



New South Wales

Occupational Health and Safety Amendment (National Code of Practice and National Standard for Licensing) Regulation 2009

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*.

JOSEPH TRIPODI, MP
Minister for Finance

Explanatory note

The object of this Regulation is to amend the *Occupational Health and Safety Regulation 2001* (the **OHS Regulation**) to implement the national scheme for occupational health and safety training and assessments of competency in relation to construction work generally and high risk work activities.

Under the national scheme, persons nominated by approved registered training organisations will provide general occupational health and safety induction training (**general induction training**) in accordance with the *National Code of Practice for Induction for Construction Work* (May 2007) (the **Code of Practice**). In addition, such persons will provide assessments of competency to carry out high risk work (currently known as **scheduled work** in the OHS Regulation) in accordance with the *National Standard for Licensing Persons Performing High Risk Work* (April 2006) (the **National Standard**).

The application of pesticides, the use of fumigants and categories of work involving certain loadshifting machines are not covered under the national scheme. Assessments of competency in relation to those work activities will remain under the current scheme outlined in the OHS Regulation.

In particular, this Regulation makes provision for the following matters:

- (a) the issue of OHS construction induction training cards by WorkCover to persons who have completed general induction training in accordance with the Code of Practice,
- (b) the approval by WorkCover of registered training organisations and persons nominated by registered training organisations for the purpose of providing general induction training and high risk work assessments in New South Wales,
- (c) the issue of licences by WorkCover in accordance with the National Standard, which authorise a person to perform high risk work,

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- (d) the suspension and cancellation of the approval of a registered training organisation and nominated persons in certain circumstances,
- (e) the review by the Administrative Decisions Tribunal of certain decisions made by WorkCover,
- (f) matters of a savings and transitional nature.

This Regulation is made under the *Occupational Health and Safety Act 2000*, including sections 33 (the general regulation-making power), 34–36, 38 and 39.

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Occupational Health and Safety Act 2000

1 Name of Regulation

This Regulation is the *Occupational Health and Safety Amendment (National Code of Practice and National Standard for Licensing) Regulation 2009*.

2 Commencement

This Regulation commences on 1 September 2009 and is required to be published on the NSW legislation website.

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Schedule 1 Amendment of Occupational Health and Safety Regulation 2001

[1] Clause 212 Definitions

Omit the definition of *Code of Practice*. Insert instead:

Code of Practice means the *National Code of Practice for Induction for Construction Work* (May 2007) prepared by the Commonwealth, as in force from time to time.

[2] Clause 212

Omit the definitions of *OHS induction training certificate* and *registered training organisation*.

Insert in alphabetical order:

general induction training means training that covers the relevant health and safety topics set out in the Code of Practice.

OHS construction induction training card means:

- (a) a card issued to a person under clause 220A whom WorkCover is satisfied has completed the general induction training referred to in clause 216 (1) (a), or
- (b) a card issued to a person who has completed equivalent training in another jurisdiction, or
- (c) an equivalent card or certificate (however described) obtained in another State or in a Territory.

registered training organisation or *RTO* means a training organisation registered by a State or Territory registering body.

State or Territory registering body means:

- (a) the Vocational Education and Training Accreditation Board constituted by the *Vocational Education and Training Act 2005*, or
- (b) the body responsible for the accreditation of vocational courses under a corresponding law.

[3] Clause 212A Application to mining workplaces and coal workplaces

Omit “general health and safety induction training that complies with clause 217”.

Insert instead “general induction training”.

[4] Clause 212A (c)

Omit the paragraph. Insert instead:

- (c) the person carrying on construction work has been provided with site induction training that:
 - (i) covers the relevant health and safety topics set out in the Code of Practice that the person would otherwise have been provided with if the person had completed general induction training, and
 - (ii) relates to the particular site at which the construction work is to be carried out.

[5] Clause 213 (1A)

Omit “general health and safety induction training referred to in clause 217 is production by the person of a current OHS induction training certificate”.

Insert instead “general induction training is production by the person of a current OHS construction induction training card”.

[6] Clauses 213 (1B), 214 (1B) and 215A (3)

Omit the subclauses.

[7] Clause 214 (1A)

Omit “general health and safety induction training referred to in clause 217 is production by the employee of a current OHS induction training certificate”.

Insert instead “general induction training is production by the employee of a current OHS construction induction training card”.

[8] Clauses 215A (1) (a), 220 (1A) and (1B), 220B (1), (3) and (5) and 220C (1) and (2)

Omit “OHS induction training certificate” wherever occurring.

Insert instead “OHS construction induction training card”.

[9] Clause 216

Omit the clause. Insert instead:

216 OHS induction training

- (1) For the purposes of this Part, *OHS induction training* means training referred to in each of the following paragraphs completed to the satisfaction of the person conducting the training:
 - (a) general induction training,

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- (b) task-specific induction training that covers the relevant health and safety topics set out in the Code of Practice and relates to the particular type of construction work to be carried out,
 - (c) site induction training that covers the relevant health and safety topics set out in the Code of Practice and relates to the particular site at which the construction work is to be carried out.
- (2) General induction training must be conducted by a nominated person approved in respect of an RTO under clause 217.
Maximum penalty: Level 3.
- (3) This Part does not apply so as to require task-specific induction training to be undertaken by a person carrying out construction work at a mining workplace or a coal workplace.

[10] Clauses 217 and 218

Omit clauses 217–219. Insert instead:

217 Approval of RTO and persons nominated to conduct general induction training

- (1) An application by an RTO to be approved to provide general induction training in New South Wales must:
- (a) be in the approved form, and
 - (b) be accompanied by the application fee as determined by WorkCover, and
 - (c) be accompanied by:
 - (i) a copy of the RTO's registration with the relevant State or Territory registering body, and
 - (ii) the name of each person nominated by the RTO to be approved to carry out general induction training (a *nominated person*), and
 - (d) be lodged in the approved manner.
- (2) WorkCover may approve the RTO or may refuse the application for such reasons as it considers sufficient.
- (3) If WorkCover approves an RTO, WorkCover may approve each nominated person named in the application in respect of that RTO or may refuse to approve any such person for such reasons as it considers sufficient.

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- (4) An approved RTO may at any time apply to have a nominated person approved to provide general induction training in respect of that RTO.
 - (5) WorkCover may approve the nominated person or may refuse the application for such reasons as it considers sufficient.
 - (6) If WorkCover approves an RTO or a nominated person, it must issue a notice of approval to the RTO.
 - (7) If a person ceases to be a nominated person because that person is no longer under the supervision of, or in partnership with, the RTO in respect of which he or she is approved, the RTO must inform WorkCover of that matter within 14 days.
 - (8) An RTO must not provide general induction training or advertise the provision of such training unless the RTO is approved for that purpose by WorkCover and the training is carried out by a nominated person approved in respect of that RTO.
Maximum penalty: Level 3.
 - (9) A person must not provide general induction training for the purposes of this Part unless the person is a nominated person approved in respect of an RTO.
Maximum penalty: Level 3.

218 Suspension and cancellation of approval

- (1) WorkCover may suspend or cancel the approval of a nominated person if it is satisfied that:
 - (a) the person is no longer competent to conduct the training for which the person is approved, or
 - (b) the person is no longer under the supervision of, or in partnership with, the RTO in respect of which the person is approved, or
 - (c) 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 within the meaning of Part 9.1A or any regulation under any such corresponding law, or
 - (d) the person was approved on the basis of false or misleading information or a failure to disclose or provide required information, or

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- (e) the person has contravened the Code of Practice or a guideline relating to the provision of general induction training, or
 - (f) the person has had his or her accreditation as an assessor suspended or cancelled under clause 287, or
 - (g) the person has had his or her approval as a nominated person suspended or cancelled under clause 264Q.
- (2) WorkCover may suspend or cancel the approval of an RTO if it is satisfied that:
- (a) the RTO was approved on the basis of false or misleading information or a failure to disclose or provide required information, or
 - (b) the RTO has contravened the Code of Practice or a guideline relating to the provision of general induction training, or
 - (c) the RTO has had its approval as a provider of high risk work assessments suspended or cancelled under clause 264Q.
- (3) If the registration of an RTO is cancelled, any approval of the body and of each person nominated in respect of that RTO under this Part is immediately cancelled.
- (4) If the registration of an RTO is suspended, any approval of the RTO and of each person nominated in respect of that RTO under this Part is also suspended during that suspension.
- (5) Before suspending or cancelling the approval of an RTO or a nominated person, WorkCover:
- (a) must cause written notice of the proposed suspension or cancellation to be given to the RTO or person, and
 - (b) must give the RTO or 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.
- (6) If, after having regard to any representations made by the RTO or nominated person, WorkCover decides to proceed with the proposed suspension or cancellation, WorkCover must give to the RTO or nominated person a written notice:
- (a) stating that the approval is suspended or cancelled, and
 - (b) in the case of a suspension, specifying the period for which the approval is suspended, and

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- (c) giving reasons for the suspension or cancellation.
- (7) The suspension or cancellation takes effect on the date on which notice of the suspension or cancellation is given to the RTO or nominated person or such later date as may be specified in the notice.
- (8) An RTO or a nominated person is taken not to be approved during any period of suspension.
- [11] **Clauses 220 (1B), 220B (1), (3) and (5) (a) and (b), 220C (1), (2) (a) and (b), (3) and (4)**
Omit “certificate” wherever occurring. Insert instead “card”.
- [12] **Clause 220A**
Omit the clause. Insert instead:
- 220A OHS construction induction training cards**
- (1) WorkCover may issue an OHS construction induction training card to any person whom it is satisfied has completed the general induction training referred to in clause 216 (1) (a), whether on the basis of a statement of OHS induction training issued under clause 220 or otherwise.
- (2) An OHS construction induction training card is of unlimited duration.
- [13] **Clause 220B (2) (c)**
Omit “certificates”. Insert instead “cards”.
- [14] **Clause 220C Cancellation of OHS construction induction training cards**
Insert after clause 220C (4):
- (5) The holder of an OHS construction induction training card that is cancelled must return the card to WorkCover within such period as may be specified in the notice of cancellation given to the holder.
Maximum penalty: Level 1.

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[15] Clause 221

Omit the clause. Insert instead:

221 Former OHS induction training certificates

- (1) In this clause, a *former OHS induction training certificate* means an OHS induction training certificate issued by WorkCover after 29 March 2004 and in force immediately before 1 September 2009.
- (2) A former OHS induction training certificate is taken to be an OHS construction induction training card issued under this Part.

[16] Clause 223 Principal contractors and employers to keep records

Omit “site specific” wherever occurring from clause 223 (1) (b) and (2) (b).

Insert instead “site induction”.

[17] Part 9.1A

Insert before Part 9.1:

Part 9.1A Licences for high risk work

Division 1 Preliminary

264A Definitions

Note. The definitions in this clause are for the purpose of the issue and use of licences under this Part only and do not limit or affect any definitions of similar terms in other Parts of the Regulation.

- (1) In this Part:
boiler means a boiler within the meaning of AS 2593—1995 *Boilers—Unattended and limited attendance* but does not include the following:
 - (a) a boiler identified in Table 1.1 in that Australian Standard as belonging to Attendance category 3 (Unattended Operation) or category 4 (Low Hazard),
 - (b) a hot drink dispenser with an internal volume of 0.014 cubic metres or less and a heat input of 5 kilowatts or less and a maximum working pressure of 210 kilopascals or less,
 - (c) a liquid heating unit where the liquid is intended to be heated under a pressure above atmospheric pressure and to a temperature not greater than 1 degree below the normal atmospheric boiling point of the liquid,

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- (d) a boiler of the Hobby Miniature Locomotive type, manufactured from steel and with an internal volume of 50 litres or less, or manufactured from copper and with an internal volume of 25 litres or less and a maximum working pressure of 700 kilopascals or less, if during the construction of the locomotive the boiler has been inspected in the manner described in AMBSC Code—Part 1: Copper Boilers or AMBSC Code—Part 2: Steel Boilers, as appropriate, by a person registered with the Australian Miniature Boiler Safety Committee and is certified by that person as having been so inspected,
 - (e) a direct-fired process heater,
 - (f) a vessel whose design allows it to operate empty of the liquid or vapour that it is designed to heat without adversely affecting its structure or its manner of operation.

corresponding law means any of the following laws:

Occupational Health and Safety Act 1985 of Victoria

Workplace Health and Safety Act 2004 of Queensland

Occupational Health, Safety and Welfare Act 1986 of South Australia

Occupational Safety and Health Act 1984 of Western Australia

Workplace Health and Safety Act 1995 of Tasmania

Workplace Health and Safety Act 2007 of the Northern Territory

Scaffolding and Lifts Act 1912 and *Machinery Act 1949* of the Australian Capital Territory

crane means an appliance intended for raising or lowering a load, and moving it horizontally, but does not include:

- (a) any industrial lift-truck, earthmoving machinery, amusement structure, tractor, industrial robot or lift, or
- (b) any front-end loader, backhoe, excavator or similar plant configured for operation as a crane, or
- (c) any non-slewing mobile crane with a capacity of 3 tonnes or less or used only for towing vehicles.

dogging means:

- (a) the application of slinging techniques, including the selection or inspection of lifting gear, to safely sling a load, or
- (b) the directing of a crane operator or hoist operator in the movement of a load when the load is out of the operator's view.

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fork-lift truck means a powered industrial truck equipped with a mast and elevating load carriage to which is attached a pair of fork arms or other loadholding attachment but does not include any pedestrian-operated fork-lift truck or a pallet truck capable of providing a maximum lift not exceeding 225 millimetres.

high risk work—see clause 264B.

hoist means an appliance intended for raising or lowering a load or personnel and includes a mast-climbing work platform, a personnel and materials hoist and a slip form or jump form, but does not include a lift.

licence means a licence issued by WorkCover in accordance with the National Standard authorising a person to perform one or more classes of high risk work.

loadshifting machine means a fork-lift truck or order picking fork-lift truck.

materials platform hoist means a powered builder's hoist by which only goods or materials (and not people) may be hoisted by means of a car, bucket or platform cantilevered from, and travelling up and down externally to, the face of a structure.

mobile crane means a crane that forms part of a vehicle.

National Standard means the *National Standard for Licensing Persons Performing High Risk Work* (April 2006) prepared by the Commonwealth, as in force from time to time.

notice of satisfactory assessment means a notice of satisfactory assessment issued under clause 264L or a record of assessment issued under a corresponding law that, in WorkCover's opinion, is equivalent to such a notice of satisfactory assessment.

personnel and materials hoist means a powered builder's hoist, comprising a car, structure, machinery or other associated equipment, by which people, goods or materials may be hoisted, and includes a cantilever hoist, a tower hoist, a multiple-winch assembly or winches configured for operation as a hoist for the movement of people.

power crane means any crane driven by other than manual power.

power hoist means any hoist driven by other than manual power.

recognised qualification—see clause 264E.

registered training organisation or ***RTO*** means a training organisation registered by a State or Territory registering body in accordance with the Australian Quality Training Framework.

rigging means the exercising of direct control of the movement of equipment and associated gear necessary for the purpose of:

- (a) setting up or dismantling a crane or hoist, or similar plant configured for operation as a crane or hoist, or
- (b) placing or securing plant or a load relating to, and including the structural members of, a building or structure, or
- (c) ensuring the stability of the structural members of a building or structure.

scaffolding means the erection, alteration or dismantling of temporary structures that are specifically erected to support platforms, but does not include the erection, alteration or dismantling of any such structure if the maximum distance a person or object could fall from the structure is less than 4 metres.

self-erecting tower crane means a tower crane:

- (a) whose erection and dismantling processes are an inherent part of the crane's function, and
- (b) that has a tower element and a boom or jib element that ordinarily remain fully assembled and part of the crane during transport from one place to another place.

State or Territory registering body means:

- (a) the Vocational Education and Training Accreditation Board constituted by the *Vocational Education and Training Act 2005*, or
- (b) the body responsible for the accreditation of vocational courses under a corresponding law.

supervisor means a person who:

- (a) holds a licence or recognised qualification directly relevant to the high risk work being supervised, and
- (b) is working under the supervision of, or in partnership with, an RTO.

trainee, in relation to high risk work, means an unqualified person who is engaged in a course of training for that kind of work and who is of or above the age of 17 years.

unqualified person, in relation to a kind of high risk work, means a person who does not hold a licence or recognised qualification in relation to that work.

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- (2) A locomotive containing a boiler that is exempt from the definition of *boiler* in subclause (1) under paragraph (d) of that definition must be in the charge of a person of or above the age of 18 years whenever it is operated.

Maximum penalty: Level 3.

264B High risk work

For the purposes of this Part, *high risk work* means work of a kind listed under the subheadings in the following Schedule:

Schedule of work for which qualifications are required

Scaffolding

- 1.1** Basic scaffolding, consisting of scaffolding work connected with the operation or use of plant including:
- (a) modular or prefabricated scaffolds, and
 - (b) cantilevered materials hoists with a maximum working load of 500 kilograms, and
 - (c) ropes and gin wheels, and
 - (d) safety nets and static lines, and
 - (e) bracket scaffolds (tank and formwork).
- 1.2** Intermediate scaffolding, consisting of all basic scaffolding together with other scaffolding work connected with the operation or use of plant including:
- (a) cantilevered crane-loading platforms, and
 - (b) cantilevered and spurred scaffolds, and
 - (c) barrow ramps and sloping platforms, and
 - (d) perimeter safety screens, fences and shutters, and
 - (e) mast climbers, and
 - (f) tube and coupler scaffolds (including tube and coupler covered ways and gantries).

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- 1.3** Advanced scaffolding, consisting of all intermediate scaffolding together with all other scaffolding work connected with the operation or use of plant including:
- (a) hung scaffolds, including scaffolds hanging from tubes, wire ropes or chains, and
 - (b) suspended scaffolds.

Rigging

- 2.1** Dogging, consisting of the application of slinging techniques to move a load (including the selection and inspection of lifting gear) or the directing of a crane or hoist operator in the movement of a load when the load is out of the view of the crane or hoist operator.
- 2.2** Basic rigging, consisting of dogging and rigging work connected with the erection, movement or placement of plant or materials including:
- (a) movement of plant and equipment, and
 - (b) steel erection, and
 - (c) hoists (including mast-climbing hoists), and
 - (d) placement of pre-cast concrete, and
 - (e) safety nets and static lines, and
 - (f) perimeter safety screens and shutters, and
 - (g) cantilevered crane-loading platforms.
- 2.3** Intermediate rigging, consisting of all basic rigging together with other rigging work connected with the erection, movement or placement of plant or materials including:
- (a) load-equalising gear, and
 - (b) cranes, conveyors, dredges and excavators, and
 - (c) tilt slabs, and
 - (d) hoists with jibs and self-climbing hoists, and
 - (e) demolition, and
 - (f) dual lifts.

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- 2.4** Advanced rigging, consisting of all intermediate rigging together with all other rigging work connected with the erection, movement or placement of plant or materials including:
- (a) gin poles and shear legs, and
 - (b) flying foxes and cableways, and
 - (c) guyed derricks and structures, and
 - (d) suspended and fabricated hung scaffolds.

Crane and hoist operation

- 3.1** Operation and use of a tower crane (other than a self-erecting tower crane).
- 3.2** Operation and use of a self-erecting tower crane.
- 3.3** Operation and use of a derrick crane.
- 3.4** Operation and use of a portal boom crane.
- 3.5** Operation and use of a bridge or gantry crane (other than one that is remotely controlled and has 3 or fewer powered operations).
- 3.6** Operation and use of a vehicle-loading crane with a capacity of 10 metre tonnes or more.
- 3.7** Operation and use of a non-slewing mobile crane with a capacity of greater than 3 tonnes.
- 3.8.1** Operation and use of a slewing mobile crane with a capacity of up to and including 20 tonnes.
- 3.8.2** Operation and use of a slewing mobile crane with a capacity of up to and including 60 tonnes.
- 3.8.3** Operation and use of a slewing mobile crane with a capacity of up to and including 100 tonnes.
- 3.8.4** Operation and use of a slewing mobile crane with a capacity of more than 100 tonnes.
- 3.9** Operation and use of a materials hoist.
- 3.10** Operation and use of a personnel and materials hoist.

3.11 Operation and use of a boom-type elevating work platform with a boom 11 metres or more in length.

3.12 Operation and use of a vehicle-mounted concrete-placing boom.

Operation and use of fork-lift trucks

4.1 Operation and use of a fork-lift truck.

4.2 Operation and use of an order picking fork-lift truck.

Operation of pressure equipment

5.1 Basic boiler operation, consisting of the operation or use of any boiler whose operation relies on:

- (a) a single fixed combustion air supply, and
- (b) a non-modulating single heat source, and
- (c) a fixed firing rate.

5.2 Intermediate boiler operation, consisting of basic boiler operation together with the operation or use of any other boiler whose operation relies on:

- (a) a modulating combustion air supply, or
- (b) a modulating heat source, or
- (c) a superheater, or
- (d) an economiser.

5.3 Advanced boiler operation, consisting of intermediate boiler operation together with the operation or use of any other boiler whose operation relies on multiple fuel types that may be fired simultaneously. This does not include boilers that change fuel type during start sequence. For the purposes of this paragraph, a boiler that relies on multiple fuel types means a boiler that is fired using at least two of the following fuel types:

- (a) gas,
- (b) liquid fuel, including oil and diesel fuel,
- (c) solid fuel, including coal (including pulverised coal), briquettes, coke, wood (including wood chips) or any other type of solid fuel.

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5.4 Operation and use of a steam turbine that is multi-wheeled or capable of a speed exceeding 3,600 rpm or a steam turbine that relies for its operation on:

- (a) attached condensers, or
 - (b) a multi-stage heat extraction process,
- except a steam turbine that produces a power output of less than 500 kilowatts.

5.5 Operation and use of a reciprocating steam engine containing a piston of 250 millimetres or more in diameter, including expanding (steam) reciprocating engines.

264C Application of Part

- (1) This Part applies to high risk work.
- (2) This Part applies only if that work is work as an employee or self-employed person.
- (3) Despite subclause (1), this Part does not apply to high risk work listed in item 4.1 or 4.2 of the Schedule to clause 264B when carried out at a mining workplace that is a mine, or at a coal workplace.

264D Manner of giving written notice

If any provision of this Part requires a written notice to be given to a person or served on a person, it may be:

- (a) given to the person personally, or
- (b) sent to the person by post to the person's last known address which, if the person has provided WorkCover with his or her address, may be the address so provided.

264E Recognised qualifications

- (1) A qualification obtained in another State or Territory that is approved by WorkCover for the purposes of this clause is recognised for the purpose of this Part in relation to high risk work.

Note. Clause 264ZB provides that certificates of competency issued under Part 9.1 are taken to be licences in certain circumstances.

- (2) A qualification does not have any force for the purposes of this Part while it is suspended or after it has been cancelled.

Division 2 Work for which licences or recognised qualifications are required

264F Requirement to be qualified to do high risk work

- (1) A person must not do any kind of high risk work to which this Part applies unless the person holds a licence or recognised qualification in relation to work of that kind.
Maximum penalty: Level 3.
- (2) A person must not employ, direct or allow another person to do any kind of high risk work to which this Part applies unless the person doing the work holds a licence or recognised qualification in relation to work of that kind.
Maximum penalty: Level 3.
- (3) A person must not:
 - (a) contravene the conditions of a licence or recognised qualification held by the person, or
 - (b) direct or allow another person to contravene the conditions of a licence or recognised qualification held by that other person.Maximum penalty: Level 3.
- (4) A trainee, an unqualified person or person employing, directing or allowing a trainee or an unqualified person to do high risk work does not commit an offence under this clause if the work is done in accordance with the other provisions of this Part.
Note. Additional exemptions may be granted by WorkCover under Chapter 12.

264G Exception for trainees

- (1) An RTO must ensure that a trainee doing any kind of high risk work:
 - (a) does the work under the supervision of a supervisor, and
 - (b) keeps and maintains a record of training in accordance with the requirements of clause 264H.
- (2) The supervisor of a trainee engaged in high risk work must directly supervise the trainee while the trainee is doing the work, unless the employer of the trainee or the supervisor has established:
 - (a) that the circumstances of a particular task make direct supervision impractical or unnecessary, and

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(b) the trainee's competency is such that direct supervision can be reduced, and

(c) that a lesser degree of supervision would not endanger the health or safety of the trainee or any other person.

Maximum penalty (subclause (2)): Level 3.

264H Trainee's obligations—record of training and assessment

(1) A trainee must make and give to the RTO responsible for providing the training, a record of training in accordance with the National Standard that includes:

(a) the name and address of the trainee, and

(b) the name and address of the RTO.

(2) The following information must be completed in the record at the completion of each training session:

(a) a signed entry by the supervisor on each occasion of training, including the supervisor's name and licence number, and

(b) a description of the tasks performed during any such training, including the type of equipment used or operated and the outcomes achieved, and

(c) a record of the dates and times during which that work was done.

Maximum penalty: Level 1.

264I Exception for holders of notices of satisfactory assessment

(1) An unqualified person who has been issued with a notice of satisfactory assessment that indicates that the person is competent to do a specified kind of high risk work may do work of that kind until the expiration of 60 days after the date of issue of the notice.

(2) If the person applies to WorkCover for a licence within that period, the person may continue to do work of that kind:

(a) until the person is issued with a licence, or

(b) until 14 days after the person receives notice that the application has been refused.

264J Exception for maintenance or demonstration

- (1) An unqualified person may do any kind of high risk work (other than dogging or scaffolding) that involves the operation or use of plant if the work:
 - (a) does not involve operating or using the plant for the purpose for which it was designed, and
 - (b) is done solely for the purpose of the testing, trialling, installing, commissioning, maintaining, servicing, repairing, altering or disposing of the plant.
- (2) A person may operate a crane or hoist solely for the purpose of setting up or dismantling the crane or hoist if the person holds a licence or recognised qualification relating to rigging that qualifies the person to set up or dismantle a crane or hoist.

Division 3 Assessment of competency**264K Applications for assessment**

- (1) A person may apply to an assessing body for an assessment of the person's competency to do high risk work if:
 - (a) the person is at least 18 years of age, and
 - (b) the person has completed the relevant training in accordance with the National Standard and any guidelines issued by WorkCover for the purposes of that training in relation to the class of high risk work to which the person's application relates.
- (2) The application:
 - (a) must be in the approved form, and
 - (b) must be accompanied by such material or information to support the application as the assessing body may require.
- (3) An application must include evidence of the applicant's age and identity that is approved by WorkCover for the purposes of this clause.
- (4) In this clause, *assessing body* means an RTO registered under Division 4 or, if no RTO is registered under that Division, WorkCover.

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264L Assessment of competency

- (1) The following persons may conduct assessments for the purposes of this Part:
 - (a) a person who is a registered nominated person in respect of an RTO that is approved under Division 4, or
 - (b) WorkCover.
- (2) If a person is assessed as being competent to do high risk work, the person who conducted the assessment must issue to the person a notice of satisfactory assessment specifying the high risk work that the person has been assessed as being competent to do.
- (3) A person referred to in subclause (1) (a) who does any of the following is guilty of an offence:
 - (a) assesses a person's competency to do high risk work otherwise than in accordance with the National Standard or the guidelines issued by WorkCover in relation to the conduct of assessments for such work,
 - (b) issues a notice of satisfactory assessment without assessing the person as being competent to do the high risk work specified in the notice,
 - (c) falsely assesses the person as being competent to do high risk work,
 - (d) assesses a person's competency to do high risk work, being aware that the person has been assessed in relation to the same kind of work within the previous 21 days,
 - (e) assesses a person who is under the age of 18 years,
 - (f) refuses to issue a notice of satisfactory assessment in respect of the high risk work despite having assessed the person as being competent to do the work.

Maximum penalty (subclause (3)): Level 4.

- (4) A person must not conduct assessments for the purposes of this Part unless the person is a nominated person approved in respect of an RTO that is approved under Division 4.

Maximum penalty (subclause (4)): Level 4.

264M Assessment guidelines

- (1) An applicant's competency to do high risk work must be assessed in accordance with the National Standard and any guidelines issued by WorkCover in relation to the conduct of assessments.

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- (2) Such guidelines may make provision for any one or more of the following matters:
- (a) techniques for directly observing the applicant's performance of the work under workplace conditions,
 - (b) simulated work-related tasks to be performed,
 - (c) checklists to be completed by the applicant,
 - (d) projects or assignments to be completed by the applicant,
 - (e) test questions,
 - (f) any other methods of assessment.

264N Appeals against the outcome of assessments

- (1) A person who is affected by the outcome of an assessment conducted:
- (a) by an approved nominated person in respect of an RTO, may apply to the RTO for a review of the outcome, or
 - (b) by WorkCover, may apply to WorkCover for a review of the outcome.
- (2) An application for review under subclause (1) (b) must be made in writing within 14 days after the applicant receives notice of the relevant outcome.

264O Assessment of competency at direction of WorkCover

- (1) A written notice directing a person to have his or her competency assessed may be given, at any time, by WorkCover:
- (a) to a person who is the holder of a licence, or
 - (b) to a person whose licence is suspended, or
 - (c) to a person who has lodged an application for the issue or renewal of a licence.
- (2) WorkCover may suspend, cancel or refuse to issue or renew the licence if the person refuses or fails to comply, without reasonable excuse, with the requirements set out in the notice.
- (3) If WorkCover decides to suspend, cancel or refuse to issue or renew a licence under this clause, WorkCover must give the person written notice:
- (a) stating that the licence has been suspended or cancelled, or that the application for the issue or renewal of a licence has been refused, and

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- (b) giving reasons for the suspension, cancellation or refusal, and
 - (c) in the case of a suspension, stating the period for which the licence is suspended.
- (4) The suspension or cancellation of a licence takes effect on the date on which notice of the suspension or cancellation is given to the holder of the licence or on such later date as may be specified in the notice.

Division 4 Approval of registered training organisations

264P Approval of RTO and persons nominated as providers of high risk work assessments

- (1) An RTO may apply to WorkCover for approval as a provider of high risk work assessments.
- (2) The application must:
 - (a) be in the approved form, and
 - (b) be accompanied by the application fee as determined by WorkCover, and
 - (c) be accompanied by:
 - (i) a copy of the RTO's registration with the relevant State or Territory registering body, and
 - (ii) the name of each person nominated by the RTO to be approved to carry out high risk work assessments (a *nominated person*), and
 - (d) be lodged in the approved manner.
- (3) WorkCover may approve the RTO or may refuse the application for such reasons as it considers sufficient.
- (4) If WorkCover approves an RTO, WorkCover may approve each nominated person named in the application in respect of that RTO or may refuse to approve any such person for such reasons as it considers sufficient.
- (5) An approved RTO may at any time apply to have a nominated person approved as a provider of high risk work assessments in respect of that RTO.
- (6) WorkCover may approve the nominated person or may refuse the application for such reasons as it considers sufficient.

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- (7) WorkCover cannot approve a nominated person under this clause unless the person is accredited as an assessor under Division 4 of Part 9.1.
 - (8) If WorkCover approves an RTO or a nominated person, it must issue a notice of approval to the RTO.
 - (9) If a person ceases to be a nominated person because that person is no longer under the supervision of, or in partnership with, the RTO in respect of which he or she is approved, the RTO must inform WorkCover of that matter within 14 days.
 - (10) An RTO must not provide a high risk work assessment or advertise the provision of such assessments unless the RTO is approved for that purpose by WorkCover and the assessment is carried out by a nominated person approved in respect of that RTO.

Maximum penalty: Level 3.

264Q Suspension and cancellation of approval

- (1) WorkCover may suspend or cancel the approval of an RTO as a provider of high risk work assessments if it is satisfied that:
 - (a) an approved nominated person in respect of the RTO has carried out an assessment of competency:
 - (i) otherwise than in accordance with the guidelines issued by WorkCover in relation to the conduct of assessments, or
 - (ii) in respect of a person who is under the age of 18 years, or
 - (b) the RTO was approved on the basis of false or misleading information or a failure to disclose or provide required information, or
 - (c) the RTO has had its approval suspended or cancelled under clause 218.
- (2) If the registration of an RTO is cancelled, any approval of the body and of each person nominated in respect of that RTO under this Division is immediately cancelled.
- (3) If the registration of an RTO is suspended, any approval of the RTO and of each person nominated in respect of that RTO under this Division is also suspended during that suspension.

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- (4) WorkCover may suspend or cancel the approval of a nominated person if it is satisfied that:
- (a) the person is no longer competent to conduct high risk work assessments, 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 approved on the basis of false or misleading information or a failure to disclose or provide required information, or
 - (d) the person has contravened the National Standard or a guideline relating to the conduct of high risk work assessments, or
 - (e) the person has had his or her accreditation as an assessor suspended or cancelled under clause 287, or
 - (f) the person has had his or her approval suspended or cancelled under clause 218, or
 - (g) the person has carried out an assessment of competency for high risk work:
 - (i) otherwise than in accordance with the National Standard or the guidelines issued by WorkCover in relation to the conduct of assessments, or
 - (ii) otherwise than under the supervision of, or in partnership with, an RTO approved by WorkCover as a provider of high risk work assessments,
 - (iii) in respect of a person who is under the age of 18 years.
- (5) Before suspending or cancelling the approval of an RTO or a nominated person, WorkCover:
- (a) must cause written notice of the proposed suspension or cancellation to be given to the RTO or person, and
 - (b) must give the RTO or person 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.

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- (6) If, after having regard to any representations made by the RTO or nominated person, WorkCover decides to proceed with the proposed suspension or cancellation, WorkCover must give to the RTO or nominated person a written notice:
 - (a) stating that the approval is suspended or cancelled, and
 - (b) in the case of a suspension, specifying the period for which the approval is suspended, and
 - (c) giving reasons for the suspension or cancellation.
 - (7) The suspension or cancellation takes effect on the date on which notice of the suspension or cancellation is given to the RTO or nominated person or such later date as may be specified in the notice.
 - (8) An RTO or a nominated person is taken not to be approved during any period of suspension.

Division 5 Issue of licences

264R Applications for licences

An application for the issue of or renewal of a licence to do high risk work:

- (a) must be lodged with an organisation nominated by WorkCover to accept such applications (including WorkCover itself if nominated), and
- (b) must be in the approved form, and
- (c) must be accompanied by such material or information to support the application (such as any relevant notice of satisfactory assessment) as WorkCover may require, and
- (d) must be accompanied by the fee fixed for the time being by WorkCover to cover expenses in connection with the regulation of holders of licences of the class concerned.

264S Issue of licences

- (1) WorkCover must issue a licence authorising a person to do a particular kind of high risk work if:
 - (a) the person has complied with the application requirements in clause 264R, and
 - (b) the person is the holder of a notice of satisfactory assessment, issued not more than 60 days before the date of the application, that indicates that the applicant is competent to do work of that kind, and

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- (c) WorkCover is satisfied that the person can be relied on to do work of that kind without endangering the health or safety of that or any other person.
- (2) However, WorkCover may refuse to issue a licence to an applicant if:
 - (a) the applicant is less than 18 years of age, or
 - (b) any relevant licence, qualification or exemption held by the applicant has been suspended or cancelled within the previous 5 years.
- (3) 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.
- (4) For the purpose of determining the kind of high risk work for which a licence may be issued, WorkCover may (but is not required to) have regard to the classes of high risk work set out in the National Standard.
- (5) If a person applies for a licence and the person has previously held a licence of the same type as that applied for, or relating to the same kind of work as will be authorised by the licence applied for, WorkCover may, if it thinks it appropriate to do so, dispense with the requirement under subclause (1) (b).

264T Form of licences

A licence must be in the approved form and must:

- (a) specify the following:
 - (i) the name and date of birth of the person to whom it is issued,
 - (ii) the date of its issue,
 - (iii) a description of the kind of high risk work that the licence authorises its holder to do,
 - (iv) a unique identifying number,
 - (v) the expiry date of the licence if the licence is issued for a limited period,
 - (vi) any conditions attached to the licence, and
- (b) contain a photograph of the person to whom it is issued.

264U Term of licences

- (1) Unless sooner cancelled, a licence expires on the earlier of:
 - (a) the day that is 5 years after its date of issue, or

- (b) the day that the licence is surrendered to an organisation nominated by WorkCover to accept surrendered licences (including WorkCover itself if nominated), or
 - (c) the day that the holder of the licence is issued a new licence authorising the holder to do the same kind of work as the holder is authorised to do under the existing licence.
- (2) A licence is of no effect while it is suspended.
 - (3) Despite subclause (1), if the holder of a licence has applied under this Division for the issue or renewal of a licence authorising the holder to do that same kind of work as the holder is authorised to do under the licence referred to in that subclause that is in force, the existing licence does not expire (unless it is cancelled) until WorkCover:
 - (a) issues the licence applied for, or
 - (b) gives the notice referred to in clause 264S (3).

264V Renewal of licences

- (1) WorkCover may, on the application of the holder of a licence, renew a licence.
- (2) Clause 264S applies to an application for the renewal of a licence in the same way as it applies to an application for the issue of a licence.

264W Replacement of lost, stolen, damaged or destroyed licences

- (1) The holder of a licence that is lost, stolen, damaged or destroyed may apply to WorkCover for a replacement licence.
- (2) The application:
 - (a) must be in the approved form, and
 - (b) must be accompanied by a statement by the applicant that explains how, or the circumstances in which, the licence 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 licences.
- (3) WorkCover may issue a replacement licence if satisfied that the applicant's licence 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.

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- (5) The holder of a licence that is replaced under this clause:
- (a) must within 7 days surrender the original licence if it is recovered, or
 - (b) in the case of a damaged licence that is replaced, must within 7 days surrender the damaged licence.
- Maximum penalty (subclause (5)): Level 1.

264X Holder to produce licence

- (1) An inspector may direct a person doing high risk work to produce for inspection immediately:
- (a) the licence, recognised qualification or exemption (including a notice of satisfactory assessment that was issued within the previous 60 days) that authorises the person to do the work or, if the person is a trainee, the person's record of training in relation to the work, 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.

Division 6 Suspension or cancellation of licences

264Y Suspension or cancellation of licences

- (1) WorkCover may suspend or cancel a licence if satisfied that:
- (a) the holder of the licence is no longer competent to do work of the kind authorised by the licence, or
 - (b) the holder of the licence can no longer be relied on to do work of the kind authorised by the licence without endangering the health or safety of the holder or any other person, or
 - (c) the licence was obtained on the basis of false or misleading information or a failure to disclose or provide required information.
- (2) Before suspending or cancelling a licence, WorkCover:
- (a) must cause written notice of the proposed suspension or cancellation to be given to the holder of the licence, and
 - (b) must give the holder of the licence 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.

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- (3) If, after having regard to any representations made by the holder of the licence, WorkCover decides to proceed with the proposed suspension or cancellation, WorkCover must give to the holder a written notice:
 - (a) stating that the licence is suspended or cancelled, and
 - (b) in the case of a suspension, specifying the period for which the licence is suspended, and
 - (c) giving reasons for the suspension or cancellation.
 - (4) The suspension or cancellation takes effect on the date on which notice of the suspension or cancellation is given to the holder of the licence or such later date as may be specified in the notice.
 - (5) To remove any doubt, WorkCover may suspend or cancel a licence on grounds arising wholly or partly outside New South Wales.

264Z Immediate suspension

- (1) An inspector may, by notice served on the holder of a licence, immediately suspend the licence for a period of up to 10 days from the day on which the notice is served if the inspector has a reasonable concern about:
 - (a) the competency of the holder to do work of the kind authorised by the licence, or
 - (b) the reliability of the holder to do work of the kind authorised by the licence without endangering the health or safety of the holder or any other person.
- (2) The notice of suspension:
 - (a) must be in writing, and
 - (b) must give reasons for the suspension, and
 - (c) must specify the period for which the licence is suspended, and
 - (d) must state that the holder of the licence may object to the suspension by providing WorkCover with reasons why the suspension should not be maintained for that period.
- (3) WorkCover must immediately terminate the suspension and give written notice to the holder of the licence of that fact if, after considering any objection by the holder, WorkCover is satisfied that the suspension should not be maintained.

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264ZA Cancelled licences must be surrendered

The holder of a licence that is cancelled must return the licence to WorkCover within such period as may be specified in the notice of cancellation.

Maximum penalty: Level 1.

Division 7 Savings and transitional provision

264ZB Saving of certain certificates of competency

- (1) A certificate of competency issued under Part 9.1 before 1 September 2009 is taken to be a licence issued under this Part if the certificate was issued for the kind of work for which a licence may be issued under this Part.
- (2) A licence to which subclause (1) applies expires (subject to clause 264U (3)) on the day on which the certificate of competency would have expired if this Part had not commenced unless sooner cancelled or surrendered under this Part.

[18] Part 9.1

Omit the heading. Insert instead:

Part 9.1 Certificates of competency for pesticides, fumigants and certain loadshifting machines

[19] Clause 265

Omit the clause. Insert instead:

265 Definitions

In this Part:

assessor means:

- (a) WorkCover, or
- (b) a person who is accredited as an assessor under Division 4,
or
- (c) a registered training organisation.

certificate of competency means a certificate of competency issued under this Part.

Note. The definition includes former authorities taken to be certificates of competency. See clause 268.

corresponding law means any of the following laws:

Occupational Health and Safety Act 1985 of Victoria

Workplace Health and Safety Act 2004 of Queensland

Occupational Health, Safety and Welfare Act 1986 of South Australia

Occupational Safety and Health Act 1984 of Western Australia

Workplace Health and Safety Act 1995 of Tasmania

Workplace Health and Safety Act 2007 of the Northern Territory

Scaffolding and Lifts Act 1912 and *Machinery Act 1949* of the Australian Capital Territory

fumigant means any of the following chemicals:

- (a) methyl bromide,
- (b) phosphine,
- (c) ethylene oxide (except single dose canisters),
- (d) ethylene dichloride,
- (e) carbon disulphide,
- (f) chloropicrin,
- (g) hydrogen cyanide.

fumigation means the use of a fumigant.

loadshifting machine means a dragline, excavator, front-end loader, front-end loader/backhoe, or front-end loader of the skid-steer type.

National Certification Standard means the document entitled *National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment* (NOHSC: 1006) published by the NOHS Commission, as in force from time to time.

National Competency Guidelines means the document entitled *National Guidelines for Occupational Health and Safety Competency Standards for the Operation of Loadshifting Equipment and Other Types of Specified Equipment* (NOHSC: 7019) published by the NOHS Commission, as in force from time to time.

National Standard for Licensing Pest Management Technicians means the document entitled *National Standard for Licensing Pest Management Technicians* published in 1999 by the National Environmental Health Forum (National Environmental Health Monographs General Series No 4).

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notice of satisfactory assessment means:

- (a) in relation to the application of pesticides or the use of fumigants, a qualification or statement of attainment issued by an RTO, or
- (b) in any other case, a notice of satisfactory assessment issued under clause 281 or a record of assessment issued under a corresponding law that, in WorkCover's opinion, is equivalent to such a notice of satisfactory assessment.

pesticide means a pesticide within the meaning of the *Pesticides Act 1999*.

recognised course of training means a course of training that is recognised in accordance with clause 271 (2).

recognised qualification—see clause 269.

registered training organisation or ***RTO*** has the same meaning as in the *Vocational Education and Training Act 2005*.

supervisor, in relation to a trainee, means a person who is designated as the trainee's supervisor under clause 273 (2).

trainee, in relation to work to which this Part applies, means an unqualified person who is engaged in a recognised course of training for that kind of work and who is of or above the age of 17 years.

unqualified person means a person who does not hold a recognised qualification.

[20] Clause 266 Scheduled work

Omit items 1.1–9 (including the headings to those items).

[21] Clause 266, Schedule, items 10.1 and 10.2

Omit the items.

[22] Clause 267 Application of Part

Omit clause 267 (3).

[23] Clause 267 (4)

Omit "10.1". Insert instead "10.3".

[24] Clause 277 Exception for maintenance or demonstration

Omit "(other than dogging or scaffolding)" from clause 277 (1).

[25] Clauses 277 (2), 278 (2), 279 and 291

Omit the provisions.

[26] Clause 284 Accreditation of assessors

Insert after clause 284 (5):

- (6) An accredited assessor must not conduct assessments or advertise the provision of assessments unless the assessor is accredited for that purpose by WorkCover.

Maximum penalty: Level 3.

[27] Clause 287 Suspension and cancellation of accreditation

Omit clause 287 (1) (e). Insert instead:

- (e) the person has had his or her registration to conduct OHS induction training suspended or cancelled under clause 218, or
- (f) the assessor has had his or her accreditation in another jurisdiction suspended or cancelled.

[28] Clauses 292 and 293

Omit the clauses. Insert instead:

292 Form of certificates

- (1) A certificate of competency must be in the approved form and must:
- (a) specify the following:
- (i) the name and date of birth of the person to whom it is issued,
 - (ii) the date of its issue,
 - (iii) a description of the kind of work that the certificate authorises its holder to do,
 - (iv) a unique identifying number,
 - (v) the expiry date of the certificate if the certificate is issued for a limited period,
 - (vi) any conditions attached to the certificate, and
- (b) contain a photograph of the person to whom it is issued.
- (2) The holder of a certificate of competency must sign the certificate as soon as practicable after receiving it.

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293 Term of certificates

- (1) Unless sooner cancelled, a certificate of competency expires on the earlier of:
 - (a) the day that the certificate is surrendered to an organisation nominated by WorkCover to accept surrendered certificates (including WorkCover itself if nominated), or
 - (b) the day that the holder of the certificate is issued a new certificate of competency authorising the holder to do the same kind of work as the holder is authorised to do under the existing certificate.
- (2) A certificate of competency is of no effect while it is suspended.
- (3) Despite subclause (1), if the holder of a certificate of competency has applied under this Division for the issue or renewal of a certificate of competency authorising the holder to do that same kind of work as the holder is authorised to do under the certificate referred to in that subclause that is in force, the existing certificate does not expire until WorkCover:
 - (a) issues the certificate applied for, or
 - (b) gives the notice referred to in clause 290 (3).

[29] Clause 351 Decisions subject to review by the Administrative Decisions Tribunal: section 36 of the Act

Insert after clause 351 (1) (b1):

- (b2) decisions made by WorkCover under Part 8.2:
 - (i) to refuse to approve an RTO or a nominated person, or
 - (ii) to suspend or cancel the approval of an RTO or a nominated person,

[30] Clause 351 (1) (c) (i)–(iii)

Insert “or a licence” after “competency” wherever occurring.

[31] Clause 351 (1) (c) (vi)

Insert at the end of subparagraph (vi):

- , or
- (vii) to refuse to approve an RTO or a nominated person, or
- (viii) to suspend or cancel the approval of an RTO or a nominated person, or

- (ix) to confirm the decision of an RTO or WorkCover on an application for a review of the outcome of an assessment,