disqualification of licence holder from applying for another licence | Licence holder |
| 7A | 106—Variation of licence conditions | Licence holder |
| Accreditation of assessors | | |
| 8 | 118—Refusal to grant accreditation | Applicant An RTO that engages the applicant |
| 9 | 120—Refusal to grant accreditation | Applicant An RTO that engages the applicant |
| 10 | 121—Imposition of a condition when granting accreditation | Applicant An RTO that engages the applicant |
| 11 | 121—Imposition of a condition when renewing accreditation | Applicant An RTO that engages the applicant |
| 12 | 127—Refusal to issue replacement accreditation document | Accredited assessor An RTO that engages the accredited assessor |
| 13 | 132—Refusal to renew accreditation | Applicant An RTO that engages the applicant |
| 14 | 133—Suspension of accreditation | Accredited assessor An RTO that engages the accredited assessor |
| 15 | 133—Cancellation of accreditation | Accredited assessor An RTO that engages the accredited assessor |

| Item | Clause under which reviewable decision is made | Eligible person in relation to reviewable decision |
|--|--|---|
| 16 | 133—Disqualification of assessor from applying for a further accreditation | Accredited assessor An RTO that engages the accredited assessor |
| Registration of plant designs | | |
| 17 | 256—Refusal to register plant design | Applicant |
| 18 | 257—Refusal to register plant design | Applicant |
| 19 | 258—Imposition of a condition when granting registration of plant design | Applicant |
| Registration of plant | | |
| 20 | 269—Refusal to register item of plant | Applicant The person with management or control of the item of plant |
| 21 | 270—Refusal to register item of plant | Applicant The person with management or control of the item of plant |
| 22 | 271—Imposition of a condition when granting registration of item of plant | Applicant The person with management or control of the item of plant |
| 23 | 271—Imposition of a condition when renewing registration of item of plant | Registration holder The person with management or control of the item of plant |
| 24 | 279—Refusal to renew registration of item of plant | Registration holder The person with management or control of the item of plant |
| 25 | 283—Amendment of registration, on regulator’s initiative | Registration holder The person with management or control of the item of plant |
| 26 | 284—Refusal to amend registration on application (or a decision to make a different amendment) | Registration holder The person with management or control of the item of plant |
| 27 | 288—Refusal to issue replacement registration document | Registration holder The person with management or control of the item of plant |
| 27A | 288B—Decision to cancel registration | Registration holder The person with management or control of the item of plant |
| General construction induction training | | |
| 28 | 322—Refusal to issue general construction induction training card | Applicant |
| 29 | 322—Refusal to issue replacement general construction induction training card | Card holder |
| 30 | 323—Cancellation of general construction induction training card | Card holder |

| Item | Clause under which reviewable decision is made | Eligible person in relation to reviewable decision |
|---|---|--|
| Hazardous chemicals and lead | | |
| 31 | 384—Refusal to grant authorisation to use, handle or store a prohibited or restricted carcinogen | Applicant |
| 32 | 386—Cancellation of authorisation to use, handle or store a prohibited or restricted carcinogen | Authorisation holder |
| 33 | 393—Deciding a process to be a lead process | A person conducting a business or undertaking that carries out the lead process A worker whose interests are affected by the decision |
| 34 | 407—Determining a different frequency for biological monitoring of workers at a workplace, or a class of workers, carrying out lead risk work | A person conducting a business or undertaking that carries out lead risk work A worker whose interests are affected by the decision |
| Asbestos removal licences and asbestos assessor licences | | |
| 35 | 497—Refusal to grant licence | Applicant |
| 36 | 501—Refusal to grant licence | Applicant |
| 37 | 502—Imposition of a condition when granting licence | Applicant |
| 38 | 502—Imposition of a condition when renewing licence | Applicant |
| 39 | 508—Amendment of licence, on regulator’s initiative | Licence holder |
| 40 | 509—Refusal to amend licence on application (or a decision to make a different amendment) | Licence holder |
| 41 | 513—Refusal to issue replacement licence document | Licence holder |
| 42 | 517—Refusal to renew licence | Applicant |
| 43 | 520—Suspension of licence | Licence holder |
| 44 | 520—Cancellation of licence | Licence holder |
| 45 | 520—Disqualification of licence holder from applying for another licence | Licence holder |
| Major hazard facilities | | |
| <i>Determination of facility to be major hazard facility</i> | | |
| 46 | 541—Determination of facility to be a major hazard facility, on making inquiry | Operator of facility |
| 47 | 541—Decision not to determine proposed facility to be a major hazard facility | Operator of facility |
| 48 | 542—Determination of major hazard facility | Operator of facility |

| Item | Clause under which reviewable decision is made | Eligible person in relation to reviewable decision |
|-------------------|--|---|
| 49 | 543—Determination of suitability of operator | Operator of facility |
| 50 | 544—Imposition of a condition on a determination of a major hazard facility <i>Licensing of major hazard facility</i> | Operator of facility |
| 51 | 580—Refusal to grant licence | Operator of facility |
| 52 | 584—Imposition of a condition when granting licence | Operator of facility |
| 53 | 584—Imposition of a condition when renewing licence | Operator of facility |
| 54 | 589—Amendment of licence, on regulator’s initiative | Operator of facility |
| 55 | 590—Refusal to amend licence, on application (or a decision to make a different amendment) | Operator of facility |
| 56 | 594—Refusal to issue replacement licence document | Operator of facility |
| 57 | 598—Refusal to renew licence | Operator of facility |
| 58 | 600—Refusal to transfer licence, on application | Operator of facility Proposed operator of facility |
| 59 | 601—Refusal to cancel licence, on application | Operator of facility |
| 60 | 602—Suspension of licence | Operator of facility |
| 61 | 602—Cancellation of licence | Operator of facility |
| 62 | 602—Disqualification of licence holder from applying for another licence | Operator of facility |
| Exemptions | | |
| 63 | 684—Refusal to exempt person (or a class of persons) from compliance with any of this Regulation | Applicant |
| 64 | 686—Refusal to exempt person from requirement to hold a high risk work licence | Applicant |
| 65 | 688—Refusal to exempt operator of major hazard facility from compliance with any of this Regulation, on application | Operator of facility |
| 66 | 691—Imposing condition on an exemption granted on application under Part 11.2 | Applicant |
| 67 | 696—Refusal to grant exemption | Applicant |
| 68 | 697—Amendment of an exemption granted on application under Part 11.2 | Applicant |
| 69 | 697—Cancellation of an exemption granted on application under Part 11.2 | Applicant |

- [73] **Clause 689 Major hazard facility—regulator to be satisfied about certain matters**
Omit “subclause (1) (c)” from clause 689 (2). Insert instead “subclause (1) (d)”.
- [74] **Clause 700 Inspectors’ identity cards**
Omit “of the size, and in the form,” from clause 700 (a). Insert instead “in the form”.
- [75] **Clause 702 Confidentiality of information—exception relating to administration or enforcement of other laws**
Insert after clause 702 (a):
(a1) *Coroners Act 2009*,
- [76] **Clause 702 (o1)**
Insert after clause 702 (o):
(o1) *Radiation Control Act 1990*,
- [77] **Schedule 2**
Omit the Schedule. Insert instead:

Schedule 2 Fees

| Type of fee | Fee |
|---|--|
| Application for high risk work licence (clause 87 (3)) | \$68.68 per class of licence |
| Application for replacement licence document (clause 98 (4) (b)) | \$31.78 |
| Application for renewal of high risk work licence (clause 101 (3)) | \$63.55 |
| Application for accreditation as assessor (clause 116 (3)) | For 3 year accreditation \$1576.45 for the first application \$512.50 for a subsequent application |
| Application for replacement accreditation document (clause 127 (4) (b)) | Nil |
| Application for renewal of accreditation (clause 130 (2) (b)) | For 3 year renewal \$1050.63 for the first application \$512.50 for a subsequent application |
| Application for registration of design of plant (clause 250 (4)) | \$264.45 per design |
| Application for registration of item of plant (clause 266 (3)) | \$66.63 for first item and \$2.05 for each additional item at the same address and owned by the same applicant |
| Application for renewal of registration of item of plant (clause 277 (3)) | \$66.63 for first item and \$2.05 for each additional item at the same address and owned by the same applicant |
| Application for replacement registration document (clause 288 (4) (b)) | \$31.78 |

| Type of fee | Fee |
|---|---|
| Issue of general construction induction training card (clause 319 (4)) | \$21.53 |
| Application for replacement general construction induction training card (clause 321 (3) (b)) | \$31.78 |
| Administration fee for notice in relation to manifest quantities of Schedule 11 hazardous chemicals (clause 348) | \$222 |
| Application for asbestos removal licence or asbestos assessor licence (clause 492 (3)) | \$5253.13 for Class A asbestos removal licence \$953.25 for Class B asbestos removal licence \$512.50 for asbestos assessor licence |
| Application for replacement licence document (clause 513 (4) (b)) | \$31.78 |
| Application for renewal of asbestos removal licences and asbestos assessor licences (clause 516 (3)) | \$5253.13 for Class A asbestos removal licence \$525.83 for Class B asbestos removal licence \$512.50 for asbestos assessor licence |
| Notification fee to be paid by operators of facilities at which Schedule 15 chemicals are present or likely to be present in a quantity that exceeds 10% of their threshold quantity (clause 538 (4)) | Nil |
| Administration fee for determined major hazard facilities (clause 544A) | For 2013–2014 and 2014–2015 financial years—\$41,400 plus \$101 per hour of the regulator’s time in connection with the administration of Chapter 9 in relation to the facility Or, in relation to any financial year, such lesser fee determined by the regulator |
| Application for major hazard facility licence (clause 578 (3)) | Nil |
| Administration fee for licensed major hazard facilities (clause 585A) | For 2013–2014 and 2014–2015 financial years—\$41,400 plus \$101 per hour of the regulator’s time administering the licence Or, in relation to any financial year, such lesser fee determined by the regulator |
| Application for replacement licence document (clause 594 (4) (b)) | Nil |
| Application for renewal of major hazard facility licence (clause 596 (3)) | Nil |
| Application for transfer of major hazard facility licence (clause 600 (2) (b)) | Nil |

| Type of fee | Fee |
|---|--|
| Administration fee in relation to transfer of major hazard facility licence (clause 600 (4A)) | \$101 per hour of the regulator's time administering the licence Or such lesser fee determined by the regulator |
| Application for cancellation of major hazard facility licence (clause 601 (2) (b)) | Nil |
| Administration fee in relation to cancellation of major hazard facility licence on operator's application (clause 601 (5A)) | \$101 per hour of the regulator's time administering the licence Or such lesser fee determined by the regulator |

[78] Schedule 3 High risk work licences and classes of high risk work

Omit items 15–18. Insert instead:

| | | |
|----|---|---|
| 15 | Slewing mobile crane—with a capacity up to 20 tonnes | Use of a slewing mobile crane with a capacity of 20 tonnes or less Use of a vehicle loading crane with a capacity of 10 metre tonnes or more, excluding the application of load estimation and slinging techniques to move a load Use of a non-slewing mobile crane with a capacity exceeding 3 tonnes Use of a reach stacker |
| 16 | Slewing mobile crane—with a capacity up to 60 tonnes | Use of a slewing mobile crane with a capacity of 60 tonnes or less Use of a vehicle loading crane with a capacity of 10 metre tonnes or more, excluding the application of load estimation and slinging techniques to move a load Use of a non-slewing mobile crane with a capacity exceeding 3 tonnes Use of a reach stacker |
| 17 | Slewing mobile crane—with a capacity up to 100 tonnes | Use of a slewing mobile crane with a capacity of 100 tonnes or less Use of a vehicle loading crane with a capacity of 10 metre tonnes or more, excluding the application of load estimation and slinging techniques to move a load Use of a non-slewing mobile crane with a capacity exceeding 3 tonnes Use of a reach stacker |
| 18 | Slewing mobile crane—with a capacity over 100 tonnes | Use of a slewing mobile crane with a capacity exceeding 100 tonnes Use of a vehicle loading crane with a capacity of 10 metre tonnes or more, excluding the application of load estimation and slinging techniques to move a load Use of a non-slewing mobile crane with a capacity exceeding 3 tonnes Use of a reach stacker |

[79] Schedule 5 Registration of plant and plant designs

Omit items 1.9 and 1.10. Insert instead:

- 1.8A Passenger ropeways.
- 1.9 Concrete placing booms.
- 1.10 Prefabricated scaffolding.

[80] Schedule 5, clause 2 (1) (ab)

Insert after clause 2 (1) (a):

- (ab) any pressure equipment (other than a gas cylinder) excluded from the scope of AS/NZS 1200:2000 (*Pressure equipment*), or

Note. See section A1 of Appendix A to AS/NZS 1200:2000 (*Pressure equipment*).

[81] Schedule 5, clause 2 (1) (ba)

Insert after clause 2 (1) (b):

- (ba) a reach stacker, or

[82] Schedule 5, clause 2 (2) (e)

Omit clause 2 (2) (e) and (f). Insert instead:

- (e) inflatable devices, other than inflatable devices (continuously blown) with a platform height of 3 metres or more.

[83] Schedule 5, clause 3.7

Omit “placement units with delivery”. Insert instead “placing”.

[84] Schedule 5, clause 4 (1)

Omit the subclause. Insert instead:

- (1) The items of plant listed in clause 3 do not include:
 - (a) any pressure equipment (other than a gas cylinder) excluded from the scope of AS/NZS 1200:2000 (*Pressure equipment*), or

Note. See section A1 of Appendix A to AS/NZS 1200:2000 (*Pressure equipment*).

 - (b) a crane or hoist that is manually powered, or
 - (c) a reach stacker.

[85] Schedule 5, clause 4 (2) (e)

Omit clause 4 (2) (e) and (f). Insert instead:

- (e) inflatable devices, other than inflatable devices (continuously blown) with a platform height of 3 metres or more.

[86] Schedule 6 Classification of mixtures

Insert “**Category 1**” after “**Skin sensitiser**” and “**Respiratory sensitiser**” in the column headings to Table 6.1.

[87] Schedule 10 Prohibited carcinogens, restricted carcinogens and restricted hazardous chemicals

Omit “For spray painting” from the matter relating to item 10 (Free silica (crystalline silicon dioxide)) in Table 10.3.

[88] Schedule 13 Placard requirements

Omit “emergency services authority” from clause 1 (2) (e).

Insert instead “emergency service organisation”.

[89] Schedule 15 Hazardous chemicals at major hazard facilities (and their threshold quantity)

Omit the definitions of *LD₅₀ (median lethal dose) for acute oral toxicity*, *LD₅₀ for acute dermal toxicity* and *LC₅₀ for acute toxicity on inhalation* from clause 1.

[90] Schedule 15, clause 5

Insert “in table 15.1” after “UN number listed” in clause 5 (1).

[91] Schedule 15, table 15.3

Omit the table (and the Key). Insert instead:

Table 15.3 Criteria for toxicity

| Description | Oral Toxicity ¹ LD ₅₀ (mg/kg) | Dermal Toxicity ² LD ₅₀ (mg/kg) | Inhalation Toxicity ³ LC ₅₀ (mg/L) |
|-------------|--|--|---|
| Very Toxic | LD ₅₀ ≤ 5 | LD ₅₀ ≤ 40 | LC ₅₀ ≤ 0.5 |
| Toxic | 5 < LD ₅₀ ≤ 50 | 40 < LD ₅₀ ≤ 200 | 0.5 < LC ₅₀ ≤ 2 |

Key

- 1 In rats
- 2 In rats or rabbits
- 3 4 hours in rats

[92] Schedule 16 Matters to be included in emergency plan for major hazard facility

Omit “emergency services” wherever occurring in clauses 1.2, 2.3, 2.5, 3.1 and 3.4.

Insert instead “emergency service organisations”.

[93] Schedule 18A Penalty notice offences

Insert “466 (1) and (3),” after “465,” in Column 1.

[94] Schedule 18A

Insert “, 458 (1) and (3)” after “450” in Column 1.

[95] Schedule 18B Savings and transitional provisions

Omit “1 January 2015” from clause 22 (9). Insert instead “1 July 2016”.

[96] Schedule 18B, clause 30 (2)

Omit “manufactured or constructed before 1 January 2003”.

Insert instead “designed before 1 September 2001”.

[97] Schedule 18B, Part 8

Insert at the end of the Schedule:

Part 8 Provisions consequent on making of Work Health and Safety Amendment (Miscellaneous) Regulation 2015

71 Registration of plant design for passenger ropeways and fixed concrete placing booms

- (1) Without limiting clause 30 of this Schedule, the following arrangements apply for the application of clause 243 of the WHS Regulation to plant designs for passenger ropeways and fixed concrete placing booms that were not required to be registered under the WHS Regulation before the date of commencement of the *Work Health and Safety Amendment (Miscellaneous) Regulation 2015*:
 - (a) clause 243 does not apply to a design of a passenger ropeway or a fixed concrete placing boom where the design was completed before that commencement date,
 - (b) clause 243 does not apply to a design of a passenger ropeway or a fixed concrete placing boom where the design was completed on or after 13 February 2015.
- (2) Subclause (1) (b) ceases to have effect on 13 February 2016.