



Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2004

under the

Occupational Health and Safety Act 2000

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Occupational Health and Safety Act 2000*.

JOHN DELLA BOSCA, M.L.C.,

Minister for Commerce

Explanatory note

The object of this Regulation is to amend the *Occupational Health and Safety Regulation 2001* so as:

- (a) to make provision with respect to OHS induction training and, in particular, to enable WorkCover to issue OHS induction training certificates and require persons carrying out construction work to be in possession of such a certificate, and
- (b) to limit to 5 years the (currently unlimited) duration of a certificate of competency issued under Part 9.1 or 9.2 of that Regulation, and
- (c) to increase the penalties that may be imposed with respect to false assessments of a person's competency to carry out certain work, and
- (d) to omit provisions that assign specific "short descriptions" to offences with respect to occupational health and safety.

This Regulation is made under the *Occupational Health and Safety Act 2000*, including section 33 (the general power to make regulations) and sections 35 and 39.

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Clause 1 Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2004

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(Accreditation and Certification) Regulation 2004**

under the

Occupational Health and Safety Act 2000

1 Name of Regulation

This Regulation is the *Occupational Health and Safety Amendment (Accreditation and Certification) Regulation 2004*.

2 Commencement

This Regulation commences on 29 March 2004.

3 Amendment of Occupational Health and Safety Regulation 2001

The *Occupational Health and Safety Regulation 2001* is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 3)

[1] Clause 212 Definitions

Insert in alphabetical order:

OHS induction training certificate means a certificate under clause 220A that has been issued to a person whom WorkCover is satisfied has completed the general health and safety induction training referred to in clause 217.

[2] Clause 213 Principal contractors to ensure that OHS induction training undertaken

Insert after clause 213 (1):

- (1A) The only evidence on the basis of which a principal contractor may be satisfied that a person has completed the general health and safety induction training referred to in clause 217 is production by the person of a current OHS induction training certificate.
- (1B) Subclause (1A) does not apply until 29 March 2006 in relation to a person who has undergone the general health and safety induction training prior to 29 March 2004.

[3] Clause 214 Employers to ensure OHS induction training undertaken

Omit “is” from clause 214 (1). Insert instead “has been”.

[4] Clause 214 (1A) and (1B)

Insert after clause 214 (1):

- (1A) The only evidence on the basis of which an employer may be satisfied that an employee has completed the general health and safety induction training referred to in clause 217 is production by the employee of a current OHS induction training certificate.
- (1B) Subclause (1A) does not apply until 29 March 2006 in relation to an employee who has undergone the general health and safety induction training prior to 29 March 2004.

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[5] Clause 215A

Insert after clause 215:

215A Holder of OHS induction training certificate to produce certificate

- (1) An inspector may direct a person carrying out construction work to produce for inspection immediately:
 - (a) the person's OHS induction training certificate, and
 - (b) a sample of the person's usual signature.
- (2) A person to whom such a direction is given must not fail to comply with the direction.
Maximum penalty: Level 1.
- (3) Until 29 March 2006, it is sufficient compliance with subclause (2) if the person concerned satisfies the inspector that the person has undergone the general health and safety induction training referred to in clause 217 prior to 29 March 2004.

[6] Clause 217 General health and safety induction training

Insert "by WorkCover or" after "developed" in clause 217 (c).

[7] Clause 217 (d)

Omit the paragraph. Insert instead:

- (d) be conducted by:
 - (i) a person who has been accredited by WorkCover to conduct such training, or
 - (ii) a person who is employed by an organisation approved by WorkCover to provide such training and who has a Certificate IV in Workplace Assessment and Training issued by a registered education or training provider (or a document from such a provider stating that the person has an equivalent qualification).

[8] Clause 217 (2)

Insert at the end of clause 217:

- (2) Until 29 March 2005, a Statement of Attainment in Train Small Groups has, for the purposes of subclause (1) (d) (ii), the same effect as a Certificate IV in Workplace Assessment and Training.

[9] Clause 217A

Insert after clause 217:

217A Accreditation of individuals to conduct OHS induction training

- (1) An application by an individual to be accredited to provide OHS induction training:
 - (a) is to be in the form, and accompanied by the particulars, approved by WorkCover, and
 - (b) is to be accompanied by such application fee as WorkCover determines to cover the expenses in dealing with the application.
- (2) WorkCover may approve an application for accreditation (with or without conditions) or may refuse the application for such reason as it considers sufficient.
- (3) WorkCover may suspend or cancel the accreditation of a person who is accredited to provide OHS induction training if it is satisfied that:
 - (a) the person is no longer competent to conduct the training for which the person is an accredited person, or
 - (b) the person has been convicted of an offence against the Act or the associated occupational health and safety legislation, or any regulation under the Act or that legislation, or of an offence against a corresponding law or any regulation under a corresponding law, or
 - (c) the person was accredited on the basis of false or misleading information or a failure to disclose or provide required information, or
 - (d) the person has contravened the conditions of his or her accreditation or a guideline relating to the provision of OHS induction training, or

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- (e) the person has had his or her accreditation as an assessor suspended or cancelled under clause 287, or has had his or her approval as a Premium Discount Advisor suspended or cancelled under the regulations under the *Workers Compensation Act 1987*, for reasons of a kind referred to in paragraph (b), (c) or (d).
- (4) Before suspending or cancelling a person's accreditation, WorkCover:
 - (a) must cause written notice of the proposed suspension or cancellation to be given to the person, and
 - (b) must give the person a reasonable opportunity to make representations to WorkCover in relation to the proposed suspension or cancellation, and
 - (c) must have regard to any representations so made.
- (5) If, after having regard to any representations made by the person, WorkCover decides to proceed with the proposed suspension or cancellation, WorkCover must give to the person a written notice:
 - (a) stating that the accreditation is suspended or cancelled, and
 - (b) in the case of a suspension, specifying the period for which the accreditation is suspended, and
 - (c) giving reasons for the suspension or cancellation.
- (6) The suspension or cancellation takes effect on the date on which notice of the suspension or cancellation is given to the person or such later date as may be specified in the notice.
- (7) Any person who, before the commencement of this clause, was accredited by WorkCover to provide OHS induction training is taken to have been accredited under this clause.

[10] Clause 220 Statements of OHS induction training

Omit "or (b)" wherever occurring.

[11] Clause 220 (1)

Omit “who has undergone the training to the satisfaction of the person conducting the training”.

Insert instead “who has, in the opinion of the person conducting the training, completed the training in accordance with the relevant guidelines issued by WorkCover”.

[12] Clause 220 (1A), (1B), (1C) and (1D)

Insert after clause 220 (1):

(1A) Within 7 days after a person issues a statement of OHS induction training under this clause, the person must cause notice of that fact to be given to WorkCover so as to enable WorkCover to issue the person to whom the statement has been issued with an OHS induction training certificate.

Maximum penalty: Level 1.

(1B) During the period of 30 days after a statement of OHS induction training is issued under his clause, the person to whom it is issued is, for the purposes of clauses 213, 214 and 215A, taken to hold an OHS induction training certificate and the statement is, for those purposes, taken to be such a certificate.

(1C) WorkCover may issue guidelines:

- (a) for the provision of OHS induction training, and
- (b) for the issue of statements of OHS induction training under this clause.

(1D) A person providing OHS induction training must not:

- (a) provide any such training otherwise than in accordance with any guidelines issued under this clause, or
- (b) issue a statement of OHS induction training under this clause without having provided any such training, or
- (c) issue a statement of OHS induction training under this clause without the person having completed the training.

Maximum penalty: Level 2.

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[13] Clauses 220A, 220B and 220C

Insert after clause 220:

220A OHS induction training certificates

- (1) WorkCover may issue an OHS induction training certificate to any person whom it is satisfied has completed the general health and safety training referred to in clause 217, whether on the basis of a statement of OHS induction training issued under clause 220 or otherwise.
- (2) An OHS induction training certificate is of unlimited duration.

220B Replacement of lost, stolen, damaged or destroyed OHS induction training certificates

- (1) The holder of an OHS induction training certificate that is lost, stolen, damaged or destroyed may apply to WorkCover for a replacement certificate.
- (2) The application:
 - (a) must be in the approved form, and
 - (b) must be accompanied by a statutory declaration by the applicant that explains how, or the circumstances in which, the certificate was lost, stolen, damaged or destroyed, and
 - (c) must be accompanied by the fee fixed for the time being by WorkCover to cover expenses in connection with issue of replacement certificates.
- (3) WorkCover may issue a replacement certificate if satisfied that the applicant's OHS induction training certificate has been lost, stolen, damaged or destroyed.
- (4) If an application is refused, WorkCover must ensure that written notice of the refusal, and of the reasons for the refusal, are given to the applicant.
- (5) The holder of an OHS induction training certificate that is replaced under this clause:
 - (a) must surrender the original certificate if it is recovered, or

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- (b) in the case of a damaged certificate that is replaced, must surrender the damaged certificate.

Maximum penalty (subclause (5)): Level 1.

220C Cancellation of OHS induction training certificates

- (1) WorkCover may cancel an OHS induction training certificate if satisfied that the certificate was obtained on the basis of false or misleading information or a failure to disclose or provide required information.
- (2) Before cancelling an OHS induction training certificate, WorkCover:
 - (a) must cause written notice of the proposed cancellation to be given to the holder of the certificate, and
 - (b) must give the holder of the certificate a reasonable opportunity to make representations to WorkCover in relation to the proposed cancellation, and
 - (c) must have regard to any representations so made.
- (3) If, after having regard to any representations made by the holder of the certificate, WorkCover decides to proceed with the proposed cancellation, WorkCover must give to the holder a written notice:
 - (a) stating that the certificate is cancelled, and
 - (b) giving reasons for the cancellation.
- (4) The cancellation takes effect on the date on which notice of the cancellation is given to the holder of the certificate or such later date as may be specified in the notice.

[14] Clause 221 Certain construction work before 1 April 1999 taken to be training

Omit the clause.

[15] Clause 222 Lapsing of currency of OHS training and OHS training statements

Omit clause 222 (1) (b).

[16] Clause 279 Assessors

Omit clause 279 (d).

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[17] Clause 281 Assessment of competency

Omit clause 281 (1).

[18] Clause 281 (3)

Omit "Level 2". Insert instead "Level 4".

[19] Clause 287 Suspension and cancellation of accreditation

Insert at the end of clause 287 (1):

, or

- (e) the person has had his or her accreditation to conduct OHS induction training suspended or cancelled under clause 217A, or has had his or her approval as a Premium Discount Advisor suspended or cancelled under the regulations under the *Workers Compensation Act 1987*, for reasons of a kind referred to in paragraph (b), (c) or (d).

[20] Clause 287A

Insert after clause 287:

287A Immediate suspension

- (1) An inspector may, by written notice served on the holder of a certificate of accreditation, immediately suspend the certificate for a period of up to 10 days if the inspector has a reasonable concern about:
 - (a) the holder's integrity, or
 - (b) the holder's competency to exercise the functions of an assessor, or
- (2) The notice of suspension:
 - (a) must specify the period for which the certificate is suspended, and
 - (b) must give reasons for the suspension, and
 - (c) must state that the holder of the certificate may object to the suspension by providing WorkCover with reasons why the suspension should not be maintained for that period.

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- (3) WorkCover must immediately terminate the suspension and give written notice to the holder of the certificate of that fact if, after considering any objection by the holder, WorkCover is satisfied that the suspension should not be maintained.

[21] Clause 293 Term of certificates

Omit clause 293 (1). Insert instead:

- (1) Unless sooner cancelled:
- (a) a certificate of competency issued after the commencement of this subclause (including a certificate renewed under clause 293A) expires at the end of 5 years from its date of issue, and
 - (b) subject to subclause (1A), a certificate of competency in force at the commencement of this clause expires at the end of 29 March 2009.
- (1A) The Minister may, by order published in the Gazette, postpone the expiry date of a certificate of competency referred to in subclause (1) (b), or of any class of such certificates, to such later date as is specified in the order.

[22] Clause 293A

Insert after clause 293:

293A Renewal of certificates

WorkCover may renew a certificate of competency if satisfied that the holder of the certificate remains competent to hold such a certificate.

[23] Clause 296 (5)

Insert after clause 296 (4):

- (5) To remove any doubt, WorkCover may suspend or cancel a certificate of competency on grounds arising wholly or partly outside New South Wales.

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[24] Clause 311 Term of certificates

Omit clause 311 (1). Insert instead:

(1) Unless sooner cancelled:

(a) a certificate of competency issued after the commencement of this subclause (including a certificate renewed under clause 311A) expires at the end of 5 years from its date of issue, and

(b) subject to subclause (1A), a certificate of competency in force at the commencement of this clause expires at the end of 29 March 2009.

(1A) The Minister may, by order published in the Gazette, postpone the expiry date of a certificate of competency referred to in subclause (1) (b), or of any class of such certificates, to such later date as is specified in the order.

[25] Clause 311A

Insert after clause 311:

311A Renewal of certificates

WorkCover may renew a certificate of competency if satisfied that the holder of the certificate remains competent to hold such a certificate.

[26] Clause 355 Short descriptions of offences

Omit the clause.

[27] Clause 356 False or misleading information in applications

Insert "8," after "5," in clause 356 (2) (a).

[28] Schedule 2 Penalty notices

Omit Columns 3 and 4.

[29] Schedule 2

Insert after the matter relating to clause 215 (2) (b):

Clause 220 (1A)	200
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Clause 220 (1D)	600
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[30] Schedule 2

Omit “200” wherever occurring in Column 2 of the matter relating to clause 220 (1) and (2). Insert instead “600”.

[31] Schedule 2

Insert after the matter relating to clause 270 (3):

Clause 281 (3)	1,000
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