

Occupational Health and Safety Regulation 2001

[2001-648]



New South Wales

Status Information

Currency of version

Historical version for 28 February 2003 to 31 August 2003 (accessed 18 April 2024 at 13:56)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
Gazette No 128 of 22.8.2003, p 8026 (not commenced — to commence on 1.9.2003)

Authorisation

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File last modified 26 August 2003

Occupational Health and Safety Regulation 2001



New South Wales

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Occupational Health and Safety Regulation 2001



New South Wales

Chapter 1 Preliminary

1 Name of Regulation

This Regulation is the *Occupational Health and Safety Regulation 2001*.

2 Commencement

This Regulation commences on the commencement of the Act.

Editorial note—

Date of commencement: 1.9.2001—see Gazette No 129 of 24.8.2001, page 6186.

3 Definitions

(1) In this Regulation:

approved form means the form approved for the time being by WorkCover for the purposes of the provision in which the expression is used.

authorised medical practitioner means a medical practitioner authorised by WorkCover, or authorised by another body or under a scheme approved by WorkCover, to perform health surveillance for the purposes of this Regulation.

building includes a structure, and includes part of a building or structure.

competent person for any task means a person who has acquired through training, qualification or experience, or a combination of them, the knowledge and skills to carry out that task.

construction work means any of the following:

- (a) excavation, including the excavation or filling of trenches, ditches, shafts, wells, tunnels and pier holes, and the use of caissons and cofferdams,
- (b) building, including the construction (including the manufacturing of prefabricated elements of a building at the place of work concerned), alteration, renovation,

repair, maintenance and demolition of all types of buildings,

- (c) civil engineering, including the construction, structural alteration, repair, maintenance and demolition of, for example, airports, docks, harbours, inland waterways, dams, river and avalanche and sea defence works, roads and highways, railways, bridges and tunnels, viaducts, and works related to the provision of services such as communications, drainage, sewerage, water and energy supplies.

dangerous goods means any substance or article prescribed as dangerous goods for the purposes of the *Dangerous Goods Act 1975*.

employer includes self-employed person in Chapters 2, 4, 5, 6, 7 and 8.

former Act means the *Occupational Health and Safety Act 1983*.

hazard means anything (including work practices or procedures) that has the potential to harm the health or safety of a person.

hazardous substance means a substance that:

- (a) is listed in the document entitled "*List of Designated Hazardous Substances [NOHSC: 10005 (1999)]*" published by the NOHS Commission, as in force from time to time, or
- (b) fits the criteria for a hazardous substance set out in the document entitled "*Approved Criteria for Classifying Hazardous Substances [NOHSC: 1008 (1999)]*" published by the NOHS Commission, as in force from time to time.

height of a building means the height measured from ground level to its highest part.

NOHS Commission means the National Occupational Health and Safety Commission of the Commonwealth.

penalty levels—see subclause (2).

public place means a public road or any other place to which the public, whether on payment of a fee or otherwise, ordinarily has access.

record includes any form in which information is stored on a permanent basis or from which information may be reproduced.

substance means any natural or artificial entity, composite material, mixture or formulation, other than something (that is not a fluid or particle) that:

- (a) is formed during production to a specific shape or design, or to have a specific surface, and
- (b) has an end use that depends in whole or in part on its shape, design or surface,

and

- (c) undergoes no change in chemical composition or physical state during its end use, except as an intrinsic aspect of that end use.

Note—

In a number of publications relating to hazardous substances the things that are excluded from the definition of **substance** are called “articles”.

the Act means the *Occupational Health and Safety Act 2000*.

WorkCover means the WorkCover Authority constituted under the *Workplace Injury Management and Workers Compensation Act 1998*.

Note—

Other relevant definitions are contained in the Act and the *Interpretation Act 1987*. They include the following:

employee means an individual who works under a contract of employment or apprenticeship.

employer means a person who employs persons under contracts of employment or apprenticeship.

occupier of premises includes:

- (a) a person who, for the time being, has (or appears to have) the charge, management or control of the premises, or
- (b) a person who, for the time being, is in charge (or appears to be in charge) of any operation being conducted on the premises.

place of work means premises where persons work.

plant includes any machinery, equipment or appliance.

premises includes any place, and in particular includes:

- (a) any land, building or part of any building, or
- (b) any vehicle, vessel or aircraft, or
- (c) any installation on land, on the bed of any waters or floating on any waters, or
- (d) any tent or movable structure.

self-employed person means a person who works for gain or reward otherwise than under a contract of employment or apprenticeship, whether or not employing others.

work means work as an employee or as a self-employed person.

The *Interpretation Act 1987* also provides that expressions defined for the purposes of this Regulation apply except in so far as the context or subject-matter otherwise indicates or requires.

- (2) The following levels of penalty apply for the purposes of determining the maximum penalty for an offence against a provision of this Regulation, and references in this

Regulation to those levels are to be construed accordingly:

- (a) Level 1—20 penalty units,
- (b) Level 2—30 penalty units,
- (c) Level 3—100 penalty units,
- (d) Level 4—250 penalty units.

Note—

At the time of making this Regulation, each penalty unit was \$110—see section 17 of the [Crimes \(Sentencing Procedure\) Act 1999](#).

- (3) In this Regulation, a reference to an Australian Standard is a reference to an Australian Standard (AS) or an Australian/New Zealand Standard (AS/NZS) published by Standards Australia in the year referred to in the citation of the Standard, as in force from time to time.
- (4) If WorkCover has indicated, by notice in writing, that it is satisfied that another standard provides an equivalent standard of safety to an Australian Standard or an Australian/New Zealand Standard, that other standard may be applied instead for the purposes of the relevant provision of this Regulation.
- (5) If there is an inconsistency between a provision of this Regulation and a provision of an Australian Standard or another standard referred to in this Regulation, the provision of this Regulation prevails.

4 Application of Regulation

- (1) This Regulation applies to all places of work, except as provided by this Regulation.
- (2) Chapter 5 applies to plant affecting public safety, whether or not the plant is at a place of work or for use at work.
- (3) This Regulation does not apply to a mine, except:
 - (a) Chapter 3 (Workplace consultation), and
 - (b) Part 6.1 (Preliminary—Chapter 6), Part 6.2 (Manufacture of hazardous substances) and Part 6.3 (Supply of hazardous substances), and
 - (c) clause 357 (Additional officers authorised to consent to institution of proceedings for offences), and
 - (d) clause 358 (Application of Act to mines: references to WorkCover).

Note—

Part 2 of the Act imposes general obligations on employers and other persons and creates offences for breaches

of those obligations. This Regulation imposes additional obligations on those persons and on others. Section 29 of the Act provides that compliance with the regulations is not in itself a defence in any proceedings for an offence against Part 2 of the Act (subject to any regulations that modify Part 2), but also provides that a relevant contravention of the regulations is admissible in evidence in any proceedings for an offence against Part 2.

5 Meaning of “control” of risks

- (1) For the purposes of this Regulation, an obligation to **control** a risk to health or safety (in any case in which the elimination of the risk is not reasonably practicable) is an obligation to take the following measures (in the order specified) to minimise the risk to the lowest level reasonably practicable:
 - (a) firstly, substituting the hazard giving rise to the risk with a hazard that gives rise to a lesser risk,
 - (b) secondly, isolating the hazard from the person put at risk,
 - (c) thirdly, minimising the risk by engineering means,
 - (d) fourthly, minimising the risk by administrative means (for example, by adopting safe working practices or providing appropriate training, instruction or information),
 - (e) fifthly, using personal protective equipment.
- (2) A combination of the above measures is required to be taken to minimise the risk to the lowest level reasonably practicable if no single measure is sufficient for that purpose.
- (3) Any obligation in this Regulation to control a risk by taking specific risk control measures, or by taking specific risk control measures in a particular order, is in addition to the obligations referred to in subclauses (1) and (2).

Note—

For an example in which the above clause applies, see clause 11 (general obligation of employers and self-employed persons to eliminate risks or, if not reasonably practicable to do so, to control the risk).

6 Application of provisions providing for alternative duties if primary duty not reasonably practicable

- (1) This clause applies to any provision of this Regulation that imposes a duty, such as a duty to eliminate a risk, on a person (the **primary duty**), but provides that if it is not reasonably practicable to comply with that duty, the person is required to comply with another duty, such as a duty to control the risk (the **alternative duty**).

Note—

See duties to eliminate risks or, if that is not reasonably practicable, to control the risk (clause 11). See also particular alternative control measures in clause 5.

- (2) For the purposes of this Regulation, the primary duty of a person is not replaced by the alternative duty unless the person can establish that it is not reasonably practicable to comply with the primary duty.

Note—

Section 28 of the Act provides a defence if the person can establish that it is not reasonably practicable to comply with the alternative duty.

7 Application of provisions of Part 2 of the Act (relating to general duties of certain persons) to persons having duties under this Regulation

- (1) Section 10 (3) and (4) of the Act apply to the duties under this Regulation of a person who has control of premises used by people as a place of work.

Note—

The effect of subclause (1) is to provide that the duties under this Regulation of a person who has control of premises used by people as a place of work:

- (a) do not apply to premises used only by employees of the controller, and (For the duties of an employer who is also the controller of the premises, see section 8 of the Act and the provisions of this Regulation imposing duties on employers.)
- (b) do not apply to premises occupied only as a private dwelling, and
- (c) end to the means of access to or exit from a place of work, and
- (d) apply only if the premises are controlled in the course of a trade, business or other undertaking (whether for profit or not) of the controller.

If a controller of premises:

- (a) has only limited control of the premises, any duty under this Regulation applies only to the matters over which the controller has control, or
- (b) is a controller by virtue of having, under a contract or lease, an obligation to maintain or repair the premises, any duty under this Regulation applies only to the matters covered by the contract or lease.

- (2) Section 11 (2) and (3) of the Act apply to the duties under this Regulation of designers, manufacturers and suppliers of plant and substances for use by people at work (other than plant affecting public safety).

Note—

The principal effect of subclause (2) is to provide that the duties under this Regulation of designers, manufacturers and suppliers of plant and substances for use by people at work (other than plant affecting public safety):

- (a) apply only if the plant or substance is designed, manufactured or supplied in the course of a trade, business or other undertaking (whether for profit or not), and
- (b) apply whether or not the plant or substance is exclusively designed, manufactured or supplied for use

by people at work.

8 Responsibilities held by more than one responsible person

If more than one person has a responsibility with respect to a particular occupational health and safety matter under this Regulation:

- (a) each such person retains responsibility for the matter, and
- (b) the responsibility is to be discharged in a co-ordinated manner.

Chapter 2 Places of work—risk management and other matters

Note—

This Chapter imposes obligations on an employer to identify foreseeable hazards that may arise from the conduct of the employer's undertaking, to assess the risks of those hazards and to eliminate the risks or, if not reasonably practicable to do so, to control the risks.

Division 2 of Part 2 of the Act requires an employer to consult with employees to enable them to contribute to the making of decisions affecting their health, safety and welfare at work. Among other things, the Division requires such consultation when risks to health and safety arising from work are assessed and when decisions are made about the measures to be taken to eliminate or control risks. (See Chapter 3 of this Regulation for further provisions regarding the machinery of consultation.)

This Chapter also applies to self-employed persons (see definition of **employer** in clause 3).

9 Employer to identify hazards

- (1) An employer must take reasonable care to identify any foreseeable hazard that may arise from the conduct of the employer's undertaking and that has the potential to harm the health or safety of:
 - (a) any employee of the employer, or
 - (b) any other person legally at the employer's place of work,or both.
- (2) In particular (and without limiting the generality of subclause (1)), the employer must take reasonable care to identify hazards arising from:
 - (a) the work premises, and
 - (b) work practices, work systems and shift working arrangements (including hazardous processes, psychological hazards and fatigue related hazards), and
 - (c) plant (including the transport, installation, erection, commissioning, use, repair, maintenance, dismantling, storage or disposal of plant), and
 - (d) hazardous substances (including the production, handling, use, storage, transport or disposal of hazardous substances), and
 - (e) the presence of asbestos installed in a place of work, and

- (f) manual handling (including the potential for occupational overuse injuries), and
 - (g) the layout and condition of a place of work (including lighting conditions and workstation design), and
 - (h) biological organisms, products or substances, and
 - (i) the physical working environment (including the potential for any one or more of the following:
 - (i) electrocution,
 - (ii) drowning,
 - (iii) fire or explosion,
 - (iv) people slipping, tripping or falling,
 - (v) contact with moving or stationary objects,
 - (vi) exposure to noise, heat, cold, vibration, radiation, static electricity or a contaminated atmosphere,
 - (vii) the presence of a confined space), and
 - (j) the potential for workplace violence.
- (3) An employer must ensure that effective procedures are in place, and are implemented, to identify hazards:
- (a) immediately prior to using premises for the first time as a place of work, and
 - (b) before and during the installation, erection, commissioning or alteration of plant in a place of work, and
 - (c) before changes to work practices and systems of work are introduced, and
 - (d) before hazardous substances are introduced into a place of work, and
 - (e) while work is being carried out, and
 - (f) when new or additional information from an authoritative source relevant to the health or safety of the employees of the employer becomes available.
- (4) An employer who employs 20 or fewer employees is not required to comply with this clause within the period of 2 years after its commencement (except to the extent that the clause applies to hazards involving hazardous substances or manual handling).
- (5) An employer who employs more than 20 employees is not required to comply with this clause within the period of 12 months after its commencement (except to the

extent that the clause applies to hazards involving hazardous substances or manual handling).

Maximum penalty: Level 4.

Note—

Other provisions of this Regulation (for example, in Chapters 4 and 5) impose specific hazard identification requirements on particular persons such as controllers of places of work, designers and manufacturers of plant and so on.

10 Employer to assess risks

(1) An employer must assess the risk of harm to the health or safety of the following persons arising from any hazard identified in accordance with this Chapter:

- (a) any employee of the employer, or
 - (b) any other person legally at the employer's place of work,
- or both.

Note—

Also see clauses 78, 168 and 207 which require employers to keep and maintain risk assessment reports in relation to confined spaces, record results of risk assessments in relation to hazardous substances and prepare written risk assessments in respect of electrical work on electrical installations.

- (2) An employer who employs 20 or fewer employees is not required to comply with this clause within the period of 2 years after its commencement (except to the extent that the clause applies to risks involving hazardous substances or manual handling).
- (3) An employer who employs more than 20 employees is not required to comply with this clause within the period of 12 months after its commencement (except to the extent that the clause applies to risks involving hazardous substances or manual handling).

Maximum penalty: Level 4.

Note—

Other provisions of this Regulation (for example, in Chapters 4 and 5) impose more specific risk assessment requirements on particular persons such as controllers of places of work, designers and manufacturers of plant and so on.

11 Employer to eliminate or control risks

(1) Subject to subclause (2), an employer must eliminate any reasonably foreseeable risk to the health or safety of:

- (a) any employee of the employer, or
- (b) any other person legally at the employer's place of work,

or both, that arises from the conduct of the employer's undertaking.

- (2) If it is not reasonably practicable to eliminate the risk, the employer must control the risk.
- (3) An employer must ensure that all measures (including procedures and equipment) that are adopted to eliminate or control risks to health and safety are properly used and maintained.
- (4) An employer who employs 20 or fewer employees is not required to comply with this clause within the period of 2 years after its commencement (except to the extent that the clause applies to risks involving hazardous substances or manual handling).
- (5) An employer who employs more than 20 employees is not required to comply with this clause within the period of 12 months after its commencement (except to the extent that the clause applies to risks involving hazardous substances or manual handling).

Maximum penalty: Level 4.

Note—

An employer must also comply with any specific risk control measures required by this Regulation. In particular see Parts 4.3, 4.4, 5.4 and 6.4 and Chapters 7 and 8. The Regulation (for example, in Part 4.2 and in Chapter 5) also imposes risk control requirements on other persons, such as controllers of places of work, designers and manufacturers of plant and so on. Clause 5 sets out the order of control measures to be taken if it is not reasonably practicable to eliminate a risk.

12 Employer to review risk assessments and control measures

An employer must review a risk assessment, and any measures adopted to control the risk, whenever:

- (a) there is evidence that the risk assessment is no longer valid, or
- (b) injury or illness results from exposure to a hazard to which the risk assessment relates, or
- (c) a significant change is proposed in the place of work or in work practices or procedures to which the risk assessment relates.

Maximum penalty: Level 4.

13 Employer to provide instruction, training and information

- (1) An employer must ensure that each new employee receives induction training that covers the following:
 - (a) arrangements at the place of work for the management of occupational health and safety, including arrangements for reporting hazards to management,

- (b) health and safety procedures at the place of work relevant to the employee, including the use and maintenance of risk control measures,
- (c) how employees can access any health and safety information that the employer is required by this Regulation to make available to employees,
- (d) any other matter that this Regulation specifies should be the subject of induction training and that is relevant to the place of work concerned having regard to the competence, experience and age of the new employee.

Maximum penalty: Level 3.

- (2) An employer must ensure that any person who may be exposed to a risk to health and safety at the employer's place of work:
- (a) is informed of the risk, and
 - (b) is provided with any information, instruction and training necessary to ensure the person's health and safety.

The information, instruction and training (and the timing of its provision) must be commensurate with the risk to health and safety concerned.

Maximum penalty: Level 3.

- (3) An employer must provide persons who have responsibilities with respect to the following under this Regulation with all available information necessary to enable them to fulfil those responsibilities:
- (a) identifying hazards,
 - (b) assessing risks arising from those hazards,
 - (c) eliminating or controlling those risks,
 - (d) monitoring or reviewing risk control measures,
 - (e) providing information.

Maximum penalty: Level 4.

- (4) Nothing in this clause requires an employer to train or instruct members of the public in the use of lifts or amusement devices.

Note—

Specific requirements as to the provision of information relating to plant and hazardous substances are set out in Chapters 5 and 6.

See Part 8.2 in relation to occupational health and safety induction training for construction work.

Clause 171 requires employers to retain records of induction or other training provided to employees who are likely to be exposed to hazardous substances.

14 Employer to provide supervision

- (1) An employer must ensure that the employer's employees are provided with reasonable supervision necessary to ensure the health and safety of the employees and any other persons at the employer's place of work.
- (2) The employer must ensure that the supervision is undertaken by a competent person.
- (3) In determining the nature and extent of necessary supervision, the employer must have regard to the competence, experience and age of each employee.

Maximum penalty: Level 3.

Note—

Specific requirements for supervision in relation to excavation work are imposed on employers by Chapter 8.

15 Provision by an employer of personal protective equipment

- (1) If measures taken by an employer under clause 11 (2) to control a risk include the use of personal protective equipment, the employer must provide each person at risk with personal protective equipment and ensure that:
 - (a) the equipment provided is appropriate for the person and controls the risk for that person, and
 - (b) the person is informed of any limitations of the equipment, and
 - (c) the person is provided with the instruction and training necessary to ensure that the equipment controls the risk for the person, and
 - (d) the equipment is properly maintained and is repaired or replaced as frequently as is necessary to control the risk for the person, and
 - (e) the equipment is provided in a clean and hygienic condition to the person, and
 - (f) the equipment is stored in a place provided by the employer for the purpose, and
 - (g) areas in places of work where personal protective equipment must be used are clearly identified.

Maximum penalty: Level 3.

- (2) In this clause, **personal protective equipment** includes any substance used to protect health (such as a sun protection cream).

Note—

Reference should also be made to any relevant Australian Standards relating to the provision and use of personal protective equipment.

16 Employer to obtain information

(1) An employer must obtain such information as is necessary to enable the employer to fulfil the employer's responsibilities under this Regulation with respect to the following:

- (a) identifying hazards,
- (b) assessing risks arising from those hazards,
- (c) eliminating or controlling those risks,
- (d) providing information.

Maximum penalty: Level 4.

(2) For the purposes of subclause (1), the information is to be reasonably available information from an authoritative source.

17 Employer to provide for emergencies

(1) An employer must ensure that, in the event of an emergency at any place of work at which the employer's undertaking is conducted, arrangements have been made for:

- (a) the safe and rapid evacuation of persons from the place of work, and
- (b) emergency communications, and
- (c) appropriate medical treatment of injured persons.

If the employer does not have control, or has only limited control, of the place of work, the duty under this subclause applies only to the matters over which the employer has control.

(2) In making arrangements for the purposes of this clause, an employer must take the following into account:

- (a) the nature of the hazards at the place of work,
- (b) the size and location of the place of work,
- (c) the number, mobility and capability of persons at the place of work.

(3) If employees work at a fixed place of work, the employer must ensure that:

- (a) adequate arrangements are made for the shutting down and evacuation of the place of work in the event of an emergency, and

- (b) details of the arrangements for any such evacuation are kept on display in an appropriate location or locations at the place of work, and
- (c) one or more persons are appointed and appropriately trained to oversee any such evacuation and, if appropriate, in the use of on-site fire fighting equipment.

Maximum penalty: Level 4.

Note—

Also see clause 13 (2) (b) which requires an employer to provide any person who may be exposed to a risk to health and safety at the employer's place of work with any information, instruction and training necessary to ensure the person's health and safety.

18 Employer to provide amenities

- (1) An employer must ensure that appropriate amenities are available for all of the employer's employees while they are at work.
- (2) The appropriateness of amenities is to be determined having regard to all of the circumstances of the case, including the following:
 - (a) the nature of the work undertaken at the place of work,
 - (b) the size and location of the place of work,
 - (c) the number of men and of women at the place of work.

Note—

Also see Part 4 of the Act (Industry codes of practice). Failure by an employer to observe any industry code of practice relevant to the provision of amenities may be used in evidence in any prosecution under this clause or clause 19. Industry codes of practice are prepared by WorkCover and approved by the Minister.

- (3) In this clause, **amenities** means facilities provided for the welfare or personal hygiene needs of persons and includes toilets, rest rooms, shelter sheds, seating, dining rooms, change rooms, provision of drinking water, lockers and washing facilities.

Maximum penalty: Level 3.

19 Maintenance of amenities and accommodation

- (1) An employer must ensure that:
 - (a) any amenities provided in accordance with clause 18, and
 - (b) any accommodation provided by the employer for the welfare of employees because of the circumstances of their work,are maintained in a safe and healthy condition.

- (2) If the employer does not have control, or has only limited control, of the amenities or accommodation, the duty under subclause (1) applies only to the matters over which the employer has control.

Maximum penalty: Level 3.

20 Employer to provide first aid facilities and personnel

- (1) In this clause:

construction site means the site of construction work.

trained first aid personnel means:

- (a) a person who holds a current first aid certificate issued after successful completion of a WorkCover approved first aid course, or
 - (b) a person who holds a current occupational first aid certificate issued after successful completion of a WorkCover approved occupational first aid course, or
 - (c) a level 3 or greater New South Wales ambulance officer, or
 - (d) a registered nurse, or
 - (e) a medical practitioner.
- (2) An employer must provide at each place of work:
- (a) first aid facilities that are adequate for the immediate treatment of injuries and illnesses that may arise at the place of work, and
 - (b) if more than 25 persons are employed at a place of work—trained first aid personnel.
- (3) An employer must have regard to the location of the place of work, the number of employees at a particular location and the type of work being undertaken in determining the nature, number and location of the first aid facilities and the number of trained first aid personnel that are required. Subclauses (4)–(7) prescribe the minimum facilities and personnel that are required at various sites or places of work.

Note—

See clause 194 as to additional first aid requirements in relation to the treatment of cyanide poisoning.

- (4) An employer must ensure that the first aid facilities at the following sites or places include a first aid kit of the type specified opposite the description of the site or place:

Construction sites at which 25 or more persons work or other places of work at which 100 or more persons work	First Aid Kit A
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Construction sites at which fewer than 25 persons work or other places of work at which fewer than 100 and more than 10 persons work First Aid Kit B

Places of work (other than construction sites) at which 10 or fewer persons work First Aid Kit C

- (5) In subclause (4), **First Aid Kit A**, **First Aid Kit B** and **First Aid Kit C** mean a first aid kit containing the following items in the quantity (if any) specified in columns A, B and C, respectively:

	A	B	C
Adhesive plastic dressing strips, sterile, packets of 50	2	1	1
Adhesive dressing tape, 2.5 cm 5 cm	1	1	—
Bags, plastic, for amputated parts:			
Small	2	1	1
Medium	2	1	1
Large	2	1	—
Dressings, non-adherent, sterile, 7.5 cm 7.5 cm	5	2	—
Eye pads, sterile	5	2	—
Gauze bandages:			
5 cm	3	1	1
10 cm	3	1	—
Gloves, disposable, single	10	4	2
Rescue blanket, silver space	1	1	—
Safety pins, packets	1	1	1
Scissors, blunt/short nosed, minimum length 12.5 cm	1	1	—
Splinter forceps	1	1	—
Sterile eyewash solution, 10 ml single use ampules or sachets	12	6	—
Swabs, prepacked, antiseptic, packs of 10	1	1	—
Triangular bandages, minimum 90 cm	8	4	1
Wound dressings, sterile, non-medicated, large	10	3	1
First-aid pamphlet as approved by WorkCover	1	1	1

- (6) An employer must ensure that the first aid kit at any place of work at which more than 25 persons are employed is under the control of trained first aid personnel.
- (7) An employer must ensure that the first aid facilities at a place of work at which more than 200 persons work, or at a construction site at which more than 100 persons work, include a first aid room that:
 - (a) is under the control of a person described in paragraph (b), (c), (d) or (e) of the definition of **trained first aid personnel** in subclause (1), and
 - (b) is located so that it is readily accessible during working hours to persons working at the place of work or site, and
 - (c) is situated at a convenient distance from:
 - (i) toilets, and
 - (ii) a sink or a wash basin equipped with suitable drainage and a supply of clean hot and cold running water, and
 - (iii) a means of boiling water, and
 - (d) has an access door that is wide enough to allow the entry and exit of a patient on a stretcher, and
 - (e) is well lit and well ventilated, and
 - (f) contains the following:
 - (i) a work bench or a dressing trolley,
 - (ii) a cupboard for storage,
 - (iii) a suitable container fitted with a disposable bag or liner for soiled dressings,
 - (iv) a suitable container for the safe disposal of needles or other sharp implements,
 - (v) an electric power point,
 - (vi) a couch with blankets and pillows,
 - (vii) a telephone,
 - (viii) a stretcher, lifting frame or similar device for transporting patients,
 - (ix) a sufficient supply of soap and disposable towels,
 - (x) a copy of the current edition of an occupational first aid handbook approved by WorkCover,

- (xi) the items specified in subclause (5) in relation to First Aid Kit A, in quantities not less than those so specified,
 - (xii) a portable first aid kit for use outside the first aid room, being a kit that contains the items specified in subclause (5) in relation to First Aid Kit B, in quantities not less than those so specified,
 - (xiii) such special appliances, requisites and equipment for first aid as are otherwise required by law or as are necessary or appropriate having regard to the nature of the work undertaken at the place of work or site, and
- (g) does not contain anything except equipment, requisites or appliances for first aid or occupational health purposes, and
- (h) is not used for any purpose other than for first aid or occupational health purposes.

Maximum penalty: Level 4.

Note—

A register of injuries is required to be kept under the [Workplace Injury Management and Workers Compensation Act 1998](#).

Chapter 3 Workplace consultation

Note—

This Chapter makes provision with respect to the duty of the employer to consult employees under Division 2 of Part 2 of the Act. The relevant provisions of the Act are as follows:

- (a) Section 13—provides that the employer must consult with the employees of the employer to enable those employees to contribute to the making of decisions affecting their health, safety and welfare at work.
- (b) Section 14—defines the nature of consultation as the sharing of relevant information, the opportunity for employees to express their views and the taking into account of those views by the employer. (Relevant information to be shared would include matters that affect or may affect the health, safety or welfare at work of employees covered by particular consultative arrangements.)
- (c) Section 15—sets out when consultation is to be undertaken (including when assessments are made of risks to health and safety, when decisions are made on measures to control or eliminate those risks, when changes are made to premises, systems or methods of work, or to plant or substances used for work, that may affect health, safety or welfare at work and when decisions are made about the consultation arrangements).
- (d) Section 16—provides that consultation is to be undertaken by means of an OHS committee, an OHS representative or other agreed arrangements, or a combination of those means.
- (e) Section 17—requires the establishment of an OHS committee if the employer employs 20 or more persons and a majority of the employees so requests or WorkCover so directs, and requires an OHS representative to be elected if at least one of the employees so requests or WorkCover so directs. Other consultative arrangements require agreement between the employer

and employees.

(f) Section 18—sets out the functions and powers of OHS committees and OHS representatives.

21 Definitions

In this Chapter:

OHS consultation arrangements means the requirements imposed by sections 16 and 17 of the Act with respect to the establishment of an OHS committee, the election of an OHS representative or the establishment of other agreed consultation arrangements.

workgroup means the group of employees that is represented by a particular OHS committee or OHS representative.

22 Setting up consultation arrangements (section 15 (f) of the Act)

- (1) The employer must, in accordance with section 15 (f) of the Act, consult on the procedures for consultation, that is, whether consultation is to be undertaken by means of an OHS committee, an OHS representative or other agreed arrangements, or a combination of those means.
- (2) If the proposed OHS consultation arrangements provide for an OHS committee or OHS representative, the employer must consult on the following:
 - (a) the composition of the relevant workgroups under the arrangements,
 - (b) the relationship between an OHS committee and an OHS representative if both are to be provided under the arrangements,
 - (c) the number of employee representatives and of employer representatives on any OHS committee,
 - (d) the arrangements for electing any OHS representative or employee representatives on any OHS committee (including arrangements for dealing with absences, the removal of members or other casual vacancies),
 - (e) the arrangements for meetings of any OHS committee and meetings between the employer and any OHS representative (including the frequency of ordinary meetings and the calling of special meetings),
 - (f) the procedures for any such meeting (including whether meetings may be held by electronic communication or the circulation of papers),
 - (g) the arrangements for communications between the persons elected by the employees in a workgroup and those employees (including procedures for enabling the employees in the workgroup to raise issues and make complaints about occupational health and safety matters),
 - (h) the arrangements for the training of members of any OHS committee or any OHS

representative,

- (i) the relationship between representatives of the workgroup of an employer and the representatives of the workgroup of another employer.
- (3) If the proposed OHS consultation arrangements provide for other agreed arrangements, the employer must consult on arrangements with respect to meetings with the employer, communication with the employees, the functions and training of the persons involved, the procedures for resolving occupational health and safety issues, the role of any relevant industrial organisation of employees and other relevant matters.
- (4) OHS consultation arrangements are to be reviewed as occasion requires. Consultation on new arrangements is to be undertaken if a majority of the employees in the workgroup so request or if there has been a significant change in the composition of the workgroup that is not reflected in the existing arrangements.
- (5) A Federal or State industrial organisation of employees may represent, for the purposes of consultation on OHS consultative arrangements, any of those employees who request the organisation to represent them.

23 Workgroups represented by OHS committees or OHS representatives

- (1) The relevant workgroups to be represented by OHS committees or OHS representatives are to be determined in a manner that ensures that they are able to represent effectively the employees in each workgroup and, in particular, in a manner that enables them to undertake regular meaningful communication with the employees in each workgroup.
- (2) The diversity of the employees and their work must be taken into account when determining the relevant workgroups. In particular, the following must be taken into account:
 - (a) the hours of work of employees (including the representation of employees on shift work),
 - (b) the pattern of work of employees (including the representation of part-time, seasonal or short term employees),
 - (c) the number and grouping of employees,
 - (d) the geographic location where the employees work (including the representation of employees in dispersed locations such as those in the transport industry or working from home),
 - (e) the different types of work performed by employees and the different levels of responsibility,

- (f) the attributes of employees (including gender, ethnicity, age and special needs),
 - (g) the nature of the occupational health and safety hazards at the place of work,
 - (h) the interaction of the employees with the employees of other employers.
- (3) It is not necessary to establish separate workgroups for different categories of employees, places of work or other matters referred to above.
- (4) OHS consultation arrangements that include both an OHS committee and an OHS representative for a workgroup must ensure that the committee is the principal mechanism for consultation for that workgroup.

24 Minimum requirements for OHS committees

The procedures with respect to the establishment and composition of OHS committees must comply with the following requirements:

- (a) the employee representatives on a committee must be elected by and from the employees in the relevant workgroup the committee represents,
- (b) an election for those representatives must be conducted in a manner that is consistent with recognised democratic principles,
- (c) an election may be conducted by a Federal or State industrial organisation of employees if a majority of the employees concerned request the organisation to conduct the election,
- (d) the number of employer representatives on a committee must not exceed the number of elected employee representatives on the committee,
- (e) the chairperson of a committee is not to be an employer representative,
- (f) a person who is elected as an OHS representative for a workgroup may be an employee representative on a committee that relates to the workgroup without further election if it is provided for in the OHS consultation arrangements,
- (g) a person who is elected as an employee representative on a committee may be an employee representative on another related committee without further election if it is provided for in the OHS consultation arrangements,
- (h) an employee representative on a committee is to be elected for a maximum period of 2 years (but the term of office may be shortened in connection with a change in OHS consultation arrangements),
- (i) a person elected as an employee representative on a committee is eligible for re-election,
- (j) a person is not eligible to be an employer representative on a committee unless the

person has authority to act on behalf of the employer in occupational health and safety matters at the place of work.

25 Minimum requirements for election of OHS representatives

The procedures with respect to the election of OHS representatives (as required by section 16 (b) of the Act) must comply with the following requirements:

- (a) the OHS representative must be elected by and from the employees in the relevant workgroup the person represents,
- (b) the election must be conducted in a manner that is consistent with recognised democratic principles,
- (c) the election may be conducted by a Federal or State industrial organisation of employees if a majority of the employees concerned request the organisation to conduct the election,
- (d) an OHS representative is to be elected for a maximum period of 2 years (but the term of office may be shortened in connection with a change in OHS consultation arrangements),
- (e) a person elected as an OHS representative is eligible for re-election.

26 Other agreed arrangements (sections 16 (c) and 17 (3) of the Act)

- (1) This clause applies to other agreed arrangements for consultation referred to in section 17 (3) of the Act.
- (2) The functions of persons under other agreed arrangements are those that are derived from the agreement.
- (3) Other agreed arrangements may comprise arrangements negotiated at an industry level. Any such arrangements may be used by a particular employer in the industry if the arrangements are agreed to by a majority of the employees and, in their application to that employer, comply with the requirements for consultation of the Act and this Regulation.

Note—

Section 17 (3) of the Act provides that a Federal or State industrial organisation of employees may, on request, represent employees for the purposes of consultation on occupational health, safety and welfare under other agreed arrangements.

27 Related obligations of employer with respect to duty to consult

- (1) An employer has the following obligations in connection with OHS consultation arrangements of the employer:
 - (a) to record those arrangements,

- (b) to publicise those arrangements among existing and new employees to whom they relate,
 - (c) to provide members of OHS committees or OHS representatives with reasonable access to the employees they represent during working hours for the purposes of communication,
 - (d) to provide reasonable facilities, and access during working hours to the workplace, for the purposes of OHS consultation arrangements (including for the purposes of conducting or holding elections, meetings and inspections),
 - (e) to ensure that employer representatives on an OHS committee participate in the work of the committee on a regular basis,
 - (f) to ensure that employees participating in consultation (and in training for consultation) in accordance with OHS consultation arrangements are paid as if they were engaged in the duties of their employment (whether they participate as representatives of employees or of the employer),
 - (g) to pay the costs reasonably and necessarily incurred by employees in connection with their participation in that consultation or training,
 - (h) to facilitate the OHS consultation arrangements of another employer where employees of that other employer are working at the employer's place of work.
- (2) An employer who fails to comply with an obligation under this clause is guilty of an offence.

Maximum penalty: Level 3.

- (3) This clause does not affect the duty of an employer to consult under section 13 of the Act and the maximum penalty provided for contravening that section.

28 Employees to disclose certain matters

- (1) An employee must take reasonable steps to prevent risks to health and safety at work by notifying the employee's employer or supervisor of any matter that, to the knowledge of the employee, may affect the capacity of the employer to comply with the requirements of this Regulation.

Maximum penalty: Level 2.

- (2) An employee may discharge the obligation under subclause (1) by notifying the matter in accordance with OHS consultation arrangements to the relevant OHS representative or member of the relevant OHS committee.

Note—

For other obligations of employees, or that may relate to employees, see the following sections of the Act:

- (a) Section 20 (1)—requires an employee to take reasonable care for the health and safety of people who are at the employer's place of work and who may be affected by the employee's acts or omissions at work.
- (b) Section 20 (2)—requires an employee to co-operate with the employer or other persons so far as is necessary to enable compliance with OHS duties of the employer or other person.
- (c) Section 21—prohibits a person interfering with or misusing anything provided in the interests of occupational health, safety and welfare.
- (d) Section 23—prohibits an employer dismissing or victimising an employee because of an OHS-related complaint, membership of an OHS committee or election as an OHS representative or the exercise of any other functions under the consultative arrangements made by the Act.
- (e) Section 25—prohibits a person, without reasonable excuse, deliberately creating a risk (or appearance of a risk) to health or safety of people at work with the intention of causing a disruption of work.

29 Procedure for resolving matter that may be risk to health and safety

- (1) This clause applies to the function of an OHS committee or an OHS representative under section 18 (c) of the Act to attempt to resolve a matter that may be a risk to health and safety at the place of work but, if unable to do so, to request an investigation by an inspector to resolve the matter.
- (2) For the purpose of resolving the matter:
 - (a) the applicable OHS consultative arrangements are to be used, and
 - (b) the matter must be formally referred to the employer, and
 - (c) the employer is to consider the matter and respond in a timely manner.
- (3) If the matter is not resolved after the employer has been given a reasonable opportunity to consider and respond to the matter, the OHS committee or OHS representative may request an investigation of the matter by an inspector.
- (4) Such a request by an OHS committee is to be made through the chairperson of the committee. The committee may make arrangements for the making of such requests by the chairperson without a formal meeting of the committee being convened to authorise the making of each particular request.
- (5) This clause does not limit any other power with respect to the inspection of places of work or of disputes arising at places of work.

30 Additional functions of OHS committees and OHS representatives (section 18 (d) of the Act)

- (1) An OHS committee and an OHS representative have the following additional functions:
 - (a) to make a request to accompany an inspector as an observer on an inspection under section 69 (b) of the Act that affects the workgroup that the committee or representative represents,

- (b) to be an observer during any formal report by an inspector to the employer in connection with any occupational health and safety matter concerning the workgroup that the committee or representative represents,
 - (c) to accompany an employee of the workgroup that the committee or representative represents, at the request of the employee, during any interview by the employer on any occupational health and safety issue,
 - (d) to be an observer during any formal in-house investigation of an accident or other occurrence at the relevant place of work that is required to be notified to WorkCover under Division 4 of Part 5 of the Act,
 - (e) to assist in the development of arrangements for recording workplace hazards and accidents to promote improved workplace health and safety,
 - (f) to make recommendations on the training of members of OHS committees and of OHS representatives,
 - (g) to make recommendations on the training of employees in relation to occupational health and safety.
- (2) An observer under subclause (1) (a), (b) or (d) must be an employee member of the OHS committee or the OHS representative and only one person may act as such an observer at any particular time.

Note—

Section 18 of the Act provides that an OHS committee or OHS representative has the following functions:

- (a) to keep under review the measures taken to ensure the health, safety and welfare of persons at the place of work,
- (b) to investigate any matter that may be a risk to health and safety at the place of work,
- (c) to attempt to resolve the matter but, if unable to do so, to request an investigation by an inspector for that purpose,
- (d) the additional functions prescribed above.

Functions under the Act and this Regulation includes “powers” and “duties”.

31 Training to be undertaken by members of OHS committees and OHS representatives

- (1) An employer must ensure that each member of an OHS committee and each OHS representative undertakes a course of training in accordance with this clause.

Maximum penalty: Level 2.

- (2) The course of training must be undertaken as soon as practicable after the person is first appointed as a member of the committee or first elected as a representative (unless the person has previously undertaken an approved course of training).

- (3) The course of training must be provided by:
- (a) a trainer who is accredited by WorkCover to provide that course of training, or
 - (b) a registered provider under the *Vocational Education and Training Accreditation Act 1990* whose registration extends to providing a course of OHS consultation training.
- (4) An application by an individual to be accredited as a trainer:
- (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.

WorkCover may approve an application for accreditation (with or without conditions) or may refuse the application.

Note—

See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to refuse to accredit a person as a trainer under this clause.

- (5) A course of training undertaken under this clause must include all the topics of OHS consultation training listed in the Table to this clause (undertaken over the period specified in guidelines issued by WorkCover for the purpose).
- (6) The trainer who provides a course of training under this clause must ensure that:
- (a) the training complies with the requirements of this Chapter, and
 - (b) a statement of training is provided to each person who completes one or more topics of OHS consultation training and a copy of the statement is provided to the employer, and
 - (c) the trainer makes a record of the training provided and retains the record for at least 6 years.

The statement of training must be in a form approved by WorkCover and record the topics of OHS consultation training completed, the date of completion and other particulars required by the approved form.

Maximum penalty: Level 2.

- (7) An employer must keep a record of the training undertaken by a person under this clause until at least 3 years after the person ceases to be an employee of, or associated with, the employer.

Maximum penalty (subclause (7)): Level 2.

Table OHS consultation training topics

Topics	Learning aim
Topic 1	
Workplace health and safety	Explains the requirements for effective management of health and safety and the importance of OHS consultation
Topic 2	
The role of OHS consultation in the workplace	Details the requirements for consultation under the <i>Occupational Health and Safety Act 2000</i> Describes the mechanisms for consultation including workplace committees and OHS representatives
Topic 3	
Effective OHS consultation in the workplace	Outlines effective communication techniques Describes how these are essential in the consultative process
Topic 4	
Systematic management of health and safety	Details the requirements for effective OHS Management Systems, their development, implementation, audit and review
Topic 5	
Action learning exercise	Practical application of risk management through work based activity
Topic 6	
Continuous improvement of OHS systems	Highlights the need for continuous improvement in OHS through consultation and provides the means for implementation, monitoring and evaluation of this process
Topic 7	
Summary and conclusion	Summarises and concludes the course, including assessment and evaluation

32 Savings and transitional arrangements

- (1) The OHS consultation arrangements must be implemented within 12 months after the commencement of the Act, except as provided by subclause (2).
- (2) An OHS committee under the former Act may (but need not) be retained for the

purposes of the OHS consultation arrangements. Replacement OHS consultation arrangements must be implemented:

- (a) within 3 months after the end of the terms of office of the members of the committee, or
- (b) within 2 years of the commencement of this Regulation, whichever first occurs.

Note—

Clause 8 of Schedule 3 to the Act provides that OHS committees established under the former Act are taken to be established under the new Act and that the regulations may provide for the staged implementation of the duties of consultation imposed by the new Act.

- (3) Any course of training of a member of an OHS committee or an OHS representative that was undertaken for the purposes of and in accordance with the regulations under the former Act is taken to have been undertaken for the purposes of and in accordance with this Regulation.
- (4) Until the expiration of 3 months after the commencement of this Regulation, a course of training that complies with the *Occupational Health and Safety (Committees in Workplaces) Regulation 1999* is taken to be a course of training for the purposes of clause 31.
- (5) A trainer accredited by WorkCover in accordance with the regulation referred to in subclause (4) is taken to have been accredited by WorkCover under clause 31.

Chapter 4 Work premises and working environment

Note—

This Chapter is divided into 4 Parts. Part 4.1 deals with preliminary matters. Part 4.2 deals with the responsibilities of controllers of premises as to hazard identification, risk assessment, risk control and provision of information generally and as to fall prevention, electricity and asbestos installed in the workplace in particular. Part 4.3 deals with the use of places of work and the responsibilities of employers as to working space, lighting, heat and cold, noise management, atmosphere, working at heights, fire prevention, electricity and working in confined spaces. Part 4.4 deals with manual handling.

Part 4.1 Preliminary

33 Definitions (and application of certain provisions)

- (1) In this Chapter:

anchorage point means:

- (a) a secure point of attachment on a structure to which a fall arrest device or anchorage line may be secured, or
- (b) a secure point on a fall arrest device to which a lanyard may be secured.

brittle or fragile roofing material means any roof covering material that would be

liable to fail if the weight of a person likely to pass across the material, and anything carried by or on the person, were applied to it.

controller of premises means a person who has control of premises used by people as a place of work, including:

- (a) a person who has only limited control of the premises, and
- (b) a person who has, under any contract or lease, an obligation to maintain or repair the premises.

electrical article means any wire, cable, appliance, fitting, meter, insulator, apparatus, equipment or material intended or designed for use in, or for the purposes of, or for connection to, any electrical installation.

electrical installation means any appliances, wires, fittings or other apparatus placed in, on, under or over any premises and used for or for purposes incidental to the conveyance, control and use of electricity supplied or intended to be supplied by an electricity supply authority, but does not include:

- (a) any electricity supply main or service line of an electricity supply authority, or
- (b) any appliances, wires, fittings, luminaries or other apparatus connected to and extending or situated beyond any electrical outlet socket:
 - (i) that is installed for the purpose of connecting portable electrical appliances, fittings or other apparatus, and
 - (ii) at which fixed wiring terminates, or
- (c) any appliances, wires, fittings or other apparatus that are:
 - (i) placed in, on or over any premises owned or occupied by an electricity supply authority, and
 - (ii) used for the generation, transmission or distribution of electricity, or
- (d) any electrical installation operating at not more than 32 volts alternating current or 115 volts direct current.

electricity supply authority has the same meaning as in the [Electricity Safety Act 1945](#).

fall arrest device means a self-locking device with the function of arresting a fall.

monitor means to survey regularly all measures used to control atmospheric contaminants in a place of work.

place of work, in relation to premises, means a place of work at those premises.

- (2) A controller of premises is not required to comply with Divisions 1 and 4 of Part 4.2 within the period of 12 months after their commencement.

Part 4.2 Work premises

Note—

Section 10 of the Act contains a general requirement for controllers of premises to ensure that the premises are safe and without risks to health. This Part sets out particular duties.

Also see clause 7 (1) as to the extent of the duties of a controller of premises under this Part.

Division 1 General duties of controllers of premises

34 Controller of premises to identify hazards

- (1) A controller of premises must identify any foreseeable hazard arising from the premises that has the potential to harm the health or safety of any person accessing, using or egressing from the premises.
- (2) Without limiting the generality of subclause (1), the controller must identify hazards arising from:
 - (a) the layout and condition of the premises, including the presence of a confined space, and
 - (b) the physical working environment, including the potential for:
 - (i) people slipping, tripping or falling, and
 - (ii) objects or structures falling on people, and
 - (c) the presence of material containing asbestos.
- (3) A controller of premises must ensure that hazards are identified:
 - (a) during any design of the premises, and
 - (b) before the premises are provided for use as a place of work.

Maximum penalty: Level 4.

35 Controller of premises to assess risks

- (1) A controller of premises must assess the risk of harm to the health or safety of any person arising from any hazard identified in accordance with this Division.
- (2) When assessing those risks, the controller must:
 - (a) evaluate the likelihood of an injury or illness occurring and the likely severity of any injury or illness that may occur, and

- (b) review available health and safety information relevant to a particular hazard, and
- (c) identify the actions necessary to eliminate or control the risk, and
- (d) identify records that it is necessary to keep to ensure that risks are controlled (including the length of time for which records are to be kept).

(3) A risk assessment may relate to more than one place of work or hazard so long as it takes account of the particular circumstances of each place of work or hazard.

Maximum penalty: Level 4.

36 Controller of premises to eliminate or control risks

- (1) A controller of premises must eliminate any risk, arising from the premises, to the health or safety of any person accessing, using or egressing from the premises.
- (2) If it is not reasonably practicable to eliminate the risk, the controller of the premises must control the risk.
- (3) A controller of premises must ensure that all measures (including procedures and equipment) that are adopted to eliminate or control risks to health or safety are properly used and maintained.

Maximum penalty: Level 4.

Note—

This Part also contains specific risk control requirements with which the controller must comply.

37 Controller of premises to review risk assessments and control measures

A controller of premises must review a risk assessment, and any measures adopted to control the risk, whenever:

- (a) there is evidence that the risk assessment is no longer valid, or
- (b) injury or illness results from exposure to a hazard to which the risk assessment relates, or
- (c) there is a significant change in the premises or place of work to which the risk assessment relates.

Maximum penalty: Level 4.

38 Controller of premises to provide information

- (1) A controller of premises must provide other persons who have responsibilities under this Regulation with all available information that is necessary to enable the other persons to fulfil their responsibilities with respect to the following:

- (a) identifying hazards,
 - (b) assessing risks arising from those hazards,
 - (c) eliminating or controlling those risks,
 - (d) providing information.
- (2) Without limiting the generality of subclause (1), the controller must provide any employer who uses the premises concerned as a place of work with information about:
- (a) any foreseeable hazard arising from the premises that has the potential to harm the health or safety of any person accessing, using or egressing from the premises, and
 - (b) an assessment of any risk arising from the premises that has not been eliminated by the controller, and
 - (c) the measures taken by the controller to control any such risk, and
 - (d) any measures (including use and maintenance of procedures and equipment) that the employer may need to adopt to control any such risk.

Maximum penalty: Level 4.

Division 2 Fall prevention

39 Fall prevention—particular risk control measures

A controller of premises must ensure that:

- (a) safe access is provided to all parts of a place of work to which a person may require access and from which the person may fall, and
- (b) if the whole or any part of the roof of a building or structure comprises or includes any brittle or fragile roofing material, warning signs are provided that:
 - (i) contain the words “DANGER—BRITTLE ROOF”, and
 - (ii) are affixed to each individual slope, curve or section of the roof and to all other places from which access to the roof may be obtained, and
- (c) walkways are provided and maintained over roofs that are wholly or partly covered by brittle or fragile roofing material, and
- (d) if windows are designed to be cleaned from the outside, anchorage points for fall arrest devices are provided on each window or other safe means for cleaning every window of the building or structure are provided, and
- (e) floors are designed to be safe without risks of slips, trips or falls, with adequate

drainage (if necessary) and appropriate floor coverings (if necessary).

Maximum penalty: Level 4.

Division 3 Electricity

40 Application

In the event of an inconsistency between the requirements of this Division and the *Electricity Safety (Electrical Installations) Regulation 1998*, the requirements of that Regulation prevail.

Note—

The *Electricity Safety (Electrical Installations) Regulation 1998* requires all electrical installation work (as defined in that Regulation) to be carried out in accordance with AS/NZS 3000:2000 *Electrical installations* (known as the Australian/New Zealand Wiring Rules).

41 Electricity—particular risk control measures

- (1) A controller of premises must ensure that:
 - (a) any electrical installation at the premises:
 - (i) is safe at the time it is made available for use by an employer, or
 - (ii) if not safe, is disconnected from the electricity supply and secured and the employer is informed that it is not safe, and
 - (b) electrical installations containing live electrical components (such as control panels, switchrooms, switchyards and substations) are suitably secured to prevent inadvertent access, and
 - (c) persons entering an area in which such electrical installations are situated are appropriately trained in issues such as safe entry, emergency procedures and safe use of electrical plant and equipment.
- (2) A controller of premises must ensure that:
 - (a) any electrical article provided for use at, or in connection with any electrical installation at, a place of work is safe at the time the place of work is made available for use by an employer, or
 - (b) if not safe, the article is disconnected from the electricity supply and secured and the employer is informed that it is not safe.
- (3) A controller of premises must ensure that any such electrical installation or electrical article that is connected to the electricity supply is, to the extent that the owner retains control over the installation or article, maintained in a safe condition.
- (4) A controller of premises must ensure that persons working in, or undertaking

maintenance on, the premises (apart from those undertaking electrical work) are prevented from coming within an unsafe distance from any overhead electrical power lines or live electrical installations unless a risk assessment determines otherwise.

- (5) A controller of premises must obtain documentation of any significant modifications made to electrical circuits at the premises from the person doing the work and ensure that the documentation is maintained and kept readily accessible for persons undertaking further electrical work.

Maximum penalty: Level 4.

Division 4 Asbestos

42 Definitions

Words and expressions used in this Division have the same meanings as they have in Part 8.7 (Asbestos—particular provisions).

43 Asbestos—risk assessment and control

A controller of premises that contains asbestos or asbestos-containing material must ensure that risk assessment and control measures are carried out in accordance with the document entitled “Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1988)]” published by the NOHS Commission, as in force from time to time.

Maximum penalty: Level 4.

Note—

See clause 34 for obligation of controller to identify presence of asbestos material.

44 Record keeping—register of asbestos

A controller of premises must ensure that:

- (a) a register, in which the type, condition and location of all asbestos and asbestos-containing material in any place of work is recorded, is prepared and maintained, and
- (b) any action taken to control asbestos and asbestos-containing material in the place of work or in plant at the place of work is recorded in the register, including details of:
 - (i) any assessment concerning the asbestos that took place before the work was carried out, and
 - (ii) if the work was carried out by a contractor rather than by an employee of the controller, the name of the person who carried out the work, and
 - (iii) the date on which the work was carried out, and
- (c) all occupiers of the place of work are provided with a copy of the register and all

updates to it.

Maximum penalty: Level 3.

Part 4.3 Use of places of work

Note—

Section 8 of the Act contains a general requirement for employers to ensure the health, safety and welfare at work of their employees. That requirement extends to:

- (a) ensuring that any premises controlled by the employer where the employees work (and the means of access to or exit from the premises) are safe and without risks to health, and
- (b) ensuring that any plant or substance provided for use by the employees at work is safe and without risks to health when properly used, and
- (c) ensuring that systems of work and the working environment of the employees are safe and without risks to health, and
- (d) providing such information, instruction, training and supervision as may be necessary to ensure the employees' health and safety at work, and
- (e) providing adequate facilities for the welfare of the employees at work.

Section 8 also requires an employer to ensure that people (other than the employees of the employer) are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking while they are at the employer's place of work.

Chapter 2 of this Regulation also contains general obligations of employers to control risks. This Part sets out particular risk control measures to be undertaken by employers. **Employer**, for the purposes of this Part, includes self-employed persons (see clause 3).

Section 9 of the Act contains a general requirement for a self-employed person to ensure that people (other than employees of the person) are not exposed to risks to their health or safety arising from the conduct of the person's undertaking while they are at the person's place of work.

Division 1 Working space

45 Working space—particular risk control measures

An employer must ensure that:

- (a) sufficient working space is provided to allow persons to work safely, and
- (b) floors and surfaces are constructed and maintained to minimise the possibility of slips, trips and falls, and
- (c) persons are unhindered and able to move safely around a place of work.

Maximum penalty: Level 4.

Note—

See also Division 9 (Working in confined spaces).

Division 2 Lighting

46 Lighting—particular risk control measures

An employer must ensure that lighting is provided that:

- (a) is adequate to allow employees to work safely, and
- (b) does not create excessive glare or reflection, and
- (c) is adequate to allow persons who are not employees to move safely within the place of work, and
- (d) facilitates safe access to and egress from the place of work, including emergency exits.

Maximum penalty: Level 4.

Division 3 Heat and cold

47 Hot working environments—particular risk control measures

An employer must ensure that:

- (a) adequate ventilation and air movement is provided in indoor environments that may become hot, and
- (b) appropriate work and rest regimes relative to the physical fitness, general health, medication taken and body weight of each employee exposed to heat are implemented.

Maximum penalty: Level 4.

48 Cold working environments—particular risk control measures

An employer must ensure that:

- (a) employees exposed to cold have adequate access to heated or sheltered work areas and warm clothing or other personal protective equipment, and
- (b) appropriate work and rest regimes relative to the physical fitness, general health, medication taken and body weight of each employee exposed to cold are implemented.

Maximum penalty: Level 4.

Division 4 Noise management

49 Noise management—particular risk control measures

- (1) An employer must ensure that appropriate control measures are taken if a person is exposed to noise levels that:
 - (a) exceed an 8-hour noise level equivalent of 85 dB(A), or
 - (b) peak at more than 140 dB(C).Maximum penalty: Level 4.
- (2) For the purposes of subclause (1):
 - (a) the measurement is to be made in accordance with AS/NZS 1269.1:1998 *Occupational noise management Part 1: Measurement and assessment of noise imission and exposure*, and
 - (b) exposure to noise is taken to be measured at the position of the ears of a person, or at an equivalent of that position, and
 - (c) the measurement is to be made on the assumption that the person is not wearing any device to protect himself or herself from noise.

Division 5 Atmosphere

50 Definitions

In this Division:

atmospheric contaminant means:

- (a) a hazardous substance that occurs in the form of a fume, mist, gas, dust or vapour, or
- (b) an asphyxiant, or
- (c) nuisance dust,

to which persons may be exposed in the working environment.

inspirable dust means those airborne particles of dust that can be taken in through the nose or mouth during breathing.

respirable fibre means a fibrous particle with a diameter of less than 3 micrometres and a length of greater than 5 micrometres, with a length to width ratio of greater than 3:1, that can reach the deepest part of a lung.

safe oxygen level means a minimum oxygen content in air of 19.5% by volume under normal atmospheric pressure and a maximum oxygen content in air of 23.5% by volume

under normal atmospheric pressure.

synthetic mineral fibre means any manufactured mineral fibre, including mineral woolrock (rockwool and slagwool), glasswool (including superfine glassfibre) and ceramic fibres.

synthetic mineral fibre dust means dust arising from a synthetic mineral fibre.

TWA (time-weighted average) means the average airborne concentration of a particular substance when calculated over a normal 8-hour working day for a 5-day working week.

51 Atmospheric contaminants—particular risk control measures

- (1) An employer must ensure that no person at a place of work is exposed to an airborne concentration of an atmospheric contaminant that exceeds or breaches a standard referred to in or determined under subclause (2).

Maximum penalty: Level 4.

- (2) For the purposes of subclause (1), the standard is as follows:

- (a) for atmospheric contaminants other than chrysotile or synthetic mineral fibre dust—as determined in accordance with the documents entitled “Guidance Note on the Interpretation of Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC: 3008]” and “Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC: 1003]”, as amended from time to time by amendments published in the Chemical Gazette of the Commonwealth of Australia,
- (b) for chrysotile—0.5 fibres per millilitre of air (TWA),
- (c) for synthetic mineral fibre dust if almost all the airborne mineral is fibrous—in addition to a respirable standard determined under paragraph (a), an exposure standard of 2 mg/m³ (TWA) of inspirable dust, but where the inspirable standard is not to take precedence over the respirable standard,
- (d) for dusts not otherwise classified—10mg/m³ (TWA) inspirable dust exposure standard applies.

52 Unsafe levels of oxygen—risk control measures

An employer must ensure that appropriate risk control measures are taken when atmospheres in a place of work contain an unsafe oxygen level.

Maximum penalty: Level 4.

53 Ventilation—particular risk control measures

An employer must ensure that:

- (a) mechanical ventilation appropriate for the work being carried out is used to control atmospheric contaminants and that the ventilation is maintained regularly, and
- (b) if a mechanical ventilation system is used to control exposure to a contaminant, the system:
 - (i) is located as close as is practicable to the source of the contaminant to minimise the risk of inhalation by a person at work, and
 - (ii) is used for as long as the contaminant is present, and
 - (iii) is kept free from accumulations of dust, fibre and other waste materials and is maintained regularly, and
 - (iv) if the system is provided to control contaminants arising from flammable or combustible substances—is designed and constructed so as to prevent the occurrence of fire or explosion, and
- (c) if a ducted ventilation system is used, an inspection point is fitted at any place where blockages in the ventilation system are likely to occur.

Maximum penalty: Level 4.

54 Entry protection—contaminated atmosphere or unsafe levels of oxygen

An employer must ensure that any place of work at which there is a risk of exposure to atmospheric contaminants or unsafe levels of oxygen is isolated and that appropriate warning signs are provided at the place.

Maximum penalty: Level 4.

55 Atmospheric monitoring

If a risk assessment under Chapter 2 indicates that monitoring of atmospheric contaminants should be undertaken at an employer's place of work, the employer must ensure that:

- (a) appropriate monitoring is undertaken in accordance with a suitable procedure, and
- (b) the results of the monitoring are recorded, and
- (c) any employee or other person working at the employer's place of work who may be or may have been exposed to an atmospheric contaminant that has been monitored is provided with the results of the monitoring, and
- (d) the monitoring records are readily accessible to any such employee or person.

Maximum penalty: Level 3.

Division 6 Working at heights

56 Prevention of falls from heights—particular risk control measures

- (1) An employer must ensure that risks associated with falls from a height are controlled by use of the following measures:
 - (a) provision and maintenance of:
 - (i) a stable and securely fenced work platform (such as scaffolding or other form of portable work platform), or
 - (ii) if compliance with subparagraph (i) is not reasonably practicable—secure perimeter screens, fencing, handrails or other forms of physical barriers that are capable of preventing the fall of a person, or
 - (iii) if compliance with subparagraph (ii) is not reasonably practicable—other forms of physical restraints that are capable of arresting the fall of a person from a height of more than 2 metres,
 - (b) provision of a safe means of movement between different levels at the place of work.
- (2) If a fall arrest device is provided for use by persons at work, the employer must ensure that:
 - (a) all anchorage points for the device are inspected by a competent person before their first use and then on a regular basis so they are capable of supporting the design loads, and
 - (b) if the load-bearing capacity of an anchorage point is impaired, the anchorage is immediately made inoperable so as to prevent its use, and
 - (c) any harness, safety line or other component of the device that shows wear or weakness to the extent it may cause the device to fail is not used, and
 - (d) all persons using the device have received training in the selection, assembly and use of the system, and
 - (e) adequate provision is made for the rescue of a person whose fall is arrested by a fall arrest device.

Maximum penalty: Level 4.

57 Falling objects—particular risk control measures

An employer must ensure that risks associated with falling objects are controlled by use of the following measures:

- (a) provision of safe means of raising and lowering plant, materials and debris in the place of work,
- (b) provision of a secure physical barrier to prevent objects falling freely from buildings or structures in or in the vicinity of the place of work,
- (c) if it is not possible to provide a secure physical barrier, provision of measures to arrest the fall of objects,
- (d) provision of appropriate personal protective equipment.

Maximum penalty: Level 4.

58 Scaffolding—particular risk control measures

An employer must ensure that:

- (a) a scaffold from which a person or object could fall more than 4 metres, and its supporting structure, is inspected by a competent person for compliance with this Regulation:
 - (i) before its first use, and
 - (ii) as soon as practicable, and before its next use, after an occurrence that might reasonably be expected to affect the stability or adequacy of the scaffold or its supporting structure, such as a severe storm or earthquake, and
 - (iii) before its use following repairs, and
 - (iv) at intervals not exceeding 30 days, and
- (b) if an inspection of a scaffold or its supporting structure indicates an unsafe condition, appropriate repairs, alterations or additions are carried out and the scaffold and its supporting structure are re-inspected by a competent person before further use of the scaffold, and
- (c) if a scaffold is incomplete and left unattended, appropriate controls, including the use of danger tags or warning signs, are used to prevent unauthorised access to it, and
- (d) the erection and dismantling of:
 - (i) scaffolds, and
 - (ii) temporarily erected structures, intended or used to support sheetings, hoardings, guard rails, means of access or egress and entertainment equipment,

is carried out in compliance with *AS/NZS 1576.1:1995 Scaffolding Part 1: General requirements*.

Maximum penalty: Level 4.

59 Lifts—particular risk control measures

An employer must ensure that, if a person is working in a lift well, adequate provision is made for the protection of the person from objects falling on the person or movement of the lift car, including provision of the following:

- (a) a means of isolating the lift car to prevent movement,
- (b) a safe working platform,
- (c) adequate protection decking,
- (d) suitable access to the lift well, working platform and protection decking.

Maximum penalty: Level 4.

60 Brittle or fragile roofs—particular risk control measures

An employer must ensure that the risk of falls associated with persons working on or passing across roofs that are wholly or partly covered by brittle or fragile roofing material are controlled by use of the following measures:

- (a) permanent walkways,
- (b) if this is not practicable, adequately secured temporary walkways or other means to prevent the fall of persons working on or passing across the roof.

Maximum penalty: Level 4.

61 Building maintenance—particular risk control measures

An employer must ensure that risks of falls associated with building maintenance, including window cleaning, from outside or through windows are controlled by:

- (a) the provision of adequate safe access to the work area, or
- (b) if compliance with paragraph (a) is not reasonably practicable, the use of appropriate fall arrest devices.

Maximum penalty: Level 4.

Division 7 Fire and explosion

62 Fire and explosion—particular risk control measures

(1) An employer must ensure that risks associated with fire or explosion at a place of work are controlled by:

- (a) eliminating activities that have the potential to generate flammable or explosive atmospheres from the work process or, if elimination is not possible, minimising the potential for flammable or explosive atmospheres by providing adequate

ventilation, and

- (b) eliminating potential ignition sources, including naked flame, hot work and electrical equipment, and sources of static electricity, including friction, welding and slipping belts, from proximity to flammable substances, combustible dusts or waste materials, and
 - (c) enclosing work areas containing flammable or explosive atmospheres, and
 - (d) removing waste materials and accumulated dust on a regular basis, and
 - (e) providing for adequate storage, transportation and disposal of flammable substances, and
 - (f) any other measures necessary to control the risks.
- (2) If flammable substances, combustible dusts or waste materials are present at a place of work, an employer must monitor the place regularly to ensure:
- (a) the removal, on a regular basis, of waste material, including dust, that could pose a fire or explosion hazard, and
 - (b) the continued effectiveness of control measures taken with respect to potential ignition sources.

Maximum penalty: Level 4.

Division 8 Electricity

63 Application

In the event of an inconsistency between the requirements of this Division and the [Electricity Safety \(Electrical Installations\) Regulation 1998](#), the requirements of that Regulation prevail.

64 Electricity—particular risk control measures

- (1) An employer must ensure that any risk of injury from electricity at a place of work is eliminated or, if elimination is not reasonably practicable, the risk is controlled.
- (2) An employer must ensure that:
 - (a) all electrical installations, electrical articles and associated equipment at a place of work are safe to use and are regularly inspected, tested and maintained to ensure they remain safe for use and are repaired or replaced if unsafe, and
 - (b) plant is not used in conditions likely to give rise to electrical hazards, and
 - (c) appropriate work systems are provided to prevent inadvertent energising of plant

connected to the electricity supply, and

- (d) if excavation work is to be carried out at a place of work, all available information concerning the position of underground electrical cables is obtained and disseminated to persons at the place, and
- (e) persons at work, their plant, tools or other equipment and any materials used in or arising from the work do not come into close proximity with overhead electrical power lines (except if the work is done in accordance with a written risk assessment and safe system of work and the requirements of the relevant electricity supply authority), and
- (f) any electrical cord extension sets, flexible cables or fittings:
 - (i) are located where they are not likely to be damaged (including damage by liquids) or are protected against any damage, and
 - (ii) are not laid across passageways or accessways unless they are suitably protected, and
- (g) adequate signs to warn of the hazards, and (if necessary) restrict access, are provided at or near any area in which there is a risk of exposure of persons to hazards arising from electricity.

Maximum penalty: Level 4.

65 Maintenance of records—electricity

- (1) An employer must ensure that a record is made and kept of all inspections and tests made and maintenance carried out on electrical articles and electrical installations required by this Part.
- (2) In particular, the following information is to be recorded:
 - (a) the name of the person who made the inspection or carried out the test or maintenance,
 - (b) the date on which, or dates over which, the inspection was made or the test or maintenance was carried out,
 - (c) the result or outcome of the inspection, test or maintenance,
 - (d) the date by which the next inspection and test must be carried out.

Maximum penalty: Level 2.

Division 9 Working in confined spaces

66 Definitions

In this Division:

confined space, in relation to a place of work, means an enclosed or partially enclosed space that:

- (a) is not intended or designed primarily as a place of work, and
- (b) is at atmospheric pressure while persons are in it, and
- (c) may have an atmosphere with potentially harmful contaminants, an unsafe level of oxygen or stored substances that may cause engulfment, and
- (d) may (but need not) have restricted means of entry and exit.

Examples of confined spaces are as follows:

- (a) storage tanks, tank cars, process vessels, boilers, pressure vessels, silos and other tank-like compartments,
- (b) open-topped spaces such as pits or degreasers,
- (c) pipes, sewers, shafts, ducts and similar structures,
- (d) shipboard spaces entered through a small hatchway or access point, cargo tanks, cellular double bottom tanks, duct keels, ballast and oil tanks and void spaces (but not including dry cargo holds).

LEL (lower explosive limit) of a flammable contaminant means the concentration of the contaminant in air below which the propagation of a flame does not occur on contact with an ignition source.

safe oxygen level means a minimum oxygen content in air of 19.5% by volume under normal atmospheric pressure and a maximum oxygen content in air of 23.5% by volume under normal atmospheric pressure.

67 Application

This Division applies to work in a confined space at any place of work.

68 Entry to or work in or on confined space—particular risk control measures

An employer must ensure that no person enters a confined space or that work is not carried out inside or on the outside of a confined space if:

- (a) there is a risk to the health and safety of a person entering, occupying or working on the surface of the confined space, or

(b) there is a risk of fire or explosion,

and the risk has not been controlled as required by this Regulation.

Maximum penalty: Level 4.

69 Isolation or control of potentially hazardous services—particular risk control measures

An employer must ensure that no person enters a confined space unless all potentially hazardous services that are normally connected to the confined space are isolated or otherwise controlled so as to prevent:

(a) the introduction of any materials, contaminants, agents or conditions that may be harmful to a person occupying the confined space, or

(b) the activation or energising in any way of equipment or services that may pose a risk to the health or safety of a person inside the confined space.

Maximum penalty: Level 4.

70 Purging before entry—particular risk control measures

(1) An employer must ensure that, if appropriate, a confined space is cleared of all contaminants by use of a suitable purging agent by which contaminants are displaced from the confined space before a person enters the confined space.

(2) An employer must ensure that pure oxygen or a gas mixture in a concentration of more than 21% of oxygen by volume is not used for the purging or ventilation of a confined space.

Maximum penalty: Level 4.

71 Safety of atmosphere—particular risk control measures

(1) Subject to subclause (4), an employer must ensure that no person enters a confined space unless:

(a) the confined space contains a safe oxygen level, and

(b) any atmospheric contaminants in the confined space are reduced below the appropriate exposure standards referred to in clause 51 (Atmospheric contaminants—particular risk control measures), and

(c) the confined space is free from extremes of temperature, and

(d) the concentration of any flammable contaminant in the atmosphere of the confined space is below 5% of its LEL.

(2) An employer must ensure that, if a concentration of flammable contaminant in the atmosphere of a confined space is found to be more than 5% of its LEL and less than

10% of its LEL, all persons leave the confined space unless a continuous monitoring, suitably calibrated flammable contaminant detector is used in the confined space at all times while persons are present in it.

- (3) An employer must ensure that, if a concentration of flammable contaminant in the atmosphere of a confined space is found to be 10% of its LEL or more, all persons leave the confined space.
- (4) If a safe oxygen level cannot be provided or atmospheric contaminants cannot be reduced to safe levels in a confined space, persons may enter the space if equipped with suitable personal protective equipment including air supplied respiratory protective equipment.
- (5) If an atmospheric contaminant is present in a confined space, or a confined space contains less than 19.5% oxygen, an employer must provide warning signs.

Maximum penalty: Level 4.

72 Entry permits—particular risk control measures

- (1) An employer must ensure that no person enters or works in or on a confined space unless authorised by an entry permit given by the employer.
- (2) An entry permit must:
 - (a) be in writing, and
 - (b) identify the confined space, and
 - (c) clearly describe the work to be carried out in or on the confined space, and
 - (d) set out risk control measures to be taken, and
 - (e) record the names of all persons who may enter or work in or on the confined space, and
 - (f) record the dates and times when the persons may enter or be in or on the confined space to carry out the work.
- (3) The entry permit must be provided to the person responsible for direct control of the work to be carried out in or on the confined space.
- (4) The employer must ensure that the persons who are to carry out the work are informed of and comply with the requirements of the entry permit.
- (5) The employer must ensure that, before authorisation is given for the confined space to be returned to service, the person in direct control of the work in the confined space acknowledges, in writing, that:

- (a) the work in or on the confined space has been completed, and
- (b) all persons involved in the carrying out of the work have left the confined space.

Maximum penalty: Level 4.

73 Stand-by persons—particular risk control measures

- (1) An employer must ensure that one or more stand-by persons are present outside a confined space when any person is inside the confined space.

Maximum penalty: Level 4.

- (2) In this clause, **stand-by person** means a competent person who:
 - (a) is assigned to remain on the outside of, and in close proximity to, the confined space, and
 - (b) is capable of being in continuous communication with and, if practicable, able to observe persons inside the confined space, and
 - (c) is capable of operating monitoring equipment used to ensure safety during entry to and work in the confined space, and
 - (d) is capable of initiating emergency procedures (including rescue procedures), if necessary.

74 Emergencies—particular risk control measures

- (1) An employer must, when persons are inside a confined space, ensure that emergency equipment (including rescue and first aid equipment) appropriate for the particular circumstances in which the persons are inside the space is provided.
- (2) An employer must ensure that emergency procedures are planned, established and rehearsed in relation to the presence of persons in a confined space.
- (3) An employer must ensure that:
 - (a) openings for entry to and egress from a confined space are of adequate size to permit the rescue of all persons who may be in the space, and
 - (b) openings are not obstructed by fittings or equipment that could impede the rescue of persons or, alternatively, if this cannot be done, that another suitable means of rescue is provided.

Maximum penalty: Level 4.

75 Entry protection—particular risk control measures

An employer must ensure that appropriate signs are displayed and protective barriers are

erected to prevent the entry into a confined space of persons who are not authorised by an entry permit referred to in clause 72.

Maximum penalty: Level 4.

76 Atmospheric testing and monitoring—particular risk control measures

An employer must ensure that appropriate atmospheric testing and monitoring is carried out if a confined space has or may:

- (a) become contaminated with an atmospheric contaminant, or
- (b) become contaminated with a flammable contaminant, or
- (c) have an oxygen level that is not a safe oxygen level.

Maximum penalty: Level 4.

77 Training

- (1) An employer must provide training for all persons who are required to work in or on a confined space in all relevant activities relating to entering and working in or on the confined space.

Maximum penalty: Level 4.

- (2) The training program must include instruction in the following:

- (a) the hazards of confined spaces,
- (b) risk assessment procedures,
- (c) risk control measures,
- (d) emergency procedures,
- (e) selection, use, fitting and maintenance of safety equipment.

Maximum penalty: Level 4.

- (3) Training must also be provided for persons who:

- (a) perform assessments in relation to the safety of confined spaces, and
- (b) issue entry permits for work in confined spaces, and
- (c) design and fix the layout of work places, and
- (d) manage or supervise (or both) persons working in or near confined spaces, including any contractor, and
- (e) maintain equipment used for and during entry to confined spaces, and

- (f) purchase, distribute, fit, wear or maintain personal protective equipment used in relation to the carrying out of work in confined spaces, and
- (g) are on stand-by in relation to work in confined spaces, and
- (h) are involved in rescue and first aid procedures in relation to work in confined spaces.

Maximum penalty: Level 4.

- (4) An employer must make a written record of:
 - (a) the training provided, and
 - (b) the persons to whom the training is provided.

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

78 Record keeping

- (1) An employer must keep and maintain:
 - (a) entry permits in relation to work in confined spaces for a period of one month after return of the confined spaces to service, and
 - (b) risk assessment reports in relation to work in confined spaces for 5 years after the date of preparation, and
 - (c) records of training in relation to work in confined spaces for the terms of employment of persons to whom the training has been provided.
- (2) Despite subclause (1), the documents referred to in that subclause are to be kept for such period as is appropriate in cases where continued surveillance of the health of employees or other continued monitoring is required.

Note—

See also clause 171 (Employer to retain certain material as record) as to the responsibilities of employers as to record keeping.

- (3) All records kept in accordance with this clause are to be made available to regulatory authority inspectors and employees (in relation to their own personal circumstances) on request.

Maximum penalty: Level 1.

Part 4.4 Manual handling

Note—

Employer, for the purposes of this Part, includes self-employed persons (see clause 3).

79 Definition

In this Part:

manual handling means any activity requiring the use of force exerted by a person to lift, lower, push, pull, carry or otherwise move, hold or restrain any animate or inanimate object.

80 Employer to control risks

- (1) An employer must ensure that:
 - (a) all objects are, where appropriate and as far as reasonably practicable, designed, constructed and maintained so as to eliminate risks arising from the manual handling of the objects, and
 - (b) work practices used in a place of work are designed so as to eliminate risks arising from manual handling, and
 - (c) the working environment is designed to be, as far as reasonably practicable and to the extent that it is within the employer's control, consistent with the safe handling of objects.
- (2) If it is not reasonably practicable to eliminate a risk arising from manual handling, an employer must design the work activity involving manual handling to control the risk and, if necessary, must:
 - (a) modify the design of the objects to be handled or the work environment (to the extent that it is under the employer's control), taking into account work design and work practices, and
 - (b) provide mechanical aids or, subject to subclause (3), make arrangements for team lifting, or both, and
 - (c) ensure that the persons carrying out the activity are trained in manual handling techniques, correct use of mechanical aids and team lifting procedures appropriate to the activity.
- (3) An employer must, as far as reasonably practicable, achieve risk control by means other than team lifting.

Maximum penalty: Level 4.

81 Assessment of risks

An employer, in carrying out a risk assessment in accordance with Chapter 2 in relation to manual handling, must take into consideration (where relevant) the following factors:

- (a) actions and movements (including repetitive actions and movements),

- (b) workplace and workstation layout,
- (c) working posture and position,
- (d) duration and frequency of manual handling,
- (e) location of loads and distances moved,
- (f) weights and forces,
- (g) characteristics of loads and equipment,
- (h) work organisation,
- (i) work environment,
- (j) skills and experience,
- (k) age,
- (l) clothing,
- (m) special needs (temporary or permanent),
- (n) any other factors considered relevant by the employer, the employees or their representatives on health and safety issues.

Chapter 5 Plant

Note—

This Chapter imposes obligations on employers, among others. **Employer**, for the purposes of this Chapter, includes self-employed persons (see clause 3).

Part 5.1 Preliminary

82 Definitions

In this Chapter:

alter, in relation to plant, means change the design of, add to or take away from the plant if the change may affect health or safety, but does not include routine maintenance, repair or replacement.

AMBSC Code—Part 1: Copper Boilers means the *Australian Miniature Boiler Safety Committee Code Part 1, Issue 6—1994, Copper Boilers*, published by the Australian Miniature Boiler Safety Committee.

AMBSC Code—Part 2: Steel Boilers means the *Australian Miniature Boiler Safety Committee Code Part 2, Issue 4—1995, Steel Boilers*, published by the Australian Miniature Boiler Safety Committee.

amusement device means equipment operated for hire or reward that provides entertainment, sightseeing or amusement through movement of the equipment, or part of the equipment, or when passengers travel on, around or along the equipment but does not include any of the following:

- (a) a crane, conveyor, escalator, hoist, lift or moving walk,
- (b) a railway to which the *Rail Safety Act 1993* applies,
- (c) a vehicle that is required to be registered under the *Road Transport (Vehicle Registration) Act 1997*,
- (d) a vessel to which the *Commercial Vessels Act 1979* applies,
- (e) an aircraft to which the *Air Navigation Act 1938* applies.

boiler means a vessel or an arrangement of vessels and interconnecting parts, in which steam or other vapour is generated, or water or other liquid is heated at a pressure above that of the atmosphere, by the application of fire, the products of combustion, electrical power or similar high temperature means, including superheaters, reheaters, economisers, boiler piping, supports, mountings, valves, gauges, fittings, controls, the boiler setting and directly associated equipment but does not include a fully flooded or pressurised system in which water or other liquid is heated to a temperature lower than the normal atmospheric boiling temperature of the liquid.

boom-type elevating work platform means a powered telescoping device, hinged device or articulated device, or any combination of these devices, used to support a platform that can be propelled horizontally as well as vertically and on which personnel, equipment or materials can be elevated, being a platform that can be projected laterally outside its wheelbase.

bridge crane means a crane comprising a bridge beam mounted at each end on an end carriage, capable of travelling along elevated runways and having one or more hoisting mechanisms arranged to traverse across the bridge.

building maintenance equipment means a suspended platform and associated equipment, including a building maintenance unit or a swing stage, that incorporates permanently installed overhead supports to provide access to the faces of a building for maintenance, but does not include a suspended scaffold.

building maintenance unit means a power operated suspended platform and associated equipment on a building specifically designed to provide permanent access to the faces of the building for maintenance.

coin operated amusement device means a power operated device that:

- (a) is intended to be ridden, at the one time, by no more than 4 children below the age of

10 years, and

- (b) is usually located in a shopping centre or similar public location, and
- (c) does not necessarily have an operator.

commissioning of plant means performing the necessary adjustments, tests and inspections to ensure plant is in full working order to specified requirements before the plant is used, and includes recommissioning.

concrete placing unit means mobile truck-mounted plant incorporating a knuckle boom that is capable of power operated slewing and luffing to place concrete by way of pumping through a pipeline attached to, or forming part of, the boom of the plant.

conveyor means an apparatus or equipment operated by any power other than manual power, by which loads are raised, lowered or transported or capable of being raised, lowered, transported or continuously driven by:

- (a) an endless belt, rope or chain or other similar means, or
- (b) buckets, trays or other containers or fittings moved by an endless belt, rope, chain or other similar means, or
- (c) a rotating screw, or
- (d) rollers,

and includes the supporting structure and auxiliary equipment and used in connection with the conveyor.

crane means an appliance intended for raising or lowering a load and moving it horizontally and includes the supporting structure of the crane and its foundations, but does not include industrial lift trucks, earthmoving machinery, amusement devices, tractors, industrial robots, conveyors, building maintenance equipment, suspended scaffolds or lifts.

designer of plant includes an employer or self-employed person who designs plant for his, her or its own use at work.

earthmoving machinery means an operator controlled item of plant used to excavate, load, transport, compact or spread earth, overburden, rubble, spoil, aggregate or similar material but does not include a tractor or industrial lift truck.

elevating work platform means a telescoping device, scissor device or articulating device, or any combination of those devices, used to move personnel, equipment or materials to and from work locations above the support surface.

erect includes altering the structure of plant.

ergonomic, in relation to the functioning of plant and systems of work associated with plant, means optimised by adaptation to human capacity or need.

fault means a break or defect that may cause plant to present an increased risk to health and safety and, in the case of a fault in the design of plant, means an aspect of the design that may cause the plant to be a risk to health and safety if manufactured in accordance with the design specifications.

fired heater means a pressure vessel in which a liquid is heated below its atmospheric boiling temperature or a process fluid is heated in tubes above or below its atmospheric boiling temperature by the application of fire, the products of combustion or electric power or similar high temperature means.

gantry crane means a crane comprising a bridge beam, supported at each end by legs mounted on end carriages, capable of travelling on supporting surfaces or deck levels, whether fixed or not and that has a crab with one or more hoisting units arranged to travel across the bridge.

gas cylinder means a particular rigid pressure vessel, exceeding 0.1 kg but not exceeding 3,000 kg water capacity, without openings or integral attachments on the shell other than at the ends, designed for the storage and transport of gas under pressure.

guard means a device that prevents or reduces access to a danger point or area.

hoist means an appliance intended for raising or lowering a load or persons, or both, and includes a scissor type elevating work platform, mast-climbing work platform, personnel and materials hoist, scaffolding hoist and serial hoist but does not include a lift or building maintenance equipment.

industrial lift truck means powered mobile plant, designed to move goods, materials or equipment, equipped with an elevating load carriage and, normally, a load-holding attachment but does not include a mobile crane or earthmoving machinery.

industrial robot means a multi-functional manipulator and its controllers, capable of handling materials, parts, tools, or specialised devices, through variable programmed motions for the performance of a variety of tasks.

lift means any permanent plant (or plant intended to be permanent) that is in or attached to a building or structure and by means of which persons, goods or materials may be raised or lowered within or on a car, cage or platform and the movement of which is restricted by a guide or guides and includes an apparatus in the nature of a stairway chair lift, escalator or moving walk, and any supporting structure, machinery, equipment, gear, lift well, enclosures and entrances.

log book for an amusement device means a permanent written record of the details required to be kept under this Chapter in respect of the amusement device so as to form a comprehensive history in respect of it.

manufacturer of plant includes an employer or self-employed person who manufactures plant for his, her or its own use at work.

mast-climbing work platform means a hoist having a working platform used for temporary purposes to raise personnel and materials to the working position by means of a drive system mounted on an extendable mast that may be tied to a building.

mobile crane means a crane capable of travelling over a supporting surface without the need for fixed runways (including railway tracks) and relying only on gravity for stability, that is, with no vertical restraining connection between itself and the supporting surface and no horizontal restraining connection (other than frictional forces at supporting-surface level) that may act as an aid to stability.

operator protective devices include roll over protective structures, falling object protective structures, operator restraining devices and seat belts.

plant includes any machinery, equipment or appliance.

plant affecting public safety has the meaning set out in clause 83.

prefabricated scaffolding means an integrated system of prefabricated components manufactured in such a way that the geometry of assembled scaffolds is pre-determined.

pressure equipment means boilers, pressure vessels and pressure piping specifically covered by AS/NZS 1200:2000 *Pressure equipment* (not being equipment or plant under pressure referred to in clause A4 of Appendix A to that Standard) and categorised as being of hazard level A, B, C or D according to the criteria identified in AS 4343—1999 *Pressure equipment—Hazard levels*.

pressure piping means an assembly of pipes, pipe fittings, valves and pipe accessories subject to internal or external pressure and used to contain or convey fluid or to transmit fluid pressure, including distribution headers, bolting, gaskets, pipe supports and pressure retaining accessories but does not include a boiler or pressure vessel or any pipeline covered by the *Dangerous Goods Act 1975*, the *Gas Supply Act 1996*, the *Petroleum (Submerged Lands) Act 1982* or the *Pipelines Act 1967*.

pressure vessel means a vessel subject to internal or external pressure, including interconnected parts and components, valves, gauges and other fittings up to the first point of connection to connecting piping, and fired heaters and gas cylinders, but does not include a boiler or pressure piping or any pipeline covered by the *Gas Supply Act 1996*, the *Petroleum (Submerged Lands) Act 1982* or the *Pipelines Act 1967*.

qualified electrical engineer means:

- (a) an electrical engineer who is a charter member of the Australian Institution of Engineers, or

- (b) a person belonging to a class of persons recognised by WorkCover as being qualified electrical engineers for the purposes of this Chapter.

qualified engineer means:

- (a) a mechanical or structural engineer who is a charter member of the Australian Institution of Engineers, or
- (b) a person who is recognised by WorkCover as being competent to exercise the functions of a qualified engineer for the purposes of this Chapter.

repair means to restore plant to an operating condition, but does not include routine maintenance, replacement or alteration.

scaffold means a temporary structure, specifically erected to support access or working platforms.

scaffolding equipment means any component, assembly or machine used or intended to be used in the construction of a scaffold.

suspended scaffold means a scaffold incorporating a suspended platform that is capable of being raised or lowered when in use and includes a boatswain's chair.

tower crane means a boom or jib crane mounted on a tower structure that is demountable or permanent and includes horizontal and luffing jib types.

tractor means a motor vehicle, whether wheeled or track mounted, designed to provide power and movement of any attached machine or implement by a transmission shaft, belt or linkage system but does not include earthmoving machinery.

use plant means work from, operate, maintain, inspect or clean plant.

vehicle hoist means a vehicle-hoisting device, the purpose of which is to provide access for convenient under-chassis examination or service.

work box means a personnel carrying device, designed to be suspended from a crane, to provide a working area for persons conveyed by and working from the box.

workpiece means material, offcut or scrap (in any form) on which an item of plant is doing work, or any material, offcut or scrap (in any form) produced by an item of plant but does not include a load being lifted or moved by the plant.

83 Plant affecting public safety

For the purposes of section 135 of the Act, plant of the following kinds is prescribed as plant affecting public safety, whether or not the plant is at a place of work or for use at work:

- (a) boilers categorised as being of hazard level A, B or C according to the criteria in AS

4343—1999 *Pressure equipment—Hazard levels,*

- (b) boilers covered by the AMBSC Code—Part 1: Copper Boilers or the AMBSC Code—Part 2: Steel Boilers,
- (c) pressure vessels categorised as being of hazard level A, B or C according to the criteria in AS 4343—1999 except the following:
 - (i) LP gas fuel vessels for automotive use covered by AS/NZS 3509:1996 *LP Gas fuel vessels for automotive use,*
 - (ii) serially produced pressure vessels covered by AS 2971—1987 *Serially produced pressure vessels,*
 - (iii) pressure vessels that do not require periodic internal inspection in accordance with the criteria in Table 4.1 in AS/NZS 3788:1996 *Pressure equipment—In-service inspection,*
- (d) lifts (including escalators and moving walkways) as defined in AS 1735.1—1999 *Lifts, escalators and moving walks Part 1: General requirements,*
- (e) amusement devices (other than coin operated amusement devices).

Part 5.2 Design, manufacture and registration of plant

Division 1 Design of plant

Note—

See clause 7 (2) as to the extent of a designer's duties under this Division.

84 Application

- (1) This Division applies to the design of:
 - (a) plant for use at work, and
 - (b) plant affecting public safety.
- (2) This Division applies to:
 - (a) plant designs, and
 - (b) unless the context otherwise requires—alterations to plant designs, that are commenced after the date of commencement of this Regulation.

85 Manufacturers and importers of plant designed outside the State to ensure that designer's responsibilities are met

A person who:

- (a) manufactures in New South Wales plant designed outside the State, or
- (b) imports plant designed outside the State for supply to others or for the person's own use,

must ensure that the responsibilities of a designer under this Division are met in relation to the plant.

Maximum penalty: Level 4.

86 Designer to identify hazards

A designer of plant must identify any foreseeable hazard that may arise from the design of the plant and that has the potential to harm the health or safety of any person during the manufacture, installation, erection, commissioning, use, repair, dismantling, storage or disposal of the plant at a place of work or, in the case of plant affecting public safety, at any other place at which the plant is located.

Maximum penalty: Level 4.

87 Designer to assess risks

- (1) A designer of plant must assess the risk of harm to the health or safety of any person arising from any hazard identified in accordance with this Division and, in particular, must:
 - (a) evaluate the likelihood of an injury or illness occurring and the likely severity of any injury or illness that may occur, and
 - (b) identify the design requirements and any other actions necessary to eliminate or control the risk.
- (2) In carrying out risk assessment for the purposes of this clause, a designer of plant must take into account the following:
 - (a) the impact of the plant on the work environment in which it is designed to operate,
 - (b) the range of environmental and operational conditions in which the plant is intended to be manufactured, transported, installed and used,
 - (c) the ergonomic needs of persons who may install, erect, use or dismantle the plant,
 - (d) the need for safe access and egress for persons who install, erect, use or dismantle the plant,
 - (e) any specific risk control measures required by this Regulation (including as to manual handling, hazardous substances and the working environment).

Maximum penalty: Level 4.

88 Designer to review risk assessment

A designer must review the risk assessment of plant whenever:

- (a) there is evidence that the risk assessment relating to the plant is no longer valid, or
- (b) an employer, manufacturer, supplier or owner of the plant provides the designer with information about a design fault that has the potential to harm the health or safety of any person.

Maximum penalty: Level 4.

89 Designer to control risks

- (1) A designer must design plant so that risks associated with the manufacture, installation, erection, commissioning, use, repair, dismantling, storage and disposal of the plant are eliminated or, if this is not reasonably practicable, are controlled.
- (2) In controlling risks, the designer must ensure that the plant is designed:
 - (a) having regard to ergonomic principles, and
 - (b) so that safe access can be gained to the various components for purposes of maintenance, adjustment, repair and cleaning, and
 - (c) so that the build up of unwanted substances or materials that create a risk is minimised, and
 - (d) in the case of plant designed to work near electrical conductors, having regard to such safety requirements as insulation, earthing and appropriate access to controls.

Maximum penalty: Level 4.

90 Guarding—particular risk control measures

- (1) A designer of plant must ensure that any device that prevents or reduces access to a danger point or area:
 - (a) is designed to be a permanently fixed physical barrier or, if access to the danger point or area is required during normal operation, maintenance or cleaning:
 - (i) is designed to be an interlocking type physical barrier, or
 - (ii) is a presence sensing safeguarding system, and
 - (b) is designed to make by-passing or defeating it, whether deliberately or by accident, as difficult as is reasonably possible, and
 - (c) is designed to be of solid construction and securely mounted so as to resist impact

and shock, and

(d) is designed so as not to cause a risk itself.

(2) In subclause (1), a ***presence sensing safeguarding system***, in relation to plant, means a presence sensing safeguarding system that includes:

(a) a sensing system that employs one or more forms of radiation, either self-generated or generated by pressure, and

(b) an interface between the final switching devices of the system and the plant's primary control elements, and

(c) plant stopping capabilities,

whereby the presence of a person or part of a person within a sensing field will cause the dangerous parts of the plant to be brought to a safe state.

(3) The designer must ensure that any guards intended to provide protection from parts of the plant or work pieces that may break, disintegrate or be ejected are designed to contain effectively the parts, work pieces or any fragments of them.

(4) The designer must specify the work procedures, devices or tools that are necessary to clear safely any jamming or blockage of moving parts that may occur.

Maximum penalty: Level 4.

91 Operational controls—particular risk control measures

(1) A designer of plant must ensure that operational controls are:

(a) suitably identified on the plant so that their nature and function is clear, and

(b) located so as to be operated readily and conveniently by each person using the plant, and

(c) located or guarded to prevent unintentional activation, and

(d) able to be locked in the "off" position (or include an alternative method of power isolation) to enable disconnection of all motive power and forces.

(2) A designer must ensure that, if it is not reasonably practicable for the plant to be stopped during maintenance and cleaning, operational controls that permit safe controlled operation are provided.

(3) A designer must ensure that, if:

(a) plant is designed to be operated or attended by more than one person, and

(b) more than one control is fitted to the plant,

the controls are of the “stop and lock-off” type so that the plant cannot be restarted after a stop control has been used unless each stop control is reset.

Maximum penalty: Level 4.

92 Emergency stops and warning devices—particular risk control measures

- (1) A designer of plant must ensure that, if warning devices are necessary to secure safety, they are placed in a position that serves that purpose.
- (2) A designer must ensure that emergency stop devices:
 - (a) are prominent, clearly and durably marked and immediately accessible to each operator of the plant, and
 - (b) have handles, bars or push buttons that are coloured red, and
 - (c) are not able to be affected by electrical or electronic circuit malfunction.

Maximum penalty: Level 4.

93 Design of powered mobile plant—particular risk control measures

- (1) A designer of powered mobile plant must ensure that the plant is designed to minimise the risk of unintended overturning or a falling object coming into contact with the operator.
- (2) A designer must ensure that powered mobile plant is designed to incorporate an appropriate combination of operator protective devices if there is a risk of the plant overturning, objects falling on the operator or the operator being ejected.
- (3) A designer of powered mobile plant must ensure that:
 - (a) a tractor designed to have a mass of 560 kg or more, but less than 15,000 kg, is designed to include a protective structure that conforms with AS 1636.1—1996, AS 1636.2—1996 and AS 1636.3—1996 *Tractors—Roll-over protective structures—Criteria and tests*, as appropriate to the type of tractor involved, and
 - (b) earth moving machinery designed to have a mass of 700 kg or more, but less than 100,000 kg, is designed to include a protective structure that conforms with AS 2294.1—1997, AS 2294.2—1997 and AS 2294.3—1997 *Earth-moving machinery—Protective structures*.
- (4) A designer of powered mobile plant must ensure that the plant is designed to incorporate warning devices that are appropriate to warn effectively persons who are at risk from the movement of the plant.

Maximum penalty: Level 4.

94 Mandatory design standards—particular risk control measures

A designer of plant must ensure that the design of:

- (a) boilers and pressure equipment, and
- (b) cranes (including hoists and winches), and
- (c) scaffolding, and
- (d) lifts, escalators and moving walks, and
- (e) gas cylinders, and
- (f) amusement devices,

complies with relevant standards listed in Schedule 1 (Standards covering design and manufacture of plant).

Maximum penalty: Level 4.

95 Specifying work systems and operator competencies—particular risk control measures

A designer of plant must specify systems of work or operator competencies if they are necessary for the safe manufacture, installation, erection, commissioning, use, repair, maintenance, dismantling or disposal of plant.

Maximum penalty: Level 4.

96 Designer to provide information

(1) A designer of plant must provide other persons who have responsibilities under this Regulation with all available information about the plant that is necessary to enable the other persons to fulfil their responsibilities with respect to the following:

- (a) identifying hazards,
- (b) assessing risks arising from these hazards,
- (c) eliminating or controlling those risks,
- (d) providing information.

(2) Without limiting subclause (1), a designer of plant must ensure that a person who manufactures the plant is provided with sufficient information to enable the plant to be manufactured in accordance with the design specifications and, as far as practicable, with information relating to the following:

- (a) the purpose for which the plant is designed,
- (b) testing or inspections to be carried out on the plant,

- (c) installation, commissioning, operation, maintenance, inspection, cleaning, transport, storage and, if the plant is capable of being dismantled, dismantling of the plant,
 - (d) systems of work necessary for the safe use of the plant,
 - (e) knowledge, training or skill necessary for persons undertaking inspection and testing of the plant,
 - (f) emergency procedures.
- (3) A designer of plant who manufactures the plant must ensure that the information specified in subclause (2) (a) to (f) inclusive is provided to any person who obtains the plant for the person's own use or who supplies the plant to others.

Maximum penalty: Level 4.

97 Designer to obtain information

- (1) A designer of plant must obtain such available information as is necessary to enable the designer to fulfil the designer's responsibilities under this Regulation with respect to the following:
- (a) identifying hazards,
 - (b) assessing risks arising from those hazards,
 - (c) eliminating or controlling those risks,
 - (d) providing information.
- (2) If a designer has a contract with an employer to design a specific item of plant, the designer must obtain from the employer any relevant information about matters with respect to the plant that may affect health and safety at the place of work.

Maximum penalty: Level 4.

Division 2 Manufacture of plant

Note—

See clause 7 (2) as to the extent of a manufacturer's duties under this Division.

98 Application

- (1) This Division applies to the manufacture of:
- (a) plant for use at work, and
 - (b) plant affecting public safety.

- (2) This Division applies to plant manufactured after the date of commencement of this Regulation.
- (3) A manufacturer is not required to comply with clauses 100–103 within the period of 12 months after commencement of those clauses.

99 Importers of plant manufactured outside the State to ensure that manufacturer's responsibilities are met

A person who imports plant manufactured outside New South Wales for supply to others or for the person's own use must ensure that the responsibilities of a manufacturer under this Division are met in relation to the plant.

Maximum penalty: Level 4.

100 Manufacturer to identify hazards

A manufacturer of plant must identify any foreseeable hazard that may be incorporated into the plant during the manufacturing process and that has the potential to harm the health or safety of any person during the installation, erection, commissioning, use, repair, dismantling, storage or disposal of the plant at a place of work or, in the case of plant affecting public safety, at any other place at which the plant is located.

Maximum penalty: Level 4.

101 Manufacturer to assess risks

A manufacturer of plant must assess the risk of harm to the health or safety of any person arising from any hazard identified in accordance with this Division and, in particular, must:

- (a) evaluate the likelihood of an injury or illness occurring and the likely severity of any injury or illness that may occur, and
- (b) as far as practicable, consult with the designer of the plant with respect to actions necessary to eliminate or control the risk, and
- (c) identify any actions necessary to eliminate or control the risk, taking into account any specific risk control measures required by this Regulation (including as to manual handling, hazardous substances and the working environment).

Maximum penalty: Level 4.

102 Manufacturer to review risk assessment

A manufacturer of plant must review the risk assessment of plant whenever:

- (a) there is evidence that the risk assessment of the plant is no longer valid, or
- (b) the manufacturer is provided with information about a design or manufacturing fault that has the potential to harm the health or safety of any person.

Maximum penalty: Level 4.

103 Manufacturer to control risks

- (1) A manufacturer of plant must not incorporate any risk into the plant during the manufacturing process or, if this is not reasonably practicable, must control the risk.
- (2) Any such control of risks must, so far as is reasonably practicable, be achieved by means other than through the use of personal protective equipment.
- (3) In controlling risks, a manufacturer must ensure in relation to the manufacture of plant that:
 - (a) if any fault in the design of the plant that may affect health or safety is identified during the manufacturing process:
 - (i) the fault is not incorporated into the plant, and
 - (ii) as far as is reasonably practicable, the designer of the plant is consulted regarding the rectification of the fault and, if possible, arrangements are made with the designer for the alteration of the design to eliminate or control the risk, and

Note—

Division 1 of this Part applies with respect to the alteration of designs. A manufacturer who alters a design to eliminate a risk must comply with the design requirements of Division 1 in relation to the alteration.

- (b) subject to paragraph (a)—plant specified in clause 94 (Mandatory design standards—particular risk control measures) and designed after the commencement of this Regulation is manufactured and inspected, and tested (if required), according to the relevant Standards set out in Schedule 1 (Standards covering design and manufacture of plant), having regard to the designer's specifications, and
- (c) subject to paragraph (a) and so far as is reasonably practicable—plant specified in clause 94 and designed before the commencement of this Regulation is manufactured and inspected, and tested (if required), according to relevant Standards set out in Schedule 1, having regard to the designer's specifications.

Maximum penalty: Level 4.

104 Manufacture of powered mobile plant—particular risk control measures

A manufacturer of powered mobile plant must ensure that:

- (a) a tractor designed to have a mass of 560 kg or more, but less than 15,000 kg, is manufactured to include a protective structure that conforms with AS 1636.1—1996, AS 1636.2—1996 and AS 1636.3—1996 *Tractors—Roll-over protective*

structures—Criteria and tests, as appropriate to the type of tractor involved, and

- (b) earth moving machinery designed to have a mass of 700 kg or more, but less than 100,000 kg, is designed to include a protective structure that conforms with AS 2294.1—1997, AS 2294.2—1997 and AS 2294.3—1997 *Earth-moving machinery—Protective structures*.

Maximum penalty: Level 4.

105 Manufacturer to provide information

- (1) A manufacturer of plant must provide other persons who have responsibilities under this Regulation with all available information about the plant that is necessary to enable the other persons to fulfil their responsibilities with respect to the following:
- (a) identifying hazards,
 - (b) assessing risks arising from those hazards,
 - (c) eliminating or controlling those risks,
 - (d) providing information.
- (2) In particular, a manufacturer of plant must ensure that a person supplying plant for use at work or plant affecting public safety is provided with:
- (a) the information provided to the manufacturer by the designer of the plant relating to the following:
 - (i) the purpose for which the plant is designed,
 - (ii) testing or inspections to be carried out on the plant,
 - (iii) installation, commissioning, operation, maintenance, inspection, cleaning, transport, storage and, if the plant is capable of being dismantled, dismantling of the plant,
 - (iv) systems of work necessary for the safe use of the plant,
 - (v) knowledge, training or skill necessary for persons undertaking testing and inspection of the plant,
 - (vi) emergency procedures, and
 - (b) any document relating to the testing and inspection of the plant.
- (3) A manufacturer of plant who supplies plant for use at work or plant affecting public safety must ensure that the information specified in subclause (2) is provided to the owner or purchaser of the plant.

- (4) If, after the supply of a particular item of plant, a fault is found in plant of the same kind that may affect health or safety, the manufacturer must take all reasonable steps to advise the owner of the particular item of plant of the fault and provide the owner with details as to what steps are required to rectify the fault.

Maximum penalty: Level 4.

106 Manufacturer to obtain information

- (1) A manufacturer of plant must obtain such available information as is necessary to enable the manufacturer to fulfil the manufacturer's responsibilities under this Regulation with respect to the following:
 - (a) identifying hazards,
 - (b) assessing risks arising from those hazards,
 - (c) eliminating or controlling those risks,
 - (d) providing information.
- (2) A manufacturer must obtain the information that a designer is required to provide to the manufacturer under clause 96 (2).

Maximum penalty: Level 4.

Division 3 Registration of plant

Note—

Clause 127 (2) (c) and (d) in Part 5.3 (Supply of plant) prohibits the hire or lease of certain items of plant unless they have a current design registration number or a current item registration number and clause 136 (1) in Part 5.4 (Working with plant) prohibits the use of certain items of plant unless similar requirements are met.

Subdivision 1 Registration of plant design

107 Application for registration of plant design

- (1) A person may apply to WorkCover to register the design of plant specified in the Table to this clause.
- (2) A person who applies for registration of a plant design must ensure that:
 - (a) a competent person verifies and records in writing that the design complies with relevant standards listed in Schedule 1 (Standards covering design and manufacture of plant), and
 - (b) the design verifier does not have any involvement in the design being verified, and
 - (c) the designer and the design verifier are not employed or engaged by the same

person unless that person uses a quality system to undertake the design of items of plant that:

- (i) meets the requirements of AS/NZS/ISO 9001:1994 *Quality systems—Model for quality assurance in design, development, production, installation and servicing*, and
- (ii) has been certified by a body accredited or approved by the Joint Accreditation System of Australia and New Zealand.

(3) The application for registration of a plant design must be accompanied by the following:

- (a) a compliance statement, signed by the designer of the plant, stating that the designer has complied with the matters, specified in this Regulation, for which a designer of plant is responsible,
- (b) a verification statement for the purposes of subclause (2) that includes the name, business address and qualifications of the design verifier of the plant and, if applicable, the name and business address of any person employing the design verifier,
- (c) representational drawings of the plant design,
- (d) a fee in such amount as WorkCover may determine as the appropriate amount to cover expenses in connection with the processing of applications for registration of plant designs.

Table Plant for which designs are to be registered

Boilers and pressure vessels categorised as being of hazard level A, B, C or D according to the criteria in AS 4343—1999

Gas cylinders

Tower cranes

Gantry cranes with a rated capacity greater than 5 tonnes

Bridge cranes with a rated capacity greater than 10 tonnes

Gantry cranes and bridge cranes designed to handle molten metal or dangerous goods (within the meaning of the Australian Dangerous Goods Code)

Mobile cranes with a rated capacity greater than 10 tonnes

Boom-type elevating work platforms

Lifts (including escalators and moving walkways)

Building maintenance units

Hoists, with a platform movement in excess of 2.4 metres, designed to lift people

Work boxes suspended from cranes

Prefabricated scaffolding

Mast climbing work platforms

Vehicle hoists

Amusement devices (other than coin operated amusement devices) that are, or may be, operated otherwise than by manual power

108 WorkCover may request further information

On request from WorkCover, the applicant for registration of a plant design must provide, at any reasonable time required by WorkCover, any one or more of the following as specified in the request:

- (a) detailed drawings of the plant design,
- (b) design calculations,
- (c) details of operating instructions,
- (d) diagrams of control systems, including the sequence of operating the controls,
- (e) details of maintenance requirements,
- (f) a statement of limitations of use.

Note—

An applicant for registration of a plant design commits an offence under clause 356 if the applicant makes a false or misleading statement in the application.

109 Processing of application by WorkCover

- (1) On receipt of the application for registration of a plant design, WorkCover must, subject to being provided with any further information that WorkCover requires under this Subdivision for the purposes of the application:
 - (a) register the plant design (with or without conditions) and issue a design registration number, or
 - (b) refuse to register the plant design.

Note—

See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to refuse to register a plant design under this clause.

- (2) A design registration applies only to a design as described and verified in the application for registration of the design.

110 Cancellation of design registration in certain circumstances

- (1) WorkCover may cancel the registration of a plant design if satisfied that:
 - (a) the applicant for registration of the plant design made a statement or furnished information, in or in connection with the application for the plant design, that the applicant knew, when the statement was made or the information was provided,

to be false or misleading in a material particular, or

(b) on the basis of information received by WorkCover, the design is unsafe.

(2) Before cancelling the registration, WorkCover:

(a) must cause notice of the proposed cancellation to be given to the person to whom the plant design registration number was issued, and

(b) must give the person 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) The cancellation of a plant design takes effect on the date on which notice of the cancellation is given to the person to whom the plant design registration number was issued or on such later date as may be specified in the notice.

111 Design registration number to be provided to certain persons

(1) A person who is issued with a design registration number under this Subdivision must provide the number to any person who proposes to manufacture plant to the design to which the number relates or who proposes to sell or transfer plant manufactured to the design to which the number relates.

(2) A person who sells or transfers plant that has been manufactured to a design for which a design registration number has been issued must provide the number to any person who owns the plant or who has control of the plant.

Maximum penalty: Level 1.

112 Registration under equivalent law

A design is taken to be registered under and for the purposes of this Regulation if a design registration number has been issued for it by a statutory authority under a law that imposes registration requirements that are reasonably equivalent to the registration requirements imposed by this Subdivision.

Subdivision 2 Registration of items of plant

113 Application for registration of item of plant

(1) In this clause:

person who has control in relation to an item of plant, includes the owner or a lessee of the plant.

(2) A person who has control of an item of plant specified in the Table to this clause may apply to WorkCover to register the plant.

- (3) A person who applies for the registration of an item of plant must provide the following at the time of making the application:
- (a) sufficient information to identify the item of plant clearly,
 - (b) if the design of the plant is required to be registered, notification of:
 - (i) the design registration number, and
 - (ii) the name of the statutory authority with which the plant design is registered,
 - (c) a statement that the plant has been inspected by a competent person and is safe to operate,
 - (d) a fee in such amount as WorkCover may determine as the appropriate amount to cover expenses in connection with the processing of applications for registration of an item of plant.
- (4) A person who applies for the registration of an item of plant must provide WorkCover with any additional information concerning the plant that WorkCover reasonably requires at the time of the making of the application or at any reasonable time after that time.

Note—

An applicant for registration of an item of plant commits an offence under clause 356 if the applicant makes a false or misleading statement in the application.

Table Items of plant required to be registered

Boilers categorised as being of hazard level A, B or C according to the criteria in AS 4343—1999

Pressure vessels categorised as being of hazard level A, B or C according to the criteria in AS 4343—1999 except the following:

- (a) LP gas fuel vessels for automotive use covered by AS/NZS 3509:1996,
- (b) serially produced pressure vessels covered by AS 2971—1987,
- (c) pressure vessels that do not require periodic internal inspection in accordance with the criteria in Table 4.1 in AS/NZS 3788:1996

Lifts (including escalators and moving walkways) as defined in AS 1735 Parts 1 to 17 (as listed in Schedule 1)

Amusement devices (other than coin operated amusement devices) that are, or may be, operated otherwise than by manual power

Tower cranes

Building maintenance units

Concrete placing units (truck mounted with boom)

Mobile cranes with a safe working load greater than 10 tonnes

114 Additional requirements for application to register amusement device

An owner of an amusement device who wishes to apply to WorkCover to register an amusement device referred to in the Table to clause 113 must, in addition to complying with clause 113, provide the following at the time of making the application:

- (a) 2 photographs of the amusement device,
- (b) a certificate of a qualified engineer certifying that:
 - (i) the engineer has, within 3 months before the date of the application, inspected the amusement device (including an inspection of the amusement device assembled and in operation without passengers), and
 - (ii) in the engineer's opinion, the amusement device is mechanically and structurally capable, under the conditions of use specified in the application, of safely supporting, at any one time, the number of persons or the load stated in the application to be the maximum number of persons or the maximum load to be supported by the amusement device, and
 - (iii) the engineer has checked that all necessary maintenance of, and repairs to, the amusement device have been carried out, that details of the maintenance and repairs have been accurately recorded in the log book for the amusement device by a competent person and that the operating and maintenance manuals for the amusement device are kept with it, and
 - (iv) if the amusement device was manufactured on or after 5 December 1997, it complies with such of the provisions of AS 3533.1—1997 *Amusement rides and devices Part 1: Design and construction* as are applicable to it,
- (c) if the amusement device includes any electrical installation, a certificate of a qualified electrical engineer, issued within 3 months before the date of the application, certifying that the engineer has inspected the electrical installation and that, in the engineer's opinion, the electrical installation:
 - (i) complies with the provisions of AS/NZS 3000:2000 *Electrical installations* (known as Australian/New Zealand Wiring Rules) and AS 3002—1985 *Electrical installations—Shows and carnivals* that are applicable to it and that were so applicable at the time of its initial manufacture, or
 - (ii) if manufactured on or after 5 December 1997, complies with such of the provisions of AS 3533.1—1997 that are applicable to it.

115 Processing of application by WorkCover

On receipt of the application for registration of an item of plant, WorkCover must, subject to clause 113 (4):

- (a) register the plant (with or without conditions) and issue evidence, in accordance with this Subdivision, that the plant is currently registered, or
- (b) refuse to register the plant.

Note—

See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to refuse to register an item of plant or to impose a condition on registration of an item of plant under this clause.

116 Cancellation of registration of item of plant in certain circumstances

(1) WorkCover may cancel the registration of an item of plant if:

- (a) satisfied that the applicant for registration of the plant made a statement or furnished information, in or in connection with the application for registration, that the applicant knew, when the statement was made or the information was provided, to be false or misleading in a material particular, or
- (b) the registration of the plant design for plant of the kind concerned has been cancelled under clause 110.

(2) Before cancelling the registration, WorkCover:

- (a) must cause notice of the proposed cancellation to be given to the person by whom the item of plant was registered, and
- (b) must give the person 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) The cancellation of the registration of an item of plant takes effect on the date on which notice of the cancellation is given to the person who registered the plant or on such later date as may be specified in the notice.

117 Automatic cancellation of registration

The registration of an item of plant is cancelled by the operation of this clause if:

- (a) the plant is altered, or
- (b) in the case of plant that is normally fixed in position, the plant is relocated and WorkCover is not notified of the relocation within 14 days of its occurrence, or
- (c) there is a change of the person in control of the plant (including a change of owner or

lessee) and WorkCover is not notified of the change within 14 days of its occurrence,
or

- (d) there is a breach of a condition subject to which the plant was registered under clause 115 (a).

Note—

See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to cancel the registration of an item of plant under this clause.

118 Renewal of registration

- (1) In this clause:

person who has control, in relation to plant that is an amusement device, includes the owner or a lessee of the amusement device.

- (2) A person who has control of plant that is registered under this Subdivision must provide WorkCover, at the intervals specified in guidelines issued by WorkCover from time to time in relation to such plant, with such information concerning compliance with requirements relating to maintenance of the plant as WorkCover may specify.

Maximum penalty: Level 1.

- (3) A notification under this clause must comply with the guidelines referred to in subclause (2) and must be accompanied by:

- (a) a statement, by the person who has control of the plant, that the plant has been maintained and is safe to operate, and
- (b) a fee in such amount as WorkCover may determine as the appropriate amount to cover the administrative costs of WorkCover in connection with the renewal of the registration of items of plant.

- (4) A notification under this clause in respect of an amusement device must also be accompanied by:

- (a) a certificate of a qualified engineer as referred to in clause 114 (b) (certificate to be lodged with an application to register an amusement device), and
- (b) if the amusement device includes any electrical installation, a certificate of a qualified electrical engineer, issued within 3 months before the date of the notification, certifying that the engineer has inspected the electrical installation and that, in the engineer's opinion, the electrical installation complies with such of the provisions of AS 3533.1—1997 *Amusement Rides and Devices Part 1: Design and Construction* as are applicable to it.

- (5) On receipt of a notification under this clause, WorkCover must:

- (a) issue evidence that the plant is currently registered, or
 - (b) seek additional information concerning the plant.
- (6) If a notification under this clause is not received by WorkCover by the date on which it is due, or if the information in the notification is not satisfactory to WorkCover, WorkCover may discontinue the registration of an item of plant.

Note—

See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to discontinue the registration of an item of plant under this clause.

- (7) WorkCover may accept a late notification under this clause.

119 Registration under equivalent law

An item of plant (other than an amusement device or plant normally fixed in position) is taken to be registered under and for the purposes of this Regulation if the item has been registered by a statutory authority under a law that imposes registration requirements that are reasonably equivalent to the registration requirements imposed by this Subdivision.

Part 5.3 Supply of plant

Note—

See clause 7 (2) as to the extent of a supplier's duties under this Part.

Division 1 Preliminary

120 Application

- (1) This Part applies to the sale, transfer, lease and hire of plant for use at work and plant affecting public safety.
- (2) In addition to applying to plant of the kinds referred to in subclause (1), Division 3 also applies to the hire or lease of the following plant in a place of work that is not under the management or control of an employer:
 - (a) plant under pressure,
 - (b) plant designed to lift or move people, equipment or materials including escalators, moving walks and lifts.
- (3) This Part applies to plant supplied after the date of commencement of this Regulation.
- (4) A person who sells or transfers plant is not required to comply with Division 2 within the period of 12 months after its commencement.
- (5) A person who hires or leases plant to another person is not required to comply with

clauses 124 and 125 of Division 3 within the period of 12 months after their commencement.

Note—

See clauses 85 and 99 as to compliance with the requirements of this Chapter relating to plant designed or manufactured outside New South Wales and imported for supply in the State.

Division 2 Sale or transfer of plant

121 Seller or transferor to control risks

- (1) A person who sells or transfers new plant must ensure that risks arising from the condition of the plant are eliminated or, if this is not reasonably practicable, controlled.
- (2) A person selling or transferring used plant (other than plant for use as scrap or as spare parts for other plant) must advise the purchaser or intended owner of the plant in writing (before the sale or transfer) of any faults detected in the plant and, if appropriate, that the plant is not to be used until the faults are rectified.
- (3) Without limiting subclause (1), the person selling or transferring the plant must ensure that the plant complies with relevant risk control measures specified in clauses 89-95.

Maximum penalty: Level 4.

122 Seller or transferor to provide information

- (1) A person who sells or transfers plant must ensure that:
 - (a) in respect of new plant—the purchaser or new owner of the plant is provided with all available information concerning health and safety about the plant received by the person from the manufacturer, and
 - (b) in respect of used plant—the purchaser or new owner of the plant is provided with:
 - (i) all available information concerning health and safety about the plant received by the person from the designer and manufacturer, and
 - (ii) if available, any record kept by the previous owner of the plant in accordance with the requirements of this Regulation, and
 - (c) the purchaser or new owner of the plant is provided with any information, data or certificate provided or kept in accordance with the standards specified in Schedule 1 (Standards covering design and manufacture of plant).
- (2) If plant is suitable only for use as scrap or for spare parts for other plant, the person

who is selling or transferring it must advise the purchaser or new owner of the plant in writing or by marking on the plant, before it is sold or transferred, that:

- (a) the plant is sold or transferred for use as scrap or for spare parts for other plant only, and
- (b) the plant in its current state must not to be used for work but may be used only as scrap or for spare parts.

Maximum penalty: Level 4.

123 Seller or transferor to obtain information

- (1) A person who sells or transfers plant must obtain such information as is necessary to enable the person to fulfil the person's responsibilities with respect to the following:
 - (a) eliminating or controlling risks in respect of the plant,
 - (b) providing information.
- (2) A person who sells or transfers plant must obtain the information that a manufacturer is required to provide to the person under clause 105 (Manufacturer to provide information).

Maximum penalty: Level 4.

Division 3 Hiring or leasing plant

Note—

Clause 120 (1) and (2) applies this Division to plant for use at work, plant affecting public safety and certain other plant (plant under pressure and plant designed to lift or move people, equipment or materials including escalators, moving walks and lifts) that is not under the management or control of an employer but is the responsibility of the owner of the plant.

124 Hirer or lessor to identify hazards

- (1) A person who hires or leases plant to another person must identify any foreseeable hazard that may arise from the condition of the plant and that has the potential to harm the health or safety of any person during the installation, erection, commissioning, use, repair, dismantling, storage or disposal of the plant at a place of work or, in the case of plant affecting public safety, at any other place at which the plant is located.
- (2) Without limiting subclause (1), the person hiring or leasing the plant must ensure that:
 - (a) the plant is inspected regularly and, at a minimum, once between each hiring and leasing, and
 - (b) inspections of the plant are carried out having regard to procedures:

- (i) recommended by the designer and manufacturer, or
- (ii) developed by a competent person.

Maximum penalty: Level 4.

125 Hirer or lessor to assess risks

- (1) A person who hires or leases plant to another person must assess the risk of harm to the health or safety of any person arising from any hazard identified in accordance with this Division and, in particular, must:
 - (a) evaluate the likelihood of an injury or illness occurring and the likely severity of any injury or illness that may occur, and
 - (b) identify any actions necessary to eliminate or control the risk, taking into account any specific risk control measures required by this Regulation (including as to manual handling, hazardous substances and the working environment), and
 - (c) identify the records that it is necessary to keep to ensure that risks are eliminated or controlled and determine the length of time for which the records are to be kept.
- (2) A person who hires or leases plant to another person must ensure that:
 - (a) an assessment is carried out to determine:
 - (i) whether the plant should be tested to check if new or increased risks to health or safety have developed, and
 - (ii) if so, the frequency at which the testing should occur, and
 - (b) if the need for testing is identified, the testing is carried out and recorded and the records of the testing are maintained for the operating life of the plant.
- (3) The assessment may be carried out:
 - (a) on individual items of plant, or
 - (b) if multiple items of plant of the same design are installed and used under conditions that are the same for all practical purposes—on a representative sample of the items.

Maximum penalty: Level 4.

126 Hirer or lessor to review risk assessment

A person who hires or leases plant to another person must review a risk assessment whenever:

- (a) there is evidence that the risk assessment of the plant is no longer valid, or
- (b) the designer or manufacturer of the plant or a person who has hired or leased the plant or similar plant provides information about a fault in the plant or similar plant that has the potential to harm the health or safety of any person.

Maximum penalty: Level 4.

127 Hirer or lessor to control risks

- (1) A person who hires or leases plant to another person must ensure that risks arising from the condition of the plant are eliminated or, if this is not practicable, controlled.
- (2) Without limiting subclause (1), the person hiring or leasing the plant to another person must not hire or lease:
 - (a) plant designed or manufactured before the date of commencement of this Regulation unless the plant complies with relevant control measures specified in clauses 89–93 inclusive, and
 - (b) plant designed and manufactured after the date of commencement of this Regulation unless the plant complies with relevant control measures specified in clauses 89–94 inclusive, and
 - (c) plant of a kind specified in the Table to clause 107 (Plant for which designs are to be registered) unless the plant has a current design registration number issued under clause 109 (Processing of application by WorkCover) and evidence of the registration is provided with the plant, and
 - (d) plant of a kind specified in the Table to clause 113 (Items of plant required to be registered) unless the plant has a current item registration number issued under clause 115 or 118 (or under the *Construction Safety Regulations 1950*) and evidence of the registration is provided with the plant.
- (3) A person who hires or leases plant to another person is not required to comply with subclause (2) (c) within the period of 12 months after its commencement.
- (4) A person who hires or leases plant to another person is not required to comply with subclause (2) (d) within the period of 12 months after its commencement (except to the extent that subclause (2) (d) applies to lifts and amusement devices).

Maximum penalty: Level 4.

Note—

Division 1 of Part 5.2 relating to the design of plant also applies to alterations to plant designs. A supplier who alters a design to eliminate or control a risk must comply with the design requirements of that Division. (See clause 84 (2) (b) and see also the definition of **alter** in clause 82 (1).)

128 Maintenance, repair, testing and cleaning of plant—particular risk control measures

- (1) A person who hires or leases plant to another person must ensure that:
- (a) maintenance and cleaning are carried out having regard to procedures:
 - (i) recommended by the designer and manufacturer, or
 - (ii) developed by a competent person, and
 - (b) all safety features of the plant (including, in the case of plant intended to be used on or near electrical conductors, all insulation, earthing and controls) and all warning devices for the plant are maintained and tested, and
 - (c) if plant has been damaged or worn to the extent that its function or condition is likely to be impaired and the risk to health or safety is likely to be increased, a competent person assesses the damage or wear and advises the hirer or lessor as to:
 - (i) the nature and extent of the damage or wear, and
 - (ii) whether or not the function or condition of the plant has been impaired owing to the damage or wear, and
 - (iii) whether or not any such impairment has produced an increase in risk to health or safety, and
 - (iv) whether the plant is able to be repaired and, if so, what repairs must be carried out to minimise risks to health and safety, and
 - (d) maintenance, repair, cleaning and, if necessary, testing is carried out by a competent person, and
 - (e) repairs to the plant are carried out so as to retain the plant within its design limits.

Maximum penalty: Level 4.

- (2) In the case of plant that is an amusement device, the reference in subclause (1) (c) to a competent person is to be read as a reference to a qualified engineer.

129 Plant under pressure—particular risk control measures

A person who hires or leases plant under pressure to another person must ensure:

- (a) pressure equipment (excluding gas cylinders) is inspected and maintained in accordance with AS/NZS 3788:1996 *Pressure equipment—in-service inspection* so far as it is relevant to the pressure equipment concerned, and
- (b) gas cylinders comply with AS 2030 Parts 1, 2 and 4 (as listed in Schedule 1) and are inspected and maintained in accordance with that Australian Standard.

Maximum penalty: Level 4.

130 Powered mobile plant—particular risk control measures

- (1) A person must not hire or lease to another person a tractor designed to have a mass of 560 kg or more, but less than 15,000 kg, unless:
 - (a) if the tractor was manufactured, imported or originally purchased after 1981, it is securely fitted with a protective structure that conforms with AS 1636.1—1996, AS 1636.2—1996 and AS 1636.3—1996 *Tractors—Roll-over protective structures—Criteria and tests*, or
 - (b) if the tractor was manufactured, imported or originally purchased during or before 1981, it is securely fitted with:
 - (i) a roll-over protective structure that conforms with AS 1636.1—1996, AS 1636.2—1996 and AS 1636.3—1996 *Tractors—Roll-over protective structures—Criteria and tests*, or
 - (ii) if such a structure is not available, an alternative roll-over protective structure designed by a suitably qualified engineer having regard to the performance requirements of AS 1636.1—1996.
- (2) A person must not hire or lease to another person earthmoving machinery designed to have a mass of 700 kg or more, but less than 100,000 kg, unless:
 - (a) if the machinery was manufactured, imported or originally purchased after 1989, it is securely fitted with a protective structure that conforms with AS 2294.1—1997, AS 2294.2—1997 and AS 2294.3—1997 *Earth-moving machinery—Protective structures*, or
 - (b) if the machinery was manufactured, imported or originally purchased during or before 1989, it is securely fitted with:
 - (i) a protective structure that conforms with AS 2294.1—1997, AS 2294.2—1997 and AS 2294.3—1997, or
 - (ii) if such a structure is not available, an alternative protective structure designed by a suitably qualified engineer having regard to the performance requirements of AS 2294.1—1997, AS 2294.2—1997 and AS 2294.3—1997.
- (3) In designing an alternative structure for the purposes of this clause, an engineer may, if satisfied that deformation testing is not required, substitute calculated deformations.
- (4) Such a structure must be identified with the information required by:
 - (a) AS 1636.1—1996, or

(b) AS 2294.1—1997, AS 2294.2—1997 or AS 2294.3—1997,
whichever is appropriate.

Maximum penalty: Level 4.

131 Hirer or lessor to keep records

A person who hires or leases plant of a kind specified in the Table to this clause to another person must make and keep records of any tests, maintenance, inspections, commissioning or alteration of plant relevant to controlling risks arising from the plant.

Maximum penalty: Level 3.

Table Plant for which records are to be kept

Boilers categorised as being of hazard level A, B or C according to the criteria in AS 4343—1999

Pressure vessels categorised as being of hazard level A, B or C according to the criteria in AS 4343:1999 except the following:

- (a) LP gas fuel vessels for automotive use covered by AS/NZS 3509:1996,
- (b) serially produced pressure vessels covered by AS 2971—1987,
- (c) pressure vessels that do not require periodic internal inspection in accordance with the criteria in Table 4.1 in AS/NZS 3788:1996

Tower cranes

Lifts (including escalators and moving walkways)

Building maintenance units

Concrete placing units (truck mounted with boom)

Personnel and materials hoists

Concrete placing units

Industrial lift trucks

Mobile cranes

Gantry cranes with a rated capacity greater than 5 tonnes

Bridge cranes with a rated capacity greater than 10 tonnes

Gantry cranes and bridge cranes designed to handle molten metal or dangerous goods (within the meaning of the Australian Dangerous Goods Code)

Boom-type elevating work platforms

Hoists, with a platform movement in excess of 2.4 metres, designed to lift or support people

Mast climbing work platforms

Vehicle hoists

Amusement devices

132 Hirer or lessor to provide information

(1) A person who hires or leases plant to another person must provide other persons who have responsibilities under this Regulation with all available information about the plant that is necessary to enable the other persons to fulfil their responsibilities with respect to the following:

- (a) identifying hazards,
- (b) assessing risks arising from those hazards,
- (c) eliminating or controlling those risks,
- (d) providing information.

(A person who hires or leases plant to another person is not required to comply with this subclause within the period of 12 months after its commencement.)

- (2) Without limiting subclause (1), a person who hires or leases plant to another person must ensure that the person is provided with relevant health and safety information about the plant including, if appropriate, information about the commissioning, installation, use, testing, de-commissioning and dismantling of the plant.
- (3) Without limiting subclause (1), a person who hires or leases an amusement device to another person must ensure that the person hiring or leasing the amusement device is provided with:
- (a) the log book for the amusement device in which details of all tests, maintenance, inspections, commissioning, alteration or repair of the amusement device have been accurately recorded by a competent person, and
 - (b) the operating and maintenance manuals for the amusement device.

Maximum penalty: Level 4.

133 Hirer or lessor to obtain information

(1) A person who hires or leases plant to another person must obtain such information as is necessary to enable the person to fulfil the person's responsibilities with respect to

the following:

- (a) identifying hazards,
- (b) assessing risks arising from those hazards,
- (c) eliminating or controlling those risks,
- (d) providing information.

(A person who hires or leases plant to another person is not required to comply with this subclause within the period of 12 months after its commencement.)

- (2) Without limiting subclause (1), a person who hires or leases plant must obtain the information that a manufacturer is required to provide to the person under clause 105 (Manufacturer to provide information).

Maximum penalty: Level 4.

Part 5.4 Working with plant

Note—

See note at beginning of this Chapter as to **employer** including **self-employed person**.

134 Application

- (1) This Part deals with the installation, erection, commissioning, use, maintenance, repair, dismantling, storage and disposal of plant for use at work and plant affecting public safety.
- (2) The requirements of this Part as to the installation, erection and commissioning of plant apply to plant installed, erected and commissioned after the date of commencement of this Regulation.
- (3) The requirements of this Part as to the use, maintenance, repair, dismantling, storage and disposal of plant apply to all plant to which this Part applies, whether manufactured before or after the date of commencement of this Regulation.
- (4) For the purposes of this Regulation, a lift or an amusement device registered under the *Construction Safety Regulations 1950* immediately before the commencement of this Part is taken to be plant registered under Subdivision 2 of Division 3 of Part 5.2.

135 Installation, erection and commissioning of plant—particular risk control measures

An employer must ensure, in complying with the requirements of clause 11 (Employer to eliminate or control risks) as to the control of risks arising from the installation, erection or commissioning of plant that:

- (a) the plant is erected, installed or commissioned having regard to the instructions of the

designer and manufacturer, or to instructions developed by a competent person, in so far as they relate to health and safety, and

- (b) a competent person undertakes the installation, erection or commissioning and is provided with all information necessary to enable plant to be installed and commissioned so as to eliminate risks to health and safety or, if this is not practicable, to control them, and
- (c) the plant is installed, erected and commissioned in a location that is suitable for the operation being undertaken and the type of plant being used, and
- (d) plant that is designed to be operated in a fixed position is positioned on and, if necessary, fixed to, a secure base in order to prevent inadvertent movement when power is applied or while the plant is in operation, and
- (e) there is sufficient clear space around the plant to allow the plant to be used and repaired, and
- (f) there is sufficient space for access to and egress from parts of the plant that require cleaning and maintenance, and
- (g) emergency lighting, safety doors and alarm systems are provided if access to plant is required as part of normal operation and persons may be trapped and exposed to increased risk due to heat, cold or lack of oxygen, and
- (h) interim safeguards are used during testing, if the final means of safeguarding are not in place, and
- (i) as far as can be determined by commissioning, the plant is safe for transfer into active service, and
- (j) if the plant is an amusement device, details of the erection of the amusement device are recorded in the log book for the amusement device on each occasion on which it is erected.

(An employer is not required to comply with paragraphs (a)–(i) within the period of 12 months after commencement of this clause.)

Maximum penalty: Level 4.

Note—

Division 1 of Part 5.2 relating to the design of plant also applies to alterations to plant designs. A supplier who alters a design to eliminate or control a risk must comply with the design requirements of that Division. (See clause 84 (2) (b) and see also the definition of **alter** in clause 82 (1).)

136 Use of plant—registration requirements and particular risk control measures

- (1) An employer must ensure that plant that:

- (a) is designed and manufactured after the commencement of this Regulation, and
- (b) is of a kind specified in the Table to clause 107 (Plant for which designs are to be registered),

is not used unless the plant has a current design registration number issued under Subdivision 1 of Division 3 of Part 5.2 and evidence of the registration is readily accessible. (An employer is not required to comply with this subclause within the period of 12 months after its commencement.)

Maximum penalty: Level 3.

- (2) An employer must ensure that plant of a kind specified in the Table to clause 113 (Items of plant required to be registered) is not used unless the plant has a current item registration issued under Subdivision 2 of Division 3 of Part 5.2 (or under the *Construction Safety Regulations 1950*) and evidence of the registration is displayed on or near the plant. (An employer is not required to comply with this subclause within the period of 12 months after its commencement (except to the extent that the subclause applies to lifts and amusement devices).)

Maximum penalty: Level 3.

- (3) An employer must ensure in relation to use of plant that:
 - (a) plant (with the exception of lifts that are operated by members of the public and coin-operated amusement devices) is not operated by a person unless the person has received adequate information and training and is supervised to the extent necessary to minimise the risks to health and safety, and
 - (b) plant is used only for the purpose for which it was designed unless a competent person has made an assessment that the change in use does not present an increased risk to health or safety, and
 - (c) if safety features or warning devices are incorporated into plant, the features or devices are used as intended, and
 - (d) if it is not possible to eliminate the risk of entanglement in plant with moving parts, persons do not operate, or pass in close proximity to, the plant unless the risk of entanglement is controlled by guarding that meets the requirements of clause 90 (1) or the use of a safe system of work, and
 - (e) if it is not possible to eliminate the risk of parts of the plant or work pieces breaking, disintegrating or being ejected from the plant, persons do not operate, or pass in close proximity to, the plant unless the risk is controlled by guarding that meets the requirements of clause 90 (3), and
 - (f) an employee does not work between fixed and traversing parts of the plant if there is a risk to health or safety, and

- (g) if plant can be remotely or automatically energised and become a risk to health and safety:
 - (i) the immediate operating area of the plant is designated as a restricted space and access to it is controlled at all times, and
 - (ii) an employee does not work in the immediate operating area of the plant unless appropriate controls and systems of work are used, and
- (h) an employee is not permitted to work in the immediate vicinity of plant that could start without warning and cause hazards unless appropriate controls and systems of work are in place, and
- (i) pipes and other parts of plant that may become hot are adequately guarded or insulated, and
- (j) pipes and other parts of plant that may become cold are adequately guarded or insulated, and
- (k) fixed sources of heat, such as furnaces, coke ovens and cooling racks, are ventilated, and
- (l) measures are provided to prevent, as far as practicable, unauthorised interference with or alteration or use of plant that may make the plant a risk to health or safety, and
- (m) plant is subject to appropriate checks, tests and inspections necessary to minimise risks to health and safety, and
- (n) if the operation or condition of plant presents an immediate risk to health or safety, the plant is withdrawn from operation until the risk is eliminated or, if this is not practicable, controlled.

Maximum penalty: Level 4.

- (4) A reference in this clause to an employer extends to an owner of plant affecting public safety.

137 Maintenance and repair of plant—particular risk control measures

- (1) An employer must ensure in relation to the maintenance and repair of plant that:
 - (a) the necessary facilities and systems of work are provided and maintained so as to minimise risks to health and safety of persons maintaining, inspecting, altering, repairing or cleaning the plant, and
 - (b) inspections, maintenance and cleaning are carried out having regard to procedures recommended by the designer or manufacturer or designer and manufacturer, or developed by a competent person, and

- (c) all safety features and warning devices of plant are maintained and tested, and
 - (d) if plant has been damaged to the extent that its operation or condition is impaired and the risk to health or safety is increased, a competent person assesses the damage and provides advice on:
 - (i) the nature of the damage, and
 - (ii) whether the plant is able to be repaired and, if so, what repairs must be carried out to minimise risks to health and safety, and
 - (e) repair, inspection and, if necessary, testing is carried out by a competent person, and
 - (f) repairs to the plant are carried out so as to keep the plant within its design limits.
- (2) An employer must ensure that:
- (a) if access to plant is required for the purpose of maintenance, cleaning or repair, the plant is stopped and one or more of the following measures is used so as to control risks to health and safety:
 - (i) lockout or isolation devices,
 - (ii) danger tags,
 - (iii) permit to work systems,
 - (iv) other control measures, and
 - (b) if it is not practicable to carry out cleaning or maintenance with the plant stopped, operational controls that permit controlled movement of the plant are fitted and safe systems of work are used.
- (3) In this clause:
- (a) a reference to an employer extends to an owner of plant affecting public safety, and
 - (b) in the case of an amusement device—a reference to a competent person is to be read as a reference to a qualified engineer.

Maximum penalty: Level 4.

138 Dismantling, storage and disposal of plant—particular risk control measures

An employer must ensure in relation to dismantling, storage and disposal of plant that:

- (a) if plant is dismantled, the dismantling is carried out by a competent person, and
- (b) all available information provided by the designer or manufacturer to the employer

that is relevant to the dismantling is made available to the competent person, and

- (c) if plant, including plant that is dismantled, is to be stored, storage is carried out by a competent person, and
- (d) if plant contains materials that present a risk to health or safety and the plant is to be disposed of, the disposal is carried out by a competent person.

(An employer is not required to comply with this clause within the period of 12 months after its commencement.)

Maximum penalty: Level 4.

139 Use of amusement devices—particular risk control measures

- (1) An employer must ensure that an amusement device (other than a coin operated amusement device) is operated only by a person who is competent to operate it and, if that person is not the owner of the amusement device, that the person operating the amusement device:
 - (a) checks the amusement device before it is operated on each day on which it is to be operated, and
 - (b) operates the amusement device without passengers before operating it with passengers on each day on which the amusement device is to be operated, and
 - (c) ensures that each daily check and operation of the amusement device without passengers is properly and accurately recorded in the log book for the amusement device.
- (2) An employer must ensure in relation to the maintenance and repair of an amusement device that maintenance, repair, inspection and, if necessary, testing is carried out by a competent person and:
 - (a) in accordance with the requirements of AS 3533.2—1997 *Amusement rides and devices Part 2: Operation and maintenance*, including as to the recording of details of all work carried out in the log book for the amusement device, 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 amusement device has been prepared by a competent person, the requirements of the maintenance manual.
- (3) A reference in this clause to an employer extends to the owner of the amusement device concerned.

Maximum penalty: Level 4.

140 Plant under pressure—particular risk control measures

- (1) An employer must ensure in relation to plant under pressure that:
 - (a) pressure equipment (excluding gas cylinders and miniature boilers) is inspected in accordance with AS/NZS 3788:1996 *Pressure equipment—in-service inspection*, and
 - (b) miniature copper boilers (falling within the definition of **pressure equipment**) are inspected, operated and maintained in accordance with AMBSC Code—Part 1: Copper Boilers, and
 - (c) miniature steel boilers (falling within the definition of **pressure equipment**) are inspected, operated and maintained in accordance with AMBSC Code—Part 2: Steel Boilers.
- (2) An employer must ensure that a gas cylinder complies with AS 2030 Parts 1, 2 and 4 (as listed in Schedule 1) and is inspected and maintained as required by that Standard.

Maximum penalty: Level 4.

141 Powered mobile plant—particular risk control measures

- (1) An employer must ensure that powered mobile plant is used so as to minimise the risk of overturning or a falling object coming into contact with the operator.
- (2) An employer must ensure that an appropriate combination of operator protective devices are provided, used and maintained if there is a risk of:
 - (a) powered mobile plant overturning, or
 - (b) an object falling on the operator, or
 - (c) an operator being ejected from the seat.
- (3) An employer must ensure that appropriate controls are implemented to eliminate or minimise the risk of the powered mobile plant colliding with pedestrians or other powered mobile plant.
- (4) An employer must ensure that a tractor designed to have a mass of 560 kg or more, but less than 15,000 kg, is not used unless:
 - (a) if the tractor was manufactured, imported or originally purchased after 1981, it is securely fitted with a protective structure that conforms with AS 1636.1—1996, AS 1636.2—1996 and AS 1636.3—1996 *Tractors—Roll-over protective structures—Criteria and tests—Conventional tractors*, or

- (b) if the tractor was manufactured, imported or originally purchased during or before 1981, it is securely fitted with:
 - (i) a roll-over protective structure that conforms with AS 1636.1—1996, AS 1636.2—1996 and AS 1636.3—1996 *Tractors—Roll-over protective structures—Criteria and tests*, or
 - (ii) if such a structure is not available, an alternative roll-over protective structure designed by a suitably qualified engineer having regard to the performance requirements of AS 1636.1—1996.
- (5) If a tractor is used in a place that is too low for the tractor to work while it is fitted with a roll-over protective structure, the structure may be lowered or removed for the period during which the tractor is used in such a situation (but only if other measures to minimise the risk of roll-over or harm from falling objects are in place).
- (6) An employer must ensure that earthmoving machinery designed to have a mass of 700 kg or more, but less than 100,000 kg, is not used unless:
 - (a) if the machinery was manufactured, imported or originally purchased after 1989, it is securely fitted with a protective structure that conforms with AS 2294.1—1997, AS 2294.2—1997 and AS 2294.3—1997 *Earth-moving machinery—Protective structures*, or
 - (b) if the machinery was manufactured, imported or originally purchased during or before 1989, it is securely fitted with:
 - (i) a protective structure that conforms with AS 2294.1—1997, AS 2294.2—1997 and AS 2294.3—1997, or
 - (ii) if such a structure is not available, an alternative protective structure designed by a suitably qualified engineer having regard to the performance requirements of AS 2294.1—1997, AS 2294.2—1997 and AS 2294.3—1997.
- (7) In designing an alternative structure for the purposes of this clause, an engineer may, if satisfied that deformation testing is not required, substitute calculated deformations.
- (8) Such a structure must be identified with the information required by:
 - (a) AS 1636.1—1996, or
 - (b) AS 2294.1—1997, AS 2294.2—1997 and AS 2294.3—1997,whichever is appropriate.
- (9) An employer must ensure that powered mobile plant is fitted with appropriate seat restraints if:

- (a) the plant is fitted with a rollover protective structure or a falling object protective structure, and
- (b) attachment points for the seat restraints have been incorporated in the original design of the plant.

(10) An employer must ensure that powered mobile plant:

- (a) is fitted with warning devices that are appropriate to effectively warn persons who are at risk from movement of the plant, and
- (b) is not used to carry, lift or lower a person other than the operator unless:
 - (i) the plant was specifically designed to carry persons, and
 - (ii) if the plant includes a specifically designed seat for carrying a passenger, the person is seated in the seat, and
 - (iii) the seat is fitted with appropriate seat restraints, and
 - (iv) the seat is located within a zone of protection afforded by operator protective devices.

(11) An employer must ensure that industrial lift trucks:

- (a) are equipped with appropriate lifting attachments specifically designed for the load to be lifted or moved, and
- (b) are used in a way that minimises exposure of the operator to risks arising from work practices or systems and the particular environment in which the industrial lift truck is used.

(12) This clause does not apply to powered mobile plant that:

- (a) is not operated by a person, or
- (b) is installed in a fixed position in a manner that does not permit its use as powered mobile plant.

Maximum penalty: Level 4.

142 Plant designed to lift or move—particular risk control measures

- (1) An employer must ensure that a clearly legible notice is affixed, in a conspicuous place, on a lift or any lifting machinery, specifying the rated capacity of the plant in appropriate metric units or maximum number of persons to be lifted, as may be appropriate.

Maximum penalty: Level 3.

- (2) A reference in subclause (1) to an employer extends to an owner of plant affecting public safety.
- (3) An employer must ensure that, in relation to plant designed to lift or move people, equipment or materials:
 - (a) as far as practicable, no loads are suspended or travel over a person, and
 - (b) plant that is not specifically designed for lifting or suspending loads is not used for those tasks unless the plant provides at least an equal level of safety to that of plant that is specifically designed for those tasks, and
 - (c) all lifting or suspending is done within the rated capacity of the plant, and
 - (d) persons are not lifted or suspended by plant or an attachment to plant (other than plant specifically designed for lifting or suspending persons) unless:
 - (i) use of another method of lifting or suspending is not reasonably practicable, and
 - (ii) a suitable and adequate personnel box or carrier, designed for the purpose, is used and is securely attached to the plant, and
 - (iii) means are provided by which persons being lifted or suspended can have safe egress from the personnel box, carrier or plant in the event of a failure in the normal operation of the plant, and
 - (iv) the plant is suitably stabilised, and can be maintained by the operator in that state, at all times during which the personnel box or carrier is in use, and
 - (v) a suitable fall arrest device is provided to and worn by all persons who are suspended in a personnel box or carrier unless the box or carrier is fully enclosed, and
 - (vi) in the case of a crane, the crane has drive-up and drive-down controls on both the hoisting and luffing motions and these controls are used by the operator in the lifting and suspending operations.

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

143 Employer to keep records

- (1) An employer who has control of any plant of a kind specified in the Table to clause 131 (Plant for which records are to be kept) must make and keep for the operating life of the plant records of any tests, maintenance, inspections, commissioning or alteration of plant relevant to controlling risks arising from the plant.
- (2) An employer must ensure in relation to an amusement device that:

- (a) details of all tests, maintenance, inspections, commissioning, alteration or repair of the amusement device are accurately recorded in the log book for the amusement device by a competent person, and
 - (b) the log book and operating and maintenance manuals for the amusement device are kept with the amusement device.
- (3) A reference in this clause to an employer extends to an owner of plant affecting public safety.

Maximum penalty: Level 3.

144 Employer to provide information

- (1) An employer must provide persons involved in the commissioning, installation, use and testing, and the de-commissioning, dismantling and disposal, of plant with all available information concerning health and safety about the plant.
- (2) An employer must ensure that all relevant information on emergency procedures relating to plant is displayed in a manner that can be readily observed by persons who may be exposed to risks arising from the operation of the plant.
- (3) An employer who contracts out the design of plant for use at work must ensure that the person who is engaged to design the plant is provided with all relevant information about matters relating to the plant that may affect health and safety.
- (4) An employer must ensure that persons involved in the commissioning, installation, use and testing, and the de-commissioning, dismantling and disposal, of an amusement device are provided with:
 - (a) the log book for the amusement device in which details concerning erection, operation, maintenance and repair of the amusement device are recorded, and
 - (b) the operating and maintenance manuals for the amusement device.
- (5) A reference in this clause to an employer extends to an owner of plant affecting public safety.

Maximum penalty: Level 3.

Chapter 6 Hazardous substances

Note—

This Chapter imposes obligations on an employer. **Employer**, for the purposes of this Chapter, includes self-employed persons (see clause 3).

Part 6.1 Preliminary

145 Definitions

(1) In this Chapter:

analysis means a process used for the purpose of identifying the kind or quantities of ingredients in a substance.

biological monitoring means the measurement and evaluation of hazardous substances or their metabolites in the body tissues, fluids or exhaled air of a person.

chemical name of a substance means a recognised chemical name of the substance that is generally used in scientific or technical texts.

consumer package means a container that is intended for retail display and sale, and includes a container that is transported and distributed as part of a larger consolidated container that consists of a number of identical consumer packages.

container means anything in or by which substances are or have been wholly or partly encased, covered, enclosed, contained or packed (whether empty, partially full or completely full), but does not include a bulk container, namely:

- (a) in the case of a container designed to hold gas—a container that has a capacity of more than 500 litres, or
- (b) in the case of a container designed to hold either solids or liquids—a container that has either a net mass of more than 400 kilograms or a capacity of more than 450 litres.

exposure—see clause 146 (2).

generic name of a substance means a name that describes the category or group of chemicals to which the substance belongs (for example, azo dyes or halogenated aromatic amines).

health practitioner means a health practitioner within the meaning of the [Health Care Complaints Act 1993](#).

health surveillance means the monitoring of persons to identify changes (if any) in their health due to exposure to a hazardous substance, and includes biological monitoring, but does not include the monitoring of atmospheric contaminants.

ingredient means any component of a substance, and includes any impurity that is mixed in with the substance.

MSDS means a material safety data sheet referred to in clause 150.

product name of a hazardous substance means the brand name, trade name, code

name or code number specified by the supplier of the substance.

research means systematic investigative or experimental activities that are carried out for the purpose of:

- (a) acquiring new knowledge (whether or not that knowledge will have a specific practical application), or
- (b) creating new or improved materials, products, devices, processes or services.

retail warehouse operator means a person who operates a warehouse at which unopened packaged goods intended for retail sale are held, but does not include a retailer.

retailer means a person who sells goods to members of the public who are not themselves engaged in any further resale of those goods.

risk phrase, in relation to a substance, means a phrase that describes the hazards of the substance, as referred to in the document entitled “National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]” published by the NOHS Commission.

risk to health, in relation to a substance, means the likelihood that the substance will cause harm to health in the circumstances of its use.

safety phrase, in relation to a substance, means a phrase that describes the procedures for the safe handling or storage of the substance, or the use of personal protective equipment in conjunction with the substance, as referred to in the document entitled “National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]” published by the NOHS Commission.

type I ingredient means an ingredient present in a particular hazardous substance in a quantity that exceeds the lowest relevant concentration cut-off level specified for the hazard classification of the substance in the document entitled “Approved Criteria for Classifying Hazardous Substances [NOHSC: 1008 (1999)]” published by the NOHS Commission, being an ingredient that:

- (a) is a substance that is, according to that document:
 - (i) carcinogenic, mutagenic or teratogenic, or
 - (ii) a skin or respiratory sensitiser, or
 - (iii) corrosive, toxic or very toxic, or
 - (iv) a harmful substance that can cause irreversible effects after acute exposure,
or
 - (v) a harmful substance that can cause serious damage to health after repeated

or prolonged exposure, or

(vi) toxic to reproduction, or

(b) is a substance for which an exposure standard is listed in the document entitled “Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environments [NOHSC: 1003]” published by the NOHS Commission, as in force from time to time.

type II ingredient means an ingredient present in a particular hazardous substance in a quantity that exceeds the lowest relevant concentration cut-off level specified for the hazard classification of the substance in the document entitled “Approved Criteria for Classifying Hazardous Substances [NOHSC: 1008 (1999)]” published by the NOHS Commission, being an ingredient that:

(a) is a harmful substance according to that document, and

(b) is not a type I ingredient.

type III ingredient means an ingredient present in a particular hazardous substance that is not a type I ingredient or a type II ingredient.

use of a substance, means the use, production, handling, storage, transport or disposal of the substance.

(2) A reference in this Chapter to a document prepared or published by any body or authority is to be taken as a reference to that document, as in force from time to time, and (if the document is revoked and remade, with or without modifications) includes a reference to the new document, as in force from time to time.

146 Application

- (1) This Chapter applies (subject to clause 147) to all hazardous substances, to all places of work in which hazardous substances are used, and to all persons who have been, are or may become exposed to hazardous substances in those places of work.
- (2) For the purposes of this Chapter, exposure of a person to a hazardous substance includes the absorption, or potential absorption, by the person of the substance by ingestion or inhalation or through the skin or mucous membrane or by any other means.

147 Exclusion of certain substances

- (1) This Chapter does not apply to the following substances if their use is not related to a work activity:
 - (a) food (within the meaning of the [Food Act 1989](#)),
 - (b) therapeutic agents,

- (c) cosmetics,
 - (d) tobacco and tobacco products,
 - (e) toiletries and toilet products.
- (2) This Chapter does not apply to:
- (a) any radioactive substance to which the *Radiation Control Act 1990* applies, or
 - (b) any infectious substance (that is, any viable micro-organism, such as a bacterium, virus, rickettsia, parasite, fungus, recombinant, hybrid or mutant, that is known or reasonably believed to cause disease in humans or animals).
- (3) This Chapter does not apply to a hazardous substance while it is being transported in accordance with any of the following:
- (a) the *Road and Rail Transport (Dangerous Goods) Act 1997* and the regulations under that Act,
 - (b) the document entitled “International Maritime Dangerous Goods Code” published by the International Maritime Organization, copies of which are available for inspection at the offices of WorkCover,
 - (c) the document entitled “Technical Instructions for the Safe Transport of Dangerous Goods by Air” published by the International Civil Aviation Organization, copies of which are available for inspection at the offices of WorkCover,
 - (d) the document entitled “Dangerous Goods Regulations” published by the International Air Transport Association, copies of which are available for inspection at the offices of WorkCover.

Part 6.2 Manufacture of hazardous substances

Note—

See clause 7 (2) as to the extent of a manufacturer’s duties under this Part.

148 Application

- (1) This Part applies to hazardous substances manufactured for use at work.
- (2) A person who imports a substance manufactured outside New South Wales for supply to others or for the person’s own use must ensure that the responsibilities of a manufacturer under this Part are met in relation to the substance.

149 Manufacturer to identify hazardous substances

- (1) A manufacturer of a substance must, before the substance is used or supplied to another person for use at work, determine whether the substance is a hazardous

substance:

- (a) by ascertaining whether it is listed in the document entitled “List of Designated Hazardous Substances [NOHSC: 10005 (1999)]” published by the NOHS Commission, or
- (b) by ascertaining whether it fits the criteria for hazardous substances set out in the document entitled “Approved Criteria for Classifying Hazardous Substances [NOHSC: 1008 (1999)]” published by the NOHS Commission.

Maximum penalty: Level 4.

(2) If:

- (a) a manufacturer determines that a substance is a hazardous substance on the basis of the document entitled “Approved Criteria for Classifying Hazardous Substances [NOHSC: 1008 (1999)]” published by the NOHS Commission, and
- (b) the substance is a natural or artificial entity (and not any composite material, mixture or formulation), and
- (c) the substance is not listed on the document entitled “List of Designated Hazardous Substances [NOHSC: 10005 (1999)]” published by the NOHS Commission,

the manufacturer must, by notice in writing, inform the NOHS Commission of the determination.

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

150 Manufacturer to prepare material safety data sheet

- (1) A manufacturer of a hazardous substance must prepare a material safety data sheet (**MSDS**) for the substance before the hazardous substance is supplied to another person for use at work.

Maximum penalty: Level 4.

(2) The MSDS:

- (a) must clearly identify each hazardous substance to which it relates, and
- (b) must set out the following information in relation to a hazardous substance to which it relates:
 - (i) its recommended uses,
 - (ii) its chemical and physical properties,
 - (iii) information relating to each of its ingredients, to the extent required by

subclause (3),

(iv) any relevant health-hazard information,

(v) information concerning the precautions to be followed in relation to its safe use and handling, and

(c) must set out the name, and Australian address and telephone numbers (including an emergency number), of the manufacturer.

(3) The following information must be disclosed by an MSDS about the ingredients of the hazardous substance to which it relates:

(a) for each type I ingredient, its chemical name,

(b) for each type II ingredient:

(i) its chemical name, or

(ii) if the identity of the ingredient is commercially confidential, its generic name,

(c) for each type III ingredient:

(i) its chemical name, or

(ii) its generic name.

(4) If a generic name is used to identify a type II ingredient under subclause (3) (b) (ii), the manufacturer must notify the NOHS Commission of the use of the generic name in a manner and form determined by the Commission.

Maximum penalty: Level 1.

(5) If the manufacturer considers that compliance with subclause (3) (c) would not provide sufficient commercial protection for a type III ingredient, other than an ingredient that has a known synergistic effect or is a hazardous substance, the MSDS may indicate that the ingredient has been determined not to be hazardous by the use of the phrase "OTHER INGREDIENTS DETERMINED NOT TO BE HAZARDOUS".

(6) The manufacturer must review and revise the MSDS as often as is reasonably necessary to keep it up to date and, in any event, at intervals not exceeding 5 years.

Maximum penalty (subclause (6)): Level 4.

151 Manufacturer to provide MSDS

A manufacturer of a hazardous substance must provide a copy of a current MSDS for that hazardous substance:

(a) to any person who supplies the hazardous substance for use at work, and

- (b) to any person who claims to be associated with the use of the hazardous substance at work and who asks to be provided with a copy of the MSDS, and
- (c) to any medical practitioner or health practitioner who requires it for the purpose of providing emergency medical treatment.

Maximum penalty: Level 3.

152 Manufacturer to disclose ingredients to medical practitioner

- (1) If an MSDS or label does not disclose the chemical name of an ingredient of a hazardous substance, the manufacturer of the hazardous substance must disclose the chemical identity of the ingredient to any medical practitioner or health practitioner who applies to the manufacturer for the disclosure of that information for the purpose of emergency medical treatment.
- (2) The manufacturer must immediately respond to the application but, on or after supplying any information, may require the medical practitioner or health practitioner concerned to sign a written undertaking that he or she will only use the information for the purpose for which it has been provided.

Maximum penalty: Level 3.

153 Manufacturer to disclose ingredients to other persons

- (1) An application may be made to the manufacturer of a hazardous substance for the disclosure of the chemical identity of any ingredient of the substance that is not disclosed by the MSDS or label for the substance.
- (2) The manufacturer may require the application to be made in writing and to set out details of the grounds on which it is made.
- (3) The manufacturer must respond to the application within 30 days after it is received.

Maximum penalty: Level 2.

- (4) The manufacturer may make it a condition of the provision of any information in response to an application (other than an application by an authorised official within the meaning of section 137 of the Act) that the applicant sign a written undertaking that he or she will only use the information for the purpose for which it has been provided.
- (5) In the case of an application made by WorkCover, an employer or an employee or by a representative of an employer or employee, the manufacturer must disclose the chemical identity of the ingredient to the applicant if the application is made for the express purpose of protecting the health of persons who may be exposed to the hazardous substance through its use at work. However, if a condition has been imposed under subclause (4) in connection with the disclosure, the manufacturer may

refuse the application if the applicant has not signed a written undertaking in accordance with the condition.

Maximum penalty: Level 3.

- (6) In any other case, the manufacturer may either disclose the chemical identity of the ingredient or else reject the application.
- (7) If the manufacturer rejects the application, the manufacturer:
- (a) must provide the applicant with written reasons for the rejection, and
 - (b) must provide such information as is necessary to satisfy the grounds on which the application is made without disclosing the chemical identity of the ingredient.

Maximum penalty (subclause (7)): Level 2.

Note—

Section 137 of the Act prohibits the disclosure by authorised officials of information obtained in connection with the administration or execution of the Act. “Authorised official” is defined in the section and includes such persons as WorkCover inspectors and authorised representatives of industrial organisations.

Part 6.3 Supply of hazardous substances

Note—

See clause 7 (2) as to the extent of a supplier’s duties under this Part.

Division 1 Preliminary

154 Application

This Part applies to the supply of hazardous substances for use at work.

Division 2 Supply of hazardous substances generally

155 Supplier to provide MSDS

- (1) A person who supplies a hazardous substance to an employer for use at work must ensure, in relation to each hazardous substance supplied, that a current MSDS prepared by the manufacturer is provided:
- (a) on the first occasion the hazardous substance is supplied to the employer, and
 - (b) at any other time, to any person who claims to be associated with the use of the hazardous substance at work and who asks to be provided with a copy of the MSDS, and
 - (c) to any medical practitioner or health practitioner who requires it for the purpose of providing emergency medical treatment.

Maximum penalty: Level 4.

- (2) Subclause (1) (a) does not apply to a hazardous substance that is supplied to a retailer or a retail warehouse operator in a consumer package holding less than 30 kilograms or 30 litres of the hazardous substance, that is intended for retail sale and that is not intended to be opened on the premises of the retailer or operator.

156 Supplier to ensure hazardous substances are labelled

- (1) A person who supplies a hazardous substance for use at work must ensure that any container of the hazardous substance is appropriately labelled.
- (2) Without limiting subclause (1), the person must ensure that any such label:
 - (a) clearly identifies the hazardous substance, and
 - (b) sets out the name, and Australian address and telephone numbers (including an emergency number), of the person, and
 - (c) discloses the chemical name of each type I ingredient, and
 - (d) discloses the chemical name of each type II ingredient or, if the identity of the ingredient is commercially confidential, its generic name, and
 - (e) provides basic health and safety information about the substance, including any relevant risk phrases and safety phrases.
- (3) If the container to be labelled is so small that it is not practicable to include all the particulars referred to in subclause (2), it is sufficient if the label complies with paragraphs (a) and (b) of that subclause.

Maximum penalty: Level 3.

157 Supplier to provide other information

A person who supplies a hazardous substance to an employer for use at work must provide to the employer, on request:

- (a) any summary report (within the meaning of the *Industrial Chemicals (Notification and Assessment) Act 1989* of the Commonwealth) that relates to the hazardous substance, and
- (b) any other relevant information (in addition to the information contained in an MSDS) that will assist in the safe use of the hazardous substance.

Maximum penalty: Level 2.

Division 3 Supply of carcinogenic substances—particular provisions

158 Definitions

In this Division:

notifiable carcinogenic substance means a substance of the following kind:

Substance Name [Chemical Abstract Number]

Acrylonitrile [107-13-1]

Benzene [71-43-2]—when used as a feedstock containing more than 50% of benzene by volume

Chrysotile [12001-29-5] (white asbestos)—when used for the manufacture of asbestos products

Cyclophosphamide [50-18-0] (cytotoxic drug)—when used in preparations for therapeutic use in hospitals and oncological treatment facilities, and in manufacturing operations

3,3'-Dichlorobenzidine [91-94-1] and its salts (including 3,3'-Dichlorobenzidine dihydrochloride [612-83-9])

Diethyl sulfate [64-67-5]

Dimethyl sulfate [77-78-1]

Ethylene dibromide [106-93-4]—when used as a fumigant

4,4'-Methylene bis(2-chloroaniline) [101-14-4]—MOCA

2-Propiolactone [57-57-8]

o-Toluidine [95-53-4] and o-Toluidine hydrochloride [636-21-5]

Vinyl chloride monomer [75-01-4]

prohibited carcinogenic substance means a substance of the following kind:

Substance Name [Chemical Abstract Number]

2-Acetylaminofluorene [53-96-3]

Aflatoxins—except in foods where specifically permitted under the [Food Act 1989](#)

4-Aminodiphenyl [92-67-1]

Amosite [12172-73-5] (brown asbestos)—except for removal, disposal, maintenance, encapsulation and enclosure purposes and situations where amosite occurs naturally and is not used for any new application

Benzidine [92-87-5] and its salts (including benzidine dihydrochloride [531-85-1])

bis(Chloromethyl) ether [542-88-1]

Chloromethyl methyl ether [107-30-2] (technical grade which contains bis(chloromethyl) ether)

Crocidolite [12001-28-4] (blue asbestos)—except for removal, disposal, maintenance,

encapsulation and enclosure purposes and situations where crocidolite occurs naturally and is not used for any new application

4-Dimethylaminoazobenzene [60-11-7]

2-Naphthylamine [91-59-8] and its salts

4-Nitrodiphenyl [92-93-3]

159 Supply of carcinogenic substances

- (1) A person must not supply a prohibited carcinogenic substance unless:
 - (a) the substance is to be used for the purpose of research or analysis, and
 - (b) the person to whom the substance is to be supplied provides evidence that WorkCover has been notified, in accordance with Part 12.3, of the intention of that person to use the same type of carcinogenic substance.
- (2) A person must not supply a notifiable carcinogenic substance unless the person to whom the substance is to be supplied provides evidence that WorkCover has been notified, in accordance with Part 12.3, of the intention of that person to use the same type of carcinogenic substance.

Maximum penalty: Level 4.

160 Supplier to keep records of supply of carcinogenic substances

- (1) A person who supplies a prohibited or notifiable carcinogenic substance for use at work must keep a record containing the following information:
 - (a) the name of the person to whom the carcinogenic substance has been supplied,
 - (b) the name and quantity of the carcinogenic substance supplied.

This clause does not apply to the supply of a prohibited or notifiable carcinogenic substance within the period of 12 months after commencement of the clause.

- (2) The record must be retained for at least 5 years.

Maximum penalty: Level 3.

Part 6.4 Use of hazardous substances

161 Application

This Part applies to the use of hazardous substances at work.

Note—

See clause 51 (Atmospheric contaminants—particular risk control measures) for prohibition of exposure to atmospheric contaminants above specified exposure levels.

162 Employer to obtain MSDS

- (1) For each hazardous substance supplied to an employer's place of work, the employer:
 - (a) must obtain from the supplier an MSDS for the substance before or on the first occasion on which it is supplied, and
 - (b) must ensure that the MSDS is readily accessible to an employee who could be exposed to the substance, and
 - (c) must ensure that the MSDS is not altered, otherwise than where it is appropriate that an overseas MSDS be reformatted by the employer.
- (2) The provisions of subclause (1) (a) and (b) do not apply to a hazardous substance that is supplied to a retailer or retail warehouse operator in a consumer package holding less than 30 kilograms or 30 litres of the substance, that is intended for retail sale and that is not intended to be opened on the premises of the retailer or operator.

Maximum penalty: Level 4.

163 Employer to ensure containers are labelled

- (1) An employer must ensure that a container that holds a hazardous substance used at work, including one supplied to or produced within the employer's place of work, is appropriately labelled and that the label is not removed, defaced or altered.
- (2) Without limiting subclause (1), an employer must ensure that the label:
 - (a) clearly identifies the hazardous substance, and
 - (b) provides basic health and safety information about the substance, including any relevant risk phrases and safety phrases.
- (3) However:
 - (a) a container into which a hazardous substance is decanted for use within the next 12 hours need only be labelled with the product name and the relevant risk phrases and safety phrases, and
 - (b) a container into which a hazardous substance is decanted for immediate use need not be labelled, so long as it is cleaned immediately after it has been emptied of the substance.

Maximum penalty: Level 4.

164 Use of hazardous substances

- (1) An employer must ensure that a hazardous substance of the kind set out in the Table to this subclause is not used for a purpose referred to in respect of that hazardous substance.

Table

Hazardous substance	Prohibited use
Arsenic or its compounds	Spray painting
Asbestos in the form of crocidolite, amosite, fibrous anthophyllite, tremolite or actinolite	All uses, except for the purpose of sampling or analysis, maintenance, removal, disposal, encapsulation or enclosure
Benzene (benzol), if the substance contains more than 1% by volume	Spray painting
Carbon disulphide (carbon bisulphide)	Spray painting
Crystalline silicon dioxide (sand)	An abrasive in abrasive blasting A constituent of steel casting moulds, when sufficient quantities of suitable alternative non-siliceous materials are available A constituent in parting powders and facing powders used in foundry work A constituent in paints used on the surface of moulds or cores
Methanol (methyl alcohol), if the substance contains more than 1% by volume	Spray painting
Tetrachloroethane	Spray painting
Tetrachloromethane (carbon tetrachloride)	Spray painting

- (2) An employer must not use a prohibited carcinogenic substance (as defined in clause 158) unless:
- (a) the use is for the purpose of research or analysis, and
 - (b) the employer has notified WorkCover of the intention to use the substance in accordance with Part 12.3.
- (3) An employer must not use a notifiable carcinogenic substance (as defined in clause 158) unless the employer has notified WorkCover of the intention to use the substance in accordance with Part 12.3.

Maximum penalty: Level 4.

165 Employer to provide health surveillance

- (1) An employer must provide health surveillance for each employee who is exposed to a hazardous substance if there is a risk to the health of the employee as a result of that exposure, and:
- (a) the hazardous substance is referred to in Column 1 of the Table to this clause, or

(b) the exposure to any other hazardous substance is such that:

- (i) an identifiable disease or other effect on health may be related to the exposure, and
- (ii) there is a reasonable likelihood that the disease or other effect on health may occur under the particular conditions of work, and
- (iii) there is available an effective technique for detecting indications of the disease or other effect on health.

An employer is not required to provide health surveillance within the period of 12 months after commencement of this clause in the case of exposure of an employee to benzene, chromium (inorganic), creosote or pentachlorophenol (PCP).

- (2) An employer must provide biological monitoring for an employee if there is a reasonable likelihood that the employee could be exposed to levels of a hazardous substance that could be a risk to health and an effective procedure for the biological monitoring of those levels is available.
- (3) The employer must ensure that:
 - (a) the health surveillance is performed under the supervision of an authorised medical practitioner, and
 - (b) if there is a significant risk to the health of an employee from a hazardous substance referred to in the Table to this clause, the health surveillance includes the carrying out of the procedures specified in Column 2 of the Table in relation to that substance.
- (4) The selection of the authorised medical practitioner to supervise the surveillance must be undertaken by the employer after consultation with the relevant employees.
- (5) The health surveillance must be undertaken at the expense of the employer.

Maximum penalty: Level 4.

Table

Column 1	Column 2
Hazardous substance	Type of health surveillance
Acrylonitrile	Occupational and medical history Demographic data Records of personal exposure

Arsenic (inorganic)	Demographic, medical and occupational history Exposure record Physical examination with emphasis on the peripheral nervous system and skin Urinary inorganic arsenic
Asbestos	Occupational and demographic data Medical interview Records of personal exposure
Benzene	Occupational and medical history Demographic data Exposure record Baseline blood sample for haematological profile
Cadmium	Demographic, medical and occupational history Exposure record Physical examination with emphasis on the respiratory system Standard respiratory questionnaire to be completed Standard respiratory function tests including for example, FEV1, FVC and FEV1/FVC Urinary cadmium and β_2 -microglobulin
Chromium (inorganic)	Demographic, occupational and medical history Physical examination with emphasis on the respiratory system and skin Weekly skin inspection of hands and forearms by a competent person
Creosote	Demographic, occupational and medical history Health advice, including recognition of photosensitivity and skin changes Physical examination with emphasis on the neurological system and skin, noting any abnormal lesions and evidence of skin sensitisation Exposure record, including photosensitivity
Crystalline Silica	Completion of a standardised respiratory questionnaire Standard respiratory function test, such as FEV1, FVC and FEV1/FVC Chest X-ray, full size PA view
Isocyanates	Occupational and medical history Completion of a standardised respiratory questionnaire Physical examination of the respiratory system and skin Standard respiratory function test, such as FEV1, FVC and FEV1/FVC

Lead (inorganic)	Medical and occupational history Physical examination
Mercury (inorganic)	Demographic, medical and occupational history Physical examination with emphasis on dermatological, gastrointestinal, neurological and renal systems Urinary inorganic mercury
MOCA (4,4-Methylenebis (2-chloroaniline))	Urinary total MOCA Dipstick analysis of urine for haematuria Urine cytology
Organophosphate pesticides	Occupational and medical history Physical examination Baseline estimation of red cell and plasma cholinesterase activity levels by the Ellman or equivalent method Estimation of red cell and plasma cholinesterase activity towards the end of the working day
Pentachlorophenol (PCP)	Demographic, occupational and medical history Physical examination with emphasis on the skin, noting any abnormal lesions or effects of irritancy Urinary total pentachlorophenol Dipstick urinalysis for haematuria and proteinuria Records of personal exposure
Polycyclic aromatic hydrocarbons	Exposure record, including photochemical skin burns Demographic, medical and occupational history Physical examination
Thallium	Demographic, medical and occupational history Physical examination Urinary thallium
Vinyl Chloride	Occupational and demographic data Record of personal exposure

Note—

See Part 7.6 for additional requirements for health surveillance and biological monitoring in the case of lead risk work.

166 Medical practitioner to notify results of health surveillance

- (1) As soon as practicable after an employee undergoes health surveillance in accordance with this Part, the medical practitioner must ensure that:
 - (a) the employee is notified of the results of the surveillance, and given any necessary explanation of those results, and
 - (b) the employer is notified of the general outcome of the surveillance, and advised

on any necessary preventive or remedial action, and

- (c) WorkCover is notified of any adverse result detected in the surveillance that is consistent with exposure to a hazardous substance referred to in the Table to clause 165.

Maximum penalty: Level 3.

- (2) The employer must ensure that results of health surveillance obtained by the employer are kept confidential.

Maximum penalty (subclause (2)): Level 1.

167 Employer to keep register of hazardous substances

- (1) An employer must ensure that a register is kept and maintained for all hazardous substances used at the employer's place of work.
- (2) The employer must ensure that the register includes:
 - (a) a list of all hazardous substances used at the employer's place of work, and
 - (b) the relevant MSDS (if any) for each of those hazardous substances, and
 - (c) any notations required under clause 168.
- (3) The employer must ensure that the register is readily accessible to all employees who may be exposed to a hazardous substance while at the employer's place of work.
- (4) This clause does not apply to a hazardous substance that is supplied to a retailer or retail warehouse operator in a consumer package holding less than 30 kilograms or 30 litres of the hazardous substance, that is intended for retail sale and that is not intended to be opened on the premises of the retailer or operator.

Maximum penalty: Level 1.

Note—

A principal contractor is required by clause 228 to keep a register of hazardous substances at a place of work at which construction work is carried out.

168 Employer to record risk assessments

- (1) An employer must record the results of a risk assessment relating to the use of a hazardous substance by:
 - (a) making a notation in the register of hazardous substances kept under clause 167 if no specific measures are necessary to control the risks associated with exposure to the hazardous substance, or
 - (b) preparing a report on the risk assessment if specific measures are necessary to

control the risks associated with exposure to the hazardous substance.

Maximum penalty: Level 3.

- (2) The employer must ensure that any risk assessment report prepared in relation to a hazardous substance that is used at the employer's place of work is readily accessible to any employee or other person working at the employer's place of work who could be exposed to the hazardous substance.

Maximum penalty (subclause (2)): Level 1.

169 Employer to keep record of employees exposed to carcinogenic substances

An employer must keep a record in respect of each employee who has been or is likely to be exposed to a prohibited or notifiable carcinogenic substance (as defined in clause 158), including the following details:

- (a) the full name and date of birth of the employee,
- (b) the address of the employee while employed by the employer.

An employer is not required to keep such a record within the period of 12 months after commencement of this clause.

Maximum penalty: Level 3.

170 Employer to provide statement to employees exposed to carcinogenic substances

- (1) An employer must provide an employee who has been or is likely to have been exposed to a prohibited or notifiable carcinogenic substance (as defined in clause 158), on the termination of the employee's employment, with a written statement that includes the following:

- (a) the name of the carcinogenic substance or substances involved,
- (b) the period of exposure or potential exposure,
- (c) details of how and where records of the exposure or potential exposure can be obtained,
- (d) a recommendation as to the advisability of having periodic health assessments and details of the types of health tests that are relevant in the circumstances.

Maximum penalty: Level 3.

- (2) Subclause (1) does not apply to an exposure or likely exposure that occurred before, or within 12 months after, the commencement of this clause.

171 Employer to retain certain material as record

- (1) An employer must retain the following, as a record, in a suitable form for the periods specified:
 - (a) all risk assessment reports indicating a need for atmospheric monitoring or health surveillance, and records of the results of any atmospheric monitoring or health surveillance—for at least 30 years after the date of the last entry in them,
 - (b) a record of all induction or other training required by clause 13 to be provided to employees who are likely to be exposed to a hazardous substance at the employer's place of work—for at least 5 years after the date of creation of the record,
 - (c) all records required to be kept under clause 169—for at least 30 years after the date of the last entry in them,
 - (d) a copy of each notification to WorkCover by an employer of an intention to carry out work that involves the use of a carcinogenic substance or lead risk work, as required by Part 12.3—for at least 30 years after the date on which the notification is given,
 - (e) all risk assessment reports indicating that atmospheric monitoring or health surveillance is not required—for at least 5 years after the date of the last entry in them,
 - (f) all records required to be kept under clause 203 (4) (as to an employee ceasing to carry out lead risk work)—for at least 5 years after the date of the last entry in them.
- (2) If the employer ceases to carry on business in New South Wales, the employer must offer the records referred to in subclause (1) (a) to WorkCover.

Maximum penalty: Level 1.

172 Medical practitioner to retain records

- (1) A medical practitioner must ensure that medical records obtained as a result of health surveillance for an employee are retained as confidential records and, if the medical practitioner has examined or treated the employee for any other purpose, that the records are clearly identified as being for the purpose of health surveillance under this Regulation.
- (2) The medical practitioner must ensure that the informed consent of the employee is obtained, in writing, before any medical records that have been obtained as a result of health surveillance, and that identify the employee, are provided to any person who is not bound to observe principles of professional confidentiality.

- (3) If the medical practitioner ceases to practise in New South Wales, the medical practitioner must offer the records to WorkCover.

Maximum penalty: Level 1.

173 Employer to identify hazardous substances in enclosed systems

An employer must ensure that the identity of any hazardous substance contained in an enclosed system at the employer's place of work (such as a pipe or piping system, or a process or reactor vessel) is notified to a person who could be exposed to the substance.

Maximum penalty: Level 1.

174 Employer to provide information to WorkCover and emergency services

- (1) An employer must ensure that all records on hazardous substances that are required to be kept by this Regulation are kept at the employer's place of work and are made available on request to WorkCover and any emergency service.

Maximum penalty: Level 1.

- (2) In this clause:

emergency service includes any of the following:

- (a) the Ambulance Service of New South Wales,
- (b) New South Wales Fire Brigades,
- (c) the NSW Rural Fire Service,
- (d) the Police Service,
- (e) the Roads and Traffic Authority,
- (f) the State Emergency Service,
- (g) the Environment Protection Authority,
- (h) the New South Wales Volunteer Rescue Association Incorporated.

Chapter 7 Hazardous processes

Note—

This Chapter imposes obligations on an employer. **Employer**, for the purposes of this Chapter, includes self-employed persons (see clause 3).

Chapter 2 (Places of work—risk management and other matters) contains further obligations in relation to the provision of personal protective equipment, emergency arrangements and first aid facilities by employers.

Part 5.4 (Working with plant) contains provisions in relation to the maintenance and repair of plant.

Part 6.4 (Use of hazardous substances) contains further obligations in relation to the use of hazardous substances at places of work.

Part 7.1 Spray painting

175 Definitions

In this Part:

electrostatic spray painting means spray painting using an electrically-charged spray painting substance.

spray booth means a structure that is designed to:

- (a) enclose or otherwise accommodate articles being spray painted, and
- (b) control hazards of dust, mist, aerosols, fumes or flammable vapours generated by spray painting by use of appropriate exhaust ventilation, and
- (c) provide for the prevention of ignition sources,

being a structure that is used only for the purpose of spray painting.

spray painting means the process of spraying a spray painting substance that has been converted into a mist or aerosol onto a surface, whether for decoration, preservation, insulation or otherwise.

spray painting substance means a substance used in spray painting and includes, but is not limited to, paints, powders, lacquers, paint removers, rust converters and removers, surface preparation and removers, surface preparation products, resins, solvents and thinners.

176 Application

This Part applies in addition to the other provisions of this Regulation.

Note—

In particular, see clause 164 (Use of hazardous substances) which prohibits the use of certain hazardous substances in spray painting and clause 165 (Employer to provide health surveillance) which requires employers to provide health surveillance if there is a risk to health through exposure to hazardous substances.

177 Spray painting in spray booths—particular risk control measures

An employer must ensure that:

- (a) spray painting is carried out in a spray booth, and
- (b) no persons (other than persons required to be in the spray booth as part of the spraying process) are in a spray booth during spray painting, and
- (c) any persons in a spray booth during spray painting are wearing appropriate personal

protective equipment.

Maximum penalty: Level 3.

Note—

See clause 51 (Atmospheric contaminants—particular risk control measures) for prohibition of exposure to atmospheric contaminants above specified exposure levels.

178 Spray painting outside spray booths—particular risk control measures

(1) This clause applies to spray painting other than spray painting carried out in a spray booth.

Note—

Despite clause 177 (a), an employer may carry out spray painting other than in a spray booth if the employer proves that compliance with that clause is not reasonably practicable (see section 28 of the Act which provides a defence to proceedings in those circumstances).

- (2) An employer must ensure that spray painting to which this clause applies:
- (a) is carried out in the open air at least 6 metres from every building and from every other thing that might obstruct ventilation, and
 - (b) is effectively isolated from every other process in which persons are employed and that is within 6 metres (measured in any direction) from the place at which the spray painting substance is being applied, and
 - (c) is effectively isolated from all plant, machinery and equipment that is, or may become, a source of ignition and that is within 2 metres, measured vertically above, and 6 metres, measured in other directions, from the place at which the spray painting substance is being applied.
- (3) If it is not reasonably practicable (within the meaning of section 28 of the Act) for an employer to ensure that the spray painting is carried out in the open air as required by subclause (2) (a), the employer must ensure that:
- (a) the place where the spray painting is carried out is adequately ventilated (by natural or mechanical ventilation), and
 - (b) the spray painting is effectively isolated in accordance with subclause (2) (b) and (c).
- (4) For the purposes of this clause, spray painting is not effectively isolated:
- (a) from another process if a substance from the spray painting can be inhaled by a person engaged in the other process, or
 - (b) from plant, machinery or equipment if there is a risk that a substance from the spray painting will be ignited by a source of ignition from or associated with the

plant, machinery or equipment.

- (5) An employer must ensure that persons carrying out spray painting to which this clause applies are wearing appropriate personal protective equipment.

Maximum penalty: Level 3.

179 Electrostatic spray painting—particular risk control measures

- (1) An employer must ensure that equipment used to carry out electrostatic spray painting is provided with automatic controls that will, if any conveyor carrying articles through the high voltage electric field stops:
- (a) disconnect the power supply to any high voltage transformer used in the process, and
 - (b) give a warning of the stoppage.
- (2) An employer must ensure that, if electrostatic spray painting is carried out using a hand-held device, the following items are effectively earthed:
- (a) the handle of the device,
 - (b) the articles being painted,
 - (c) if the painting is carried out in a spray booth:
 - (i) all metal work of the booth, and
 - (ii) all metal articles inside the booth or within 2 metres of the booth.
- (3) An employer must ensure that a clearly legible warning notice bearing the words “DANGER—HIGH VOLTAGE” is exhibited in a clearly visible position on equipment used to carry out electrostatic spray painting.
- (4) An employer must ensure that equipment used to carry out electrostatic spray painting cannot be used unless the exhaust system is in operation.

Maximum penalty: Level 3.

Part 7.2 Abrasive blasting

180 Definitions

In this Part:

abrasive blasting means the process of cleaning, smoothing, roughening, cutting, preparing or removing the surface, or part of the surface, of any article or building by means of blasting, blowing, throwing or otherwise propelling an abrasive substance against the article or building, including the propelling of an abrasive substance by means

of blasting steam or water at a high pressure.

abrasive blasting enclosure means a structure that is designed to:

- (a) enclose or otherwise accommodate articles being abrasive blasted, and
- (b) isolate or minimise hazards of dusts or debris generated by abrasive blasting, and
- (c) provide for the prevention of ignition sources, and
- (d) safely filter and discharge any exhaust ventilation to a suitable point outside the workplace,

being a structure that is used only for the purpose of abrasive blasting.

abrasive substance means any substance used as an abrasive for the purpose of abrasive blasting.

181 Application

This Part applies in addition to the other provisions of this Regulation.

182 Abrasive blasting—particular risk control measures

- (1) An employer must ensure that:
 - (a) abrasive blasting is carried out in an abrasive blasting enclosure if reasonably practicable, and
 - (b) no persons (other than persons required to be in the abrasive blasting enclosure as part of the blasting process) are in an abrasive blasting enclosure during abrasive blasting, and
 - (c) any persons in an abrasive blasting enclosure during abrasive blasting are wearing appropriate personal protective equipment.
- (2) If it is not reasonably practicable to carry out abrasive blasting in an abrasive blasting enclosure, an employer must ensure that:
 - (a) any area exposed to dust is minimised, and
 - (b) adequate signs to warn of the hazards of the blasting are provided, and
 - (c) persons not carrying out the blasting are not permitted to enter an area in which there is a risk of exposure to atmospheric contaminants, and
 - (d) persons carrying out the blasting are wearing appropriate personal protective equipment.

Maximum penalty: Level 3.

183 Supply of respirators and personal protective equipment

- (1) An employer must ensure that persons who are carrying out abrasive blasting and who may be exposed to atmospheric contaminants arising from the blasting are provided with an air supplied respirator if the persons may be exposed to atmospheric contaminants exceeding the appropriate exposure standard referred to in clause 51 (Atmospheric contaminants—particular risk control measures).
- (2) An employer must ensure that other persons (including those carrying out maintenance or repair work on abrasive blasting equipment) who may be exposed to atmospheric contaminants arising from abrasive blasting are provided with appropriate personal protective equipment if the persons may be exposed to atmospheric contaminants exceeding the appropriate exposure standard referred to in clause 51.

Maximum penalty: Level 3.

Note—

Also see clause 15 (Provision by an employer of personal protective equipment).

184 Control of substances used in abrasive blasting

An employer must ensure that substances that may result in the exposure of persons to atmospheric contaminants exceeding the appropriate exposure standard referred to in clause 51 are not used for the purpose of abrasive blasting.

Maximum penalty: Level 3.

Part 7.3 Welding

185 Definition

In this Part:

welding includes any metal welding or similar process, such as fusion welding (including arc welding, gas welding and laser beam welding), spot welding, braze welding and thermal cutting (including oxygen and plasma cutting).

186 Application

This Part applies in addition to the other provisions of this Regulation.

187 Exposure to atmospheric contaminants and other hazards—particular risk control measures

- (1) An employer must ensure that exposure of persons to atmospheric contaminants arising from welding, including fumes, gases and vapours emitted from materials consumed during welding and from materials being welded, is controlled by use of one

or more of the following measures (in descending order of priority):

- (a) substituting a less hazardous process, material or procedure,
- (b) using appropriate ventilation.

- (2) An employer must ensure that persons directly involved in welding are wearing appropriate personal protective equipment.
- (3) An employer must ensure that adequate signs to warn of the hazards are provided at or near any area in which there is a risk of exposure of persons to hazards arising from welding.

Maximum penalty: Level 3.

188 Supply of respirators

An employer must ensure that any person who may be exposed to atmospheric contaminants arising from welding, including fumes, vapours or gases emitted from materials consumed during welding and from materials being welded, is provided with suitable respiratory protection if the person may be exposed to atmospheric contaminants exceeding the appropriate exposure standard referred to in clause 51 (Atmospheric contaminants—particular risk control measures).

Maximum penalty: Level 3.

Note—

Also see clause 15 (Provision by an employer of personal protective equipment).

189 Ultraviolet radiation—particular risk control measures

An employer must ensure that risks associated with exposure of persons to harmful levels of ultraviolet radiation at or near the site of welding are controlled by use of the following measures (in descending order of priority):

- (a) using appropriate screens to provide protection from ultraviolet radiation,
- (b) ensuring that persons required to be in an area in which there is a risk of exposure to ultraviolet radiation are wearing appropriate protective equipment,
- (c) ensuring that persons who are not carrying out welding are not permitted to enter an area in which there is a risk of exposure to ultraviolet radiation and that adequate signs to warn of the hazards are provided.

Maximum penalty: Level 3.

Part 7.4 Electroplating

190 Definition

In this Part:

electroplating means the process of applying a deposit of metal onto an article, or any part of an article, by electrolytic means, including the ancillary process of polishing, brightening or cleaning the article by electrolytic or chemical means.

191 Application

This Part applies in addition to the other provisions of this Regulation.

192 Exposure to atmospheric contaminants and other hazards—particular risk control measures

- (1) An employer must ensure that exposure of persons to atmospheric contaminants arising from electroplating is controlled by use of one or more of the following measures (in descending order of priority):
 - (a) substituting a less hazardous process, material or procedure,
 - (b) using appropriate ventilation or fume suppressants, or both.
- (2) An employer must ensure that, if the persons exposed to atmospheric contaminants arising from electroplating are persons involved in the cleaning or maintenance of equipment used in electroplating, the exposure is controlled by using appropriate ventilation and the provision of appropriate personal protective equipment.
- (3) An employer must ensure that adequate provision is made to minimise the consequences of dangerous spills or splashes arising from electroplating by the supply, appropriate to the level of risk, of spill kits, safety showers, eye wash and personal protective equipment for splash protection.
- (4) An employer must ensure that adequate signs to warn of the hazards are provided at or near any area in which there is a risk of exposure of persons to hazards arising from electroplating.
- (5) An employer must ensure that persons who are not carrying out electroplating are not permitted to enter an area in which there is a risk of exposure to hazards arising from electroplating.

Maximum penalty: Level 3.

193 Labelling of containers

An employer must ensure that every container of a substance (whether hazardous or not) used in electroplating is clearly labelled with the name of the substance at all times.

Maximum penalty: Level 3.

Note—

This clause is in addition to clauses 156 (Supplier to ensure hazardous substances are labelled) and 163 (Employer to ensure containers are labelled) (to the extent that those clauses apply to the containers referred to in the clause).

194 Cyanide—particular risk control measures

An employer must ensure that any electroplating process involving cyanide complies with the following:

- (a) containers of corrosives involved in the process must be separated from any container of cyanide by at least one water rinse tank,
- (b) cyanide not being used in the process must be kept in containers that are stored in a manner that prevents them from coming into contact with a liquid,
- (c) containers of corrosives not directly involved in the process must not be kept in a storage area in which cyanide is kept,
- (d) a person is available to provide first aid in the case of cyanide poisoning and an emergency kit suitable for treating cyanide poisoning, together with an appropriate respirator, is provided in a suitable location for use by that person,
- (e) a notice with respect to the treatment of persons for cyanide poisoning is exhibited in a suitable location where cyanide is used or stored.

Maximum penalty: Level 3.

Part 7.5 Molten metal

195 Definitions

In this Part:

molten metal work means any work process in which metals are melted, poured and moulded.

196 Application

This Part applies in addition to the other provisions of this Regulation.

197 Atmospheric contaminants and other hazards—particular risk control measures

- (1) An employer must ensure that exposure of persons to atmospheric contaminants from molten metal work, including toxic or noxious fumes, dust or gases emitted during the melting, pouring and moulding processes, is controlled by use of the following measures (in descending order of priority):

- (a) isolation of the work,
 - (b) installation of extractive ventilation or measures of equivalent effectiveness.
- (2) An employer must ensure that persons directly involved in molten metal work are wearing appropriate personal protective equipment (including, where appropriate, respiratory equipment and equipment for protection against impact, radiation or heat).
- (3) An employer must ensure that adequate signs to warn of the hazards are provided at or near any area in which there is a risk of exposure of persons to hazards arising from molten metal work.
- (4) An employer must ensure that persons who are not carrying out molten metal work are not permitted to enter any area in which there is a risk of exposure to hazards arising from molten metal work.

Maximum penalty: Level 3.

198 Exposure to radiation—particular risk control measures

An employer must ensure that exposure of persons to heat and infra-red and ultra-violet radiation generated by molten metal work is controlled by use of the following measures (in descending order of priority):

- (a) isolation of the heat or radiation generating process from the work space,
- (b) shielding the persons concerned from the heat or radiation.

Maximum penalty: Level 3.

Part 7.6 Lead processes and lead risk work

199 Definitions

In this Part:

blood lead level means the concentration in whole blood expressed in micromoles per litre ($\mu\text{mol/L}$) or micrograms per decilitre ($\mu\text{g/dL}$).

lead means lead metal, inorganic lead compounds and lead salts of organic acids.

lead process means any one of the following processes:

- (a) any work that exposes a person to lead dust in air or lead fumes arising from the manufacture or handling of a dry lead compound, except galena (lead sulphide) when its character or composition remains unchanged,
- (b) any work connected with the manufacture, assembly, handling or repair of, or parts of, electric accumulators (batteries) that involves the manipulation of dry lead

compounds, pasting or casting lead,

- (c) breaking up or dismantling of lead accumulators and the sorting, packing and handling of plates or other parts containing lead removed or recovered from those accumulators,
- (d) spraying with molten lead, alloys or lead paint containing more than 5 per cent by weight of lead,
- (e) melting or casting of lead alloys containing more than 5 per cent by weight of lead in which the temperature of the molten material is more than 450 degrees Celsius,
- (f) recovery of lead from its ores, oxides or other compounds by a thermal reduction process,
- (g) dry machine grinding, discing, buffing or cutting by power tools of lead or alloy containing more than 5 per cent by weight of lead,
- (h) machine sanding or buffing of surfaces coated with paint containing more than one per cent by dry weight of lead,
- (i) any process by which electric arc, oxy-acetylene, oxy gas, plasma arc or a flame is applied, for the purposes of welding, cutting or cleaning, to the surface of any metal that is coated with lead or paint containing more than one per cent by dry weight of lead,
- (j) radiator repairs if exposure to lead dust or fumes may occur,
- (k) fire assay if lead is used,
- (l) melting of lead or alloy containing more than 50 per cent lead by weight if the exposed surface area of the molten material is more than 0.1 square metres and the temperature of the molten material exceeds 450 degrees Celsius.

lead risk work means a lead process or a work activity or sequence of activities at a specific area within a place of work in which the blood lead level of an employee might reasonably be expected to rise or does rise above 1.45 $\mu\text{mol/L}$ (30 $\mu\text{g/dL}$).

200 Application

This Part applies in addition to the other provisions of this Regulation.

Note—

In particular, note that the provisions of Part 6.4 apply to the use of all hazardous substances (including lead) at work and, among other things, require employers to provide health surveillance for employees if there is a risk to health resulting from exposure to a hazardous substance. Those provisions apply whether or not the use constitutes a lead process or lead risk work for the purposes of this Part. Also note that clause 345 requires persons to give WorkCover notice of any proposed lead risk work.

201 Employer to control risks from lead

- (1) An employer at a place of work at which a lead process is carried out must ensure that contamination by lead is confined to the area in which the lead process is carried out (a **lead process area**) and that lead contamination of the surrounding environment does not occur.

Maximum penalty: Level 4.

- (2) An employer must ensure that:

- (a) a lead process area is kept as clean as is practicable, and
- (b) compressed air, compressed gas or dry sweeping cleaning methods are not used in a lead process area, and
- (c) no employee eats, drinks, chews gum, smokes or carries smoking materials in a lead process area, and
- (d) any eating or drinking facilities provided at the workplace cannot be contaminated with lead, and
- (e) employees working in a lead process area wear appropriate personal protective equipment, and
- (f) changing rooms and washing, showering and toilet facilities appropriate to the lead process carried out are provided and maintained in good working order, and
- (g) employees remove clothing and equipment contaminated with lead, and wash their hands and faces, before entering an area provided at the workplace for eating and drinking.

Maximum penalty: Level 3.

- (3) An employer must arrange for the laundering of protective work clothing that may have been contaminated by lead.

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

202 Biological monitoring and health surveillance

- (1) In the case of lead risk work, any biological monitoring required to be performed under Part 6.4 must consist of the measurement of lead in whole blood or packed red cells, sampled as capillary or venous blood (as appropriate) and related measurements, as required.
- (2) In the case of lead risk work, health surveillance (additional to that required to be performed under Part 6.4) must be performed:
 - (a) in relation to an employee who is carrying out lead risk work at the

commencement of this clause—as soon as practicable after that commencement,
or

- (b) in relation to an employee who commences lead risk work after the commencement of this clause:
 - (i) before the employee commences the work (except biological monitoring), and
 - (ii) within one month of the commencement of the work, and
 - (iii) as soon as practicable after 2 months of the commencement of the work, and
 - (iv) as soon as practicable after 6 months of the commencement of the work.

(3) In the case of lead risk work, the biological monitoring required to be performed under Part 6.4 and subclause (1) must be performed at the following intervals:

- (a) for females of reproductive capacity:
 - (i) within 3 months of the last biological monitoring if the result of that last monitoring shows a blood lead level of less than 0.48 $\mu\text{mol/L}$ (10 $\mu\text{g/dL}$), or
 - (ii) within 6 weeks of the last biological monitoring if the result of the last monitoring shows a blood lead level result of 0.48 $\mu\text{mol/L}$ (10 $\mu\text{g/dL}$) or more,
- (b) for females not of reproductive capacity and males:
 - (i) within 6 months of the last biological monitoring if the result of the last monitoring shows a blood lead level result of less than 1.45 $\mu\text{mol/L}$ (30 $\mu\text{g/dL}$),
or
 - (ii) within 3 months of the last biological monitoring if the result of the last monitoring shows a blood lead level of 1.45 $\mu\text{mol/L}$ (30 $\mu\text{g/dL}$) or more but less than 1.93 $\mu\text{mol/L}$ (40 $\mu\text{g/dL}$), or
 - (iii) within 6 weeks of the last biological monitoring if the result of the last monitoring shows a blood lead level of 1.93 $\mu\text{mol/L}$ (40 $\mu\text{g/dL}$) or more.

Maximum penalty: Level 4.

203 Employer to remove certain employees from lead risk work

- (1) An employer must ensure that an employee ceases to carry out lead risk work if the employer or employee considers that the employee has received an excessive exposure to lead in the workplace and the results of biological monitoring on the employee show the confirmed blood lead level of the employee as:
 - (a) 0.72 $\mu\text{mol/L}$ (15 $\mu\text{g/dL}$) or more for females who are pregnant or breast feeding, or
 - (b) 0.97 $\mu\text{mol/L}$ (20 $\mu\text{g/dL}$) or more for other females of reproductive capacity, or

- (c) 2.41 $\mu\text{mol/L}$ (50 $\mu\text{g/dL}$) or more for females not of reproductive capacity and males.
- (2) An employer must ensure that an employee referred to in subclause (1) receives a medical examination by an authorised medical practitioner within 7 days of the employer determining that the employee should cease carrying out lead risk work.
- (3) An employer must ensure that an employee referred to in subclause (1) does not carry out lead risk work until:
 - (a) the employee's confirmed blood lead level is less than:
 - (i) 0.48 $\mu\text{mol/L}$ (10 $\mu\text{g/dL}$) for females of reproductive capacity, or
 - (ii) 1.93 $\mu\text{mol/L}$ (40 $\mu\text{g/dL}$) for females not of reproductive capacity and males, and
 - (b) the employee is certified as fit to return to lead risk work by an authorised medical practitioner.
- (4) An employer must keep a record that includes the following particulars:
 - (a) the date on which an employee ceased to carry out lead risk work in accordance with this clause and the date on which the employee recommenced such work,
 - (b) the name, sex and date of birth of the employee.

Note—

The record must be retained for at least 5 years. See clause 171.

- (5) In this clause:

confirmed blood lead level means the concentration of lead in venous whole blood.

Maximum penalty: Level 4.

204 Pregnant or breastfeeding employee to advise employer

An employee employed to carry out lead risk work who:

- (a) knows she is pregnant, or
- (b) is breast feeding,

must advise her employer of that fact as soon as practicable.

Maximum penalty: Level 2.

Note—

See also clause 28 for obligation of employee to notify employer of any matter that may affect employer's

obligations under this Regulation.

Part 7.7 Electrical work

Note—

See also Division 3 of Part 4.2 (Electricity—duties of controllers of premises) and Division 8 of Part 4.3 (Electricity—duties of employers).

205 Definition

In this Part:

electrical installation has the same meaning as in Chapter 4.

206 Application

This Part applies in addition to the other provisions of this Regulation.

207 Electrical work on electrical installations—safety measures

- (1) An employer must ensure that any electrical work on an electrical installation at a place of work is carried out using a safe system of work.
- (2) An employer must ensure that such work is not carried out while the installation's circuits and apparatus are energised.
- (3) The safe system of work must include checks to ensure the installation's circuits and apparatus are not energised before work commences and remain that way until the work is completed.
- (4) Despite subclause (2), electrical work on an electrical installation may be carried out while the installation's circuits and apparatus are energised if there is an emergency situation and the risk of harm would be greater if the circuits and apparatus were de-energised before work commenced. In this circumstance the employer must ensure that:
 - (a) a written risk assessment has been completed in respect of the work, and
 - (b) the work has been authorised by the person in control of the premises, and
 - (c) the persons doing the work are appropriately qualified and trained in safe work practices for the particular task, and
 - (d) appropriate test equipment and tools and accessories are provided and well maintained, and
 - (e) appropriate clothing and personal protective equipment for the work are worn, and
 - (f) the isolation point of the relevant electrical supply has been clearly identified and

is accessible, and

- (g) the work area is clear of obstruction so as to enable entry and exit quickly and safely, and
- (h) unauthorised persons are prevented from entering the work area by signage or barriers, or both, and
- (i) a safety observer competent in electrical rescue and cardiopulmonary resuscitation is present.

(5) This clause does not apply to electrical work carried out under a safety plan required by the *Electricity Supply (Safety Plans) Regulation 1997* or to electrical testing referred to in clause 208.

Maximum penalty: Level 4.

208 Electrical tests to be conducted in a safe manner

An employer must ensure that persons conducting tests for electrical system integrity and operability at a place of work conduct the tests in a safe manner using a safe system of work, appropriate personal protective equipment and appropriate test equipment.

Maximum penalty: Level 4.

Chapter 8 Construction work

Note—

This Part imposes obligations on an employer. **Employer**, for the purposes of this Chapter, includes self-employed persons (see clause 3).

Part 8.1 Preliminary

209 Definitions

In this Chapter:

construction site means the site of construction work (either in progress or suspended).

falling objects means objects (including materials, debris, tools and equipment) that fall or rebound during construction work.

formwork means the surface, supports and framing used to define the shape of concrete until it becomes self-supporting.

high risk construction work means any of the following:

- (a) construction work involving structural alterations that require temporary support,
- (b) construction work at a height above 3 metres,

- (c) construction work involving excavation to a depth greater than 1.5 metres,
- (d) demolition work for which a licence is not required under Chapter 10 to carry on the business of that work,
- (e) construction work in tunnels,
- (f) construction work involving the use of explosives,
- (g) construction work near traffic or mobile plant,
- (h) construction work in or around gas or electrical installations,
- (i) construction work over or adjacent to water where there is a risk of drowning.

overhead protective structure means an overhead structure designed to protect:

- (a) persons at a construction site, or
- (b) public places or other property (or persons on public places or other property) adjoining a construction site.

principal contractor, in relation to construction work (or a construction project involving construction work), means a person who is, under clause 210, for the time being appointed or taken to be the principal contractor for the construction work.

qualified engineer for a task means a person qualified for member grade of the Australian Institution of Engineers, having not less than 4 years post-qualification professional engineering experience in that task.

structural frames includes steelwork, post-tensioning and pre-cast concrete, timber or masonry frames of any part of a building or structure.

210 Appointment of principal contractor

- (1) This clause applies to any place of work at which:
 - (a) construction work is undertaken and the cost of the work exceeds \$250,000, or
 - (b) high risk construction work is undertaken and the cost of the work does not exceed \$250,000, or
 - (c) demolition work or asbestos removal work for which a licence is required under Chapter 10 to carry on the business of that work is undertaken (regardless of the cost of the work),

(but does not apply to a place of work if the contract to undertake the work referred to was entered into before the commencement of this clause).

- (2) An owner of a place of work to which this clause applies must:

- (a) appoint a principal contractor for the construction work carried out by or on behalf of the owner, and
 - (b) authorise the principal contractor who is appointed to exercise such authority of the owner as is necessary to enable the principal contractor to discharge the responsibilities imposed on a principal contractor by this Part.
- (3) A person cannot be appointed as a principal contractor unless the person is responsible for the construction work at all times until the work is completed.
- (4) If a principal contractor is not appointed in relation to demolition work or asbestos removal work referred to in subclause (1) (c), the employer carrying out that work is taken to be the principal contractor for the work.
- (5) Nothing in this clause prevents an owner from appointing itself as the principal contractor for the construction work.
- (6) Subject to subclause (4), if an owner does not appoint a principal contractor for the construction work, the owner is taken to be the principal contractor for the construction work.
- (7) An owner must ensure that signs, that are clearly visible from outside the site and on which the name and contact telephone numbers (including an after hours emergency telephone number) of the principal contractor are stated, are placed on each construction site.
- (8) In this clause:
- owner** has the same meaning as in the [Local Government Act 1993](#).

Maximum penalty: Level 4.

211 Cost of construction work

For the purposes of this Chapter, the cost of any construction work is:

- (a) the cost of the work as assessed for the purposes of the payment of any fee for approval to carry out the work under the [Environmental Planning and Assessment Act 1979](#), or
- (b) if there is no such cost assessed, the contract price for carrying out the work, or
- (c) if there is no such contract price, the value of the work carried out.

Part 8.2 OHS induction training—construction work

Note—

This Part imposes obligations on principal contractors and employers to ensure that occupational health and safety induction training has been undertaken by construction workers and requires self-employed construction workers to undertake such

training. The provisions apply with respect to all construction work.

212 Definitions

In this Part:

Code of Practice means the document prepared by WorkCover entitled “Code of Practice—Occupational Health and Safety Induction Training for Construction Work 1998” as in force on the commencement of this Regulation.

construction project means a project involving construction work.

OHS induction training has the meaning given by clause 216.

registered education or training provider means an education or training provider registered under the [Vocational Education and Training Accreditation Act 1990](#).

statement of OHS induction training means a statement issued under clause 220.

213 Principal contractors to ensure OHS induction training is undertaken

- (1) A principal contractor for a construction project must not direct or allow another person to carry out construction work on the construction project unless the principal contractor is satisfied that the person has undergone OHS induction training.
- (2) A principal contractor for a construction project must:
 - (a) identify any change in the construction site, and in the activities performed by each person carrying out construction work at the construction site, that might affect the health or safety of any person on the construction site, and
 - (b) if any such change is identified, ensure that each person carrying out construction work at the construction site undergoes such OHS induction training referred to in clause 216 (1) (b) or (c) as is necessary to enable the person to carry out that work safely despite the change.

Maximum penalty: Level 3.

214 Employers to ensure OHS induction training is undertaken

- (1) An employer must ensure that any employee whom the employer employs to carry out construction work is provided with the OHS induction training required to be undertaken by the employee in accordance with this Part.
- (2) An employer must not direct or allow an employee to carry out construction work unless the employer is satisfied that the employee has undergone OHS induction training.
- (3) An employer who employs any employee to carry out construction work must:

- (a) identify any change in the construction site, and in the activities performed by each employee carrying out construction work at the construction site, that might affect the health or safety of any person on the construction site, and
- (b) if any such change is identified, ensure that each employee carrying out construction work at the construction site undergoes such OHS induction training referred to in clause 216 (1) (b) or (c) as is necessary to enable the employee to carry out that work safely despite the change.

Maximum penalty: Level 3.

Note—

Section 22 of the Act provides that an employer must not impose a charge on an employee in respect of anything done or provided in pursuance of any specific requirement made by or under the Act.

215 Self-employed persons to undergo OHS induction training

- (1) A self-employed person must not carry out construction work unless the person has undergone OHS induction training.
- (2) A self-employed person carrying out construction work must:
 - (a) identify any change in the construction site, and in the activities performed by the person at the construction site, that might affect the health or safety of any person on the construction site, and
 - (b) if any such change is identified, undergo such OHS induction training referred to in clause 216 (1) (b) or (c) as is necessary to enable the person to carry out that work safely despite the change.

Maximum penalty: Level 3.

216 Meaning of “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 health and safety induction training that complies with clause 217,
 - (b) work activity based health and safety induction training that complies with clause 218 and relates to the particular type of construction work to be carried out,
 - (c) site specific health and safety induction training that complies with clause 219 and relates to the particular site at which the construction work is to be carried out.
- (2) An approval by WorkCover of OHS induction training for the purposes of Part 15 of the *Construction Safety Regulations 1950* (being an approval in force immediately before the commencement of this clause) is taken to be an approval by WorkCover of the

training for the purposes of this Regulation.

217 General health and safety induction training

General health and safety induction training must:

- (a) cover the relevant health and safety topics set out in the Code of Practice, and
- (b) be approved by WorkCover, and
- (c) be developed by a person 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), and
- (d) be conducted by a person who has a Statement of Attainment in Train Small Groups issued by a registered education or training provider (or a document from such a provider stating that the person has an equivalent qualification).

218 Work activity based health and safety induction training

Work activity based health and safety induction training must:

- (a) cover the relevant health and safety topics set out in the Code of Practice, and
- (b) if the training is provided by way of a training course:
 - (i) be developed by a person 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), and
 - (ii) be conducted by a person who has a Statement of Attainment in Train Small Groups issued by a registered education or training provider (or a document from such a provider stating that the person has an equivalent qualification),

unless the training course is conducted by the employer of the person undertaking the training and that employer employs not more than 10 employees.

219 Site specific health and safety induction training

Site specific health and safety induction training must cover the relevant health and safety topics set out in the Code of Practice.

220 Statements of OHS induction training

- (1) A person who conducts training referred to in clause 216 (1) (a) or (b) must issue to each person who has undergone the training to the satisfaction of the person conducting the training a written statement that:
 - (a) states that the person to whom the statement is issued completed the training to the satisfaction of the person conducting it, and

- (b) identifies the types of activities covered by the training, and
 - (c) specifies the date or dates on which the training was provided, and
 - (d) specifies the name and qualifications of the person who conducted the training, and
 - (e) is signed by the person who conducted the training.
- (2) A person who conducts training referred to in clause 216 (1) (a) or (b) must keep a record of each statement of OHS induction training issued until 3 years after the issue of the statement.

Maximum penalty: Level 2.

221 Certain construction work before 1 April 1999 taken to be training

For the purposes of this Part, an employee or self-employed person who has carried out construction work in the course of employment for any period within the period of 2 years immediately preceding 1 April 1999 is taken to have undergone:

- (a) the course referred to in clause 216 (1) (a), and
- (b) the course referred to in clause 216 (1) (b), but only in relation to the particular type of construction work that the employee or self-employed person carried out within that 2-year period.

222 Lapsing of currency of OHS training and OHS training statements

- (1) A person's OHS induction training ceases to be current for the purposes of this Part if the person has not carried out construction work for any consecutive period of 2 years or more since:
- (a) in the case of a person who has actually undergone training—the completion of the training, or
 - (b) in the case of a person who is taken to have undergone such training under clause 221 by reason of having carried out construction work in the course of employment for a period within the period of 2 years immediately preceding 1 April 1999—the last date of the period during which the person carried out the work.
- (2) A statement of OHS induction training ceases to be valid for the purposes of this Part if the person to whom it is issued has not carried out construction work for any consecutive period of 2 years or more since the issue of the statement.

223 Principal contractors and employers to keep records

- (1) A principal contractor for a construction project must keep a record containing the

following, in relation to each person carrying out construction work on the project, until 3 years after the project is completed:

- (a) a copy of any relevant statement of OHS induction training or a statement indicating that the principal contractor is satisfied that the relevant OHS induction training has been undertaken,
- (b) a brief description of the site specific training that has been undertaken by the person in accordance with this Part for the site at which the construction work is carried out.

(2) An employer must keep a record containing the following, in relation to each employee employed to carry out construction work, until 3 years after the employee has ceased to be employed by the employer:

- (a) a copy of any relevant statement of OHS induction training or a statement indicating that the employer is satisfied that the relevant OHS induction training has been undertaken,
- (b) a brief description of the site specific training that has been undertaken by the employee in accordance with this Part for the site at which the construction work is carried out.

Maximum penalty: Level 1.

Part 8.3 Special workplace arrangements for construction work

Note—

This Part makes special arrangements for workplaces that are construction sites where the cost of the work exceeds \$250,000 or the work is demolition work, asbestos removal work or high risk construction work. The obligation bearers under this Part are principal contractors and sub-contractors. However, to the extent that those contractors are also employers or self-employed persons, the obligations under this Part apply to them also.

224 Definition

In this Part:

safe work method statement means a statement that:

- (a) describes how work is to be carried out, and
- (b) identifies the work activities assessed as having safety risks, and
- (c) identifies the safety risks, and
- (d) describes the control measures that will be applied to the work activities,

and includes a description of the equipment used in the work, the standards or codes to be complied with, the qualifications of the personnel doing the work and the training required to do the work.

Note—

See Chapter 2 for provisions relating to the identification, assessment and control of risks.

225 Responsibilities of contractors to be in addition to responsibilities as employers

The responsibilities imposed on a principal contractor or a sub-contractor by this Part are in addition to any other responsibilities that the principal contractor or sub-contractor may have as an employer or self-employed person or other person having responsibilities under this Regulation.

226 Responsibility of principal contractor to prepare an OHS management plan

- (1) This clause applies to any place of work at which construction work is undertaken and the cost of the work exceeds \$250,000.
- (2) The principal contractor for the construction work must ensure that:
 - (a) a site specific occupational health and safety management plan is prepared for each place of work at which the construction work is to be carried out before the work commences, and
 - (b) the plan is maintained and kept up to date during the course of the work.

Maximum penalty: Level 4.

- (3) The principal contractor must ensure that the occupational health and safety management plan includes:
 - (a) a statement of responsibilities listing the names, positions and responsibilities of all persons who will have specific responsibilities on the site for occupational health and safety, and
 - (b) details of the arrangements for ensuring compliance with the requirements for occupational health and safety induction training that are set out in Part 8.2, and
 - (c) details of the arrangements for managing occupational health and safety incidents, including the identity of and contact details for the person or persons who will be available to prevent, prepare for, respond to and recover from occupational health and safety incidents, and

Note—

Some incidents must be notified to WorkCover under Chapter 12.

- (d) any site safety rules and details of the arrangements for ensuring that all persons at the place of work (whether employees or visitors) are informed of the rules, and
- (e) safe work method statements for all work activities assessed as having safety risks.

Maximum penalty: Level 3.

- (4) The principal contractor must ensure that a copy of the occupational health and safety management plan is available for inspection during the course of the construction work by:
- (a) any person working at the place of work concerned and by any person about to commence work at that place, and
 - (b) an employee member of an OHS committee, an OHS representative, a person elected by the persons employed at the place of work to represent a group of employees on health and safety matters or (if the employees so agree) an appropriate representative of an industrial organisation of employees.

Maximum penalty: Level 1.

- (5) The principal contractor must ensure that a copy of any parts of the occupational health and safety management plan that are relevant to a sub-contractor are provided to the sub-contractor before the sub-contractor commences work at the place of work concerned.

Maximum penalty: Level 1.

- (6) The principal contractor must ensure that, if any change is made to the occupational health and safety management plan during the course of the construction work, a copy of any part of the plan that has been changed and that is relevant to a sub-contractor is provided to the sub-contractor as soon as practicable after the change is made.

Maximum penalty (subclause (6)): Level 1.

227 Responsibility to provide safe work method statements—principal contractor and sub-contractors

- (1) This clause applies to any place of work at which:
- (a) construction work is undertaken and the cost of the work exceeds \$250,000, or
 - (b) high risk construction work is undertaken and the cost of the work does not exceed \$250,000, or
 - (c) demolition work or asbestos removal work for which a licence is required under Chapter 10 to carry on the business of that work is undertaken (regardless of the cost of the work).
- (2) A principal contractor for the construction work must ensure that each sub-contractor, before commencing work at a place of work, provides the principal contractor with a written safe work method statement for the work to be carried out by the sub-contractor.

Maximum penalty: Level 3.

(3) A principal contractor must ensure that:

(a) a sub-contractor is directed to comply with:

- (i) the safe work method statement that the sub-contractor has provided, and
- (ii) the requirements of the Act and this Regulation, and

(b) the activities of a sub-contractor are monitored to the extent necessary to determine whether the sub-contractor is complying with:

- (i) the safe work method statement that the sub-contractor has provided, and
- (ii) the requirements of the Act and this Regulation, and

(c) if the sub-contractor is not so complying, the sub-contractor is directed to take action immediately to comply with the safe work method statement or the requirements of the Act and this Regulation, or both, and

(d) if a risk to the health or safety of a person arises because of the non-compliance, the sub-contractor is directed to stop work immediately and not to resume work until the safe work method statement or those requirements, or both, are complied with, unless an immediate cessation of work is likely to increase the risk to health and safety, in which event the sub-contractor must be directed to stop work as soon as it is safe to do so.

Maximum penalty: Level 4.

(4) If there are no sub-contractors for the construction work, the principal contractor must:

(a) undertake an assessment of the risks associated with the work to be carried out and prepare a written safe work method statement that includes a copy of the assessment of risks, and

(b) maintain and keep up to date the statement, and

(c) ensure that the work is carried out in accordance with the statement, and

(d) if a risk to the health or safety of a person arises because of non-compliance with the statement, ensure that work is stopped immediately and not resumed until the statement is complied with (unless an immediate cessation of work is likely to increase the risk to health and safety, in which event the principal contractor must stop the work as soon as it is safe to do so).

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

228 Responsibility of principal contractor to keep register of hazardous substances

- (1) This clause applies to any place of work at which:
 - (a) construction work is undertaken and the cost of the work exceeds \$250,000, or
 - (b) demolition work or asbestos removal work for which a licence is required under Chapter 10 to carry on the business of that work is undertaken (regardless of the cost of the work).
- (2) The principal contractor for the construction work must ensure that:
 - (a) a register of hazardous substances at a place of work at which construction work is carried out is kept and maintained during the course of the work, and
 - (b) the register is readily accessible to all persons working at the place of work, and
 - (c) copies are kept during the course of the work of any records of atmospheric monitoring or health surveillance in relation to the place of work, and
 - (d) copies are kept during the course of the work of any written report of a risk assessment prepared in accordance with clause 168 (1) (b) in relation to risks associated with exposure to a hazardous substance at the place of work.
- (3) If more than one sub-contractor is using hazardous substances at the place of work, the principal contractor must ensure that the register of hazardous substances kept under subclause (2) (a) contains details of all hazardous substances being used at the place of work.

Maximum penalty: Level 1.

Note—

See Chapter 6 as to the obligations of employers with respect to the keeping of registers and recording of information concerning hazardous substances and carcinogenic substances.

229 Responsibilities of sub-contractors

- (1) This clause applies to any place of work at which:
 - (a) construction work is undertaken and the cost of the work exceeds \$250,000, or
 - (b) demolition work or asbestos removal work for which a licence is required under Chapter 10 to carry on the business of that work is undertaken (regardless of the cost of the work).

Subclauses (2) (b) and (3) also apply to any place of work at which high risk construction work is undertaken and the cost of the work does not exceed \$250,000.

- (2) A sub-contractor must not commence construction work at a place of work unless the

sub-contractor:

- (a) has been provided by the principal contractor for the construction work with a copy of the parts of the occupational health and safety management plan for the place of work that are relevant to the sub-contractor, and
- (b) has undertaken an assessment of the risks associated with the work to be carried out and provided to the principal contractor a written safe work method statement that includes a copy of the assessment of risks, and
- (c) has completed induction training with respect to occupational health and safety as specified in the occupational health and safety management plan for the place of work.

Maximum penalty: Level 3.

- (3) A sub-contractor must not allow an employee of the sub-contractor to start work at a place of work at which construction work is carried out unless the employee has completed induction training with respect to occupational health and safety as specified in the occupational health and safety management plan for the place of work.

Maximum penalty: Level 3.

- (4) A sub-contractor must maintain and keep up to date the sub-contractor's safe work method statement for a place of work, and must provide the principal contractor with any changes made to the safe work method statement.

Maximum penalty: Level 1.

- (5) A sub-contractor must provide the principal contractor for the place of work with any information known to or records held by the sub-contractor concerning hazardous substances or atmospheric monitoring or health surveillance that is required by this Regulation to be entered in the register of hazardous substances or kept for the place of work.

Maximum penalty (subclause (5)): Level 2.

Part 8.4 Control of risks arising during construction work

230 Application

- (1) This Part applies to the control of risks arising during construction work.
- (2) In particular, this Part applies to control of risks arising from:
 - (a) falling objects other than falling rock and earth (to which Part 8.5 applies),
 - (b) collapse of formwork and other structural frames used for permanent or

- temporary support of buildings and other structures,
- (c) collapse of existing buildings and other structures affected by construction work,
 - (d) unauthorised access to construction sites,
 - (e) use of compressed air in construction work,
 - (f) use of lasers in construction work.

231 Overhead protective structures—particular risk control measures

(1) This clause applies if:

- (a) construction work is carried out at a place that adjoins a public place or any other property, and
- (b) that construction work is carried out at a vertical height exceeding 4 metres above the lowest ground level of that public place or other property (unless the ratio of the horizontal distance to the vertical height between the nearest boundary of that public place or other property and where the work is carried out exceeds 2),

but does not apply to maintenance work on power or telecommunication poles, towers or overhead lines unless a risk assessment identifies that any hazards cannot be controlled by means other than overhead protective structures.

(2) In any case in which this clause applies, an employer must provide an overhead protective structure that:

- (a) is of appropriate strength and design having regard to the circumstances of that case, and
- (b) will catch, deflect or hold any weight and amount of material or objects that might reasonably be expected to fall on it.

Maximum penalty: Level 4.

232 Safe means of lowering materials—particular risk control measures

(1) If an inclined or vertical chute is used on a construction site as a means of lowering materials, an employer must ensure that the following requirements are met:

- (a) the chute is properly secured to the building or other structure to which it is attached,
- (b) the chute is completely enclosed except as provided by this clause,
- (c) the open end at the top of the chute has a cover that can be locked securely,
- (d) each opening in the chute has:

- (i) a hinged or sliding door that can be locked securely when material is not being fed into the chute through the opening, and
 - (ii) a hopper is fitted to it to channel material into the chute,
- (e) in order to prevent material that is being fed into the chute from spilling outside the chute, a solid fence at least 1 metre high and 1 metre long is erected at each opening in the chute at an angle of 45 degrees to the building line,
- (f) the discharge end of the chute is kept open at all times.
- (2) The employer must ensure that a designated area is provided around the discharge end of the chute and that this area is adequately fenced. Alternatively, if a bin is used at the discharge end, a fence with a hinged gate that can be securely locked must be provided around the bin at a distance of at least 2 metres from the bin.
- (3) The employer must ensure that doors and all other openings of the chute (except the discharge end) are closed and securely locked before:
 - (a) any demolished material is removed from any such designated area, or
 - (b) any such bin is replaced.
- (4) The employer must ensure that notices of the danger from discharged material are prominently placed at the discharge end of the chute and on the access gate of the fence.
- (5) In this clause, **opening**, in relation to a chute, means an opening in the side of the chute through which material can be fed into the chute.

Maximum penalty: Level 4.

233 Formwork—particular risk control measures

- (1) An employer must ensure that formwork complies with AS 3610—1995 *Formwork for concrete*.
- (2) An employer must ensure that formwork is designed, constructed and maintained so as to support safely all loads that are to be placed on it.
- (3) An employer must ensure that, before the concrete pour, formwork is inspected by a qualified engineer and is certified by the qualified engineer as safe for its intended purpose and the loads that will be placed on it.
- (4) Subclause (3) does not apply if:
 - (a) the deck of the formwork is less than 3 metres above the lowest surrounding ground level, or

- (b) the area of the formwork deck is less than 16 square metres and is designed to hold not more than 2.5 cubic metres or 6 tonnes of wet concrete (whichever measure is appropriate).

Maximum penalty: Level 4.

234 Prevention of structural collapse—particular risk control measures

- (1) An employer must ensure that any danger to persons arising from the collapse of a building during a temporary state of weakness or instability before its construction is completed is controlled by the use of adequate temporary guys, stays, supports and fixings or other measures.
- (2) An employer must ensure that, if construction work is likely to reduce the stability of an existing building or a building in the course of construction so as to endanger a person, shoring is used or other appropriate measures are taken to prevent the collapse of the building.

Maximum penalty: Level 4.

235 Site security—particular risk control measures

- (1) Subject to subclause (2), an employer must ensure that perimeter fencing is provided for all construction sites.
- (2) Subclause (1) applies with respect to the site of construction of a single dwelling house, duplex or civil engineering project or the site of maintenance work only if a risk assessment identifies the need to isolate particular hazards at the site that cannot be controlled by means other than perimeter fencing.
- (3) The employer must ensure that perimeter fencing required to be provided by this clause is adequate for the purpose for which it is constructed.
- (4) An employer must ensure that signs, that are clearly visible from outside the site and on which the name and contact telephone numbers (including an after hours emergency telephone number) of the controller of the site are stated, are placed on each construction site.

Maximum penalty: Level 4.

236 Use of compressed air—particular risk control measures

An employer must ensure that the use of compressed air in connection with any construction work complies with AS CA 12—1970 *Work in compressed air* (known as the SAA Compressed Air Code), as in force at the time of that publication.

Maximum penalty: Level 4.

237 Laser work

- (1) An employer must ensure that Class 3B or Class 4 lasers or laser products as defined in AS/NZS 2211.1:1997 *Laser safety: Equipment classification, requirements and user's guide*, as in force at the time of that publication, are not used in construction work.
- (2) Subject to subclause (1), an employer must ensure that the use of lasers or laser products in construction work is in accordance with AS 2397—1993 *Safe use of lasers in the building and construction industry*.

Maximum penalty: Level 4.

Part 8.5 Excavation work—particular provisions

238 Definition

In this Part:

excavation work means construction work of the kind referred to in paragraph (a) of the definition of **construction work** in Chapter 1.

239 Application

This Part applies to places of work at which excavation work is carried out.

240 Protection of stability of excavation work—particular risk control measures

- (1) An employer must ensure that, in relation to excavation work, an adequate system of safety, involving shoring, earth retention equipment or other appropriate measures, is in place to control risks to health and safety arising from one or more of the following:
 - (a) the fall or dislodgment of earth and rock,
 - (b) the instability of the excavation or any adjoining structure,
 - (c) the inrush of water,
 - (d) the placement of excavated material,
 - (e) instability due to persons or plant working adjacent to the excavation.
- (2) A shoring system is not required if, having regard to the nature and slope of the side of the excavation and other relevant circumstances, there is no reasonable likelihood of a fall or dislodgment of earth, rock or other material from a height of more than 1.5 metres (measured vertically) that may bury, trap or strike a person who is in the excavation.
- (3) If a system of shoring is used, the employer must ensure that an adequate supply of shoring equipment and material is provided and used to prevent a fall or dislodgment of earth, rock or other material that forms the side of or is adjacent to the excavation

work.

- (4) An employer must ensure that adequate measures are taken in the immediate vicinity of excavation work so as to prevent the collapse of the work. In particular, an employer must ensure that no materials are placed, stacked or moved near the edge of excavation work so as to cause the collapse of the work.

Maximum penalty: Level 4.

241 Potential risks arising from excavation work—particular risk control measures

- (1) An employer must ensure that no excavation work that is likely to reduce the stability of any part of a building or structure is commenced or continued unless adequate measures are adopted, both before and during the excavation work, to prevent a risk to the health and safety of a person from the collapse of the building or structure or any part of it.
- (2) An employer must ensure that:
 - (a) adequate measures are taken in the immediate vicinity of excavation work so as to prevent the fall of mobile plant or materials into the excavation, and
 - (b) no materials are placed, stacked or moved near the edge of excavation work so as to endanger a person present below.
- (3) An employer must ensure that, in relation to excavation work, an adequate system of safety is in place to control risks to health and safety arising from unplanned contact with electricity cables, gas mains and other utility services.

Maximum penalty: Level 4.

242 Regular inspection mandatory for excavations of 1 metre or more—particular risk control measures

An employer must ensure that excavation work at a depth of 1 metre or more is inspected by a competent person at the intervals determined during the risk assessment for the work.

Maximum penalty: Level 3.

243 Caissons and cofferdams—particular risk control measures

An employer must ensure that caissons and cofferdams are of sound construction and secured in position to prevent movement.

Maximum penalty: Level 4.

244 Supervision

An employer must ensure that any of the following excavation work is carried out only

under the supervision of a competent person:

- (a) work at a depth of 1 metre or more,
- (b) work in tunnels,
- (c) work on caissons and cofferdams,
- (d) compressed air work.

Maximum penalty: Level 4.

245 Safe access and egress

An employer must ensure that there is a safe means of access to and egress from excavations.

Maximum penalty: Level 4.

Part 8.6 Demolition work—particular provisions

246 Definitions

(1) In this Part:

AS 2601—1991 means AS 2601—1991 *The demolition of structures*.

demolition work means construction work involving the demolition of a building but does not include construction work involving the removal of power or telecommunication poles.

Note—

Clause 3 provides that **building** includes a structure and part of a building or structure.

(2) In applying the provisions of AS 2601—1991 for the purposes of this Part, references in that Standard to a public thoroughfare are taken to be references to a public place.

(3) In this Part, a reference to the height of a building is a reference to the height of the building measured from the lowest level of the ground immediately adjacent to the base of the building at the point at which the height is to be measured to its highest point.

Note—

Carrying on the business of demolition work requires a licence (see Chapter 10). Demolition work also requires a permit (see Chapter 11).

247 Work to be done in accordance with Australian Standard and this Part

(1) An employer must ensure that demolition work is carried out in accordance with AS 2601—1991 and the provisions of this Part.

Maximum penalty: Level 4.

- (2) In the event of an inconsistency between a provision of AS 2601—1991 and the provisions of this Regulation, the provisions of this Regulation prevail.
- (3) Despite AS 2601—1991 or this Part, a building may be demolished by the use of explosives if a permit under Chapter 11 has been obtained.

Note—

The following matters, among others, are dealt with in AS 2601—1991:

- Sequential demolition
- Measures to prevent materials falling on workers and the public, including adequate fencing
- Use of heavy machinery and plant on suspended floors
- Ensuring that stairs and other means of access, and scaffolding, are clear of rubble and other debris
- Chimney demolition
- Dust control
- Warning signs and general safety measures
- Fire prevention
- Circumstances in which overhead protective structures and heavy duty independent scaffolding are required

248 Investigations

- (1) An employer must ensure that, before the commencement of stripping or demolition work, an initial investigation of the building to be demolished and the site on which it is located is carried out in accordance with AS 2601—1991.

Maximum penalty: Level 4.

- (2) The results of the investigations of the building and site must be recorded in writing by the employer and must be made available to WorkCover for inspection, on demand.

Maximum penalty: Level 4.

- (3) The records of the investigations must be included by the employer in the work method statement for the demolition to substantiate the choice of a particular sequence, method or technique of demolition.

Maximum penalty (subclause (3)): Level 1.

249 Carrying out demolition work

- (1) An employer must ensure that, if mechanical means are used to carry out demolition

work, the work is carried out sequentially.

- (2) An employer must ensure that demolition work involving pulling with ropes or chains or similar means is carried out only if the building being demolished is not more than 4 metres in height and the work is carried out sequentially.

Maximum penalty: Level 4.

Note—

See Chapter 11 regarding the issue of permits for the carrying out of certain demolition work.

250 Working in or below building being demolished

- (1) An employer must ensure that a person does not work in or below a building that is being demolished if, at any time during the carrying out of the demolition work, there is a danger that the person might be injured as a result of demolished or other material falling or rebounding.

Maximum penalty: Level 4.

- (2) This clause applies whether or not the person's work is associated with the demolition of the building.

251 Buildings adjacent to public places

- (1) An employer must ensure that, if demolition work involves the demolishing of a building that is less than 4 metres in height and is adjacent to a public place, adequate precautionary measures are taken to protect persons who may be in the public place.

Note—

AS 2601—1991 contains precautionary requirements for the demolition of buildings that are more than 4 metres in height.

- (2) An employer must ensure that, if demolition work involves the demolishing of a building (regardless of its height) that is adjacent to another building, adequate precautionary measures are taken to protect:

- (a) the other building, and
- (b) any person entering or leaving the other building, and
- (c) if the other building is shorter than the building being demolished—any person who is on top of the other building.

Maximum penalty: Level 4.

252 Demolition within confines of building

The requirements of AS 2601—1991 relating to fencing, overhead protective structures

and scaffolding do not apply to the demolition of part of a building if:

- (a) the work is carried out wholly within the confines of the building, and
- (b) demolished material is, at all times during the carrying out of the work, prevented from falling or rebounding outside those confines.

253 Overhead protective structures

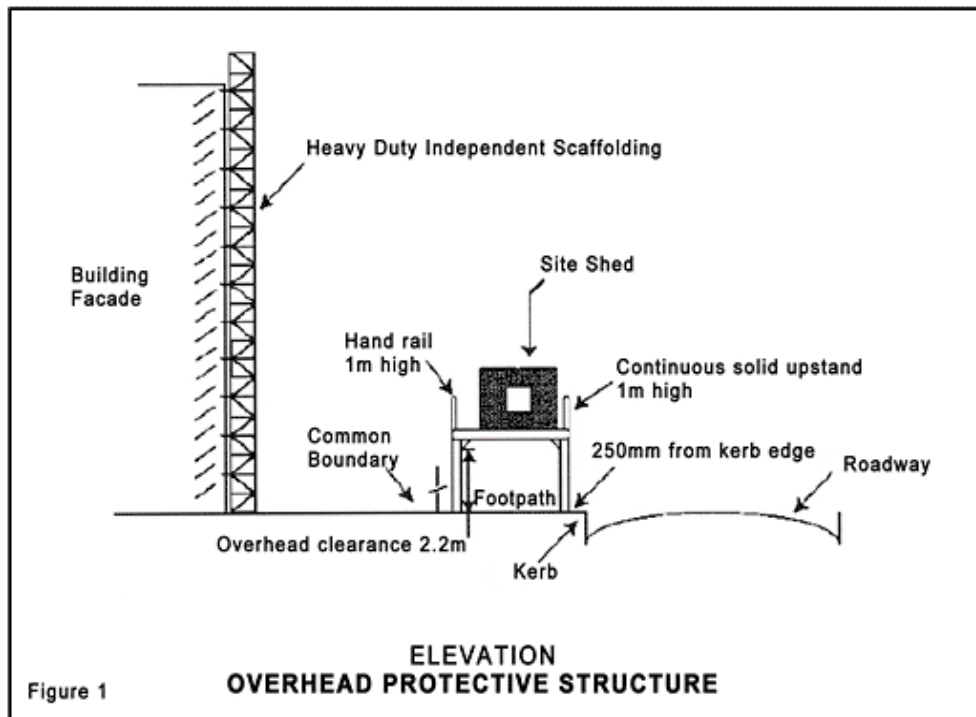
An employer must, in carrying out any demolition work, ensure that, if AS 2601—1991 requires an overhead protective structure to be provided over a public walkway that lies between a public place and the building being demolished, the overhead protective structure:

- (a) consists of a horizontal platform of solid construction with vertical supports, and
- (b) is at least 250 mm from the edge of the kerb of the walkway towards the common boundary of the walkway and the building that is being demolished, and
- (c) has a minimum overhead clearance of 2.2 m to any bracings, beams or any other part of the overhead protective structure, and
- (d) has a continuous solid upstand projecting at least one metre above the platform surface, and
- (e) is designed for a uniformly distributed live load of 10kPa.

Maximum penalty: Level 4.

Note—

See figure 1 below, which illustrates these requirements.



254 Scaffolding

- (1) This clause does not apply to the demolition of a chimney stack.
- (2) An employer must ensure that, if AS 2601—1991 requires scaffolding to be provided, the scaffolding:
 - (a) is erected before the commencement of any demolition work on the side or part of the building being demolished that faces a public place, and
 - (b) is kept in the erected position until the work is completed.

Note—

See also clause 58 (Scaffolding—particular risk control measures) which requires compliance with AS/NZS 1576.1:1995.

- (3) The employer must ensure that the scaffolding is provided with at least 2, but not more than 3 platforms, unless otherwise certified by a qualified engineer.
- (4) The employer must ensure that each platform on the scaffolding:
 - (a) extends the full width of the scaffold frame, and
 - (b) abuts the building, and
 - (c) extends into any openings of the building for a sufficient distance in order to catch any falling material.

- (5) The employer must ensure that any platform or section of a platform (other than the platform at the final lower level of the scaffolding) is not dismantled, repositioned or removed unless:
 - (a) a further platform has been installed not more than 6 metres below the platform or section of platform to be repositioned or removed, and
 - (b) all material on the platform has been removed.
- (6) The employer must ensure that scaffolding is effectively enclosed on the outer faces and ends for its full height with steel wire mesh that:
 - (a) has a cross section dimension of not less than 2.5 mm and an aperture of not greater than 50 mm, and
 - (b) is adequately secured to the scaffolding, and
 - (c) is sufficient to withhold demolished material,or with some other equivalent system that is adequately secured to the scaffolding and is sufficient to withhold demolished material.
- (7) The employer must ensure that the edges of the runs of wire mesh are adequately overlapped and secured.
- (8) The employer must ensure that appropriate material is securely fixed to the wire mesh to minimise the release of dust into the atmosphere.

Maximum penalty: Level 4.

255 Demolition of chimney stacks

- (1) An employer must ensure that the demolition of a chimney stack is carried out only:
 - (a) by felling using undercutting or explosives, or
 - (b) by the removal of successive sections of metal, or successive courses of brickwork or masonry, from the top.
- (2) The employer must ensure that, if a chimney stack is or is to be demolished by felling:
 - (a) the felling is not done in a wind that:
 - (i) is likely to cause the chimney stack to fall otherwise than in the intended direction, or
 - (ii) exceeds 20 knots, and
 - (b) if undercutting is used—the equilibrium of the stack being undercut is gauged in compression by positive means to ensure that sufficient time remains for the safe

retreat of workers from the stack when it commences to fall, and

(c) if the chimney stack could, in falling, endanger the safety of a person or property in a place outside the area under the control of the employer who is carrying out the demolition work—24 hours' notice of the intended commencement of the work is given to:

- (i) the council of the local government area in which the work is carried out, and
- (ii) a police officer.

(3) An employer must ensure that, if a chimney stack is to be demolished by the removal of successive sections of metal from the top, or successive courses of brickwork or masonry from the top, overhead protection complying with clause 231 is provided over the discharge end of any chute, hopper, bin or material outlet to protect any person removing material from the discharge area from falling objects.

(4) The employer must ensure that material is not allowed to accumulate on, or to overload, any such overhead protection.

Maximum penalty: Level 4.

256 Notification of dangerous work

An employer must ensure that a police officer is informed immediately if, during any demolition work:

- (a) the building concerned (including an undemolished part of the building) becomes unstable, and
- (b) there is a danger that the building could collapse and injure any person who is in any place not under the control of the person who is carrying out that work, either directly or by his or her employees or agents.

Maximum penalty: Level 1.

Part 8.7 Asbestos—particular provisions

257 Definitions

In this Part:

asbestos means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

asbestos work means work undertaken in connection with a construction work process in which exposure to asbestos may occur and includes any work process involving the

use, application, removal, mixing or other handling of asbestos or asbestos-containing material.

bonded asbestos material means any material (other than friable asbestos material) that contains asbestos.

bonded asbestos removal work means work in which bonded asbestos material is removed, repaired or disturbed.

friable asbestos material means any material that contains asbestos and is in the form of a powder or can be crumbled, pulverised or reduced to powder by hand pressure when dry.

friable asbestos removal work means work in which friable asbestos material is removed, repaired or disturbed.

Note—

Carrying on the business of asbestos removal work requires a licence (see Chapter 10). Friable asbestos removal work also requires a permit (see Chapter 11).

258 Application

This Part applies to asbestos and asbestos-containing material present in a workplace in which construction work is carried out including (but not limited to) asbestos used as a building material, for insulation or fire-proofing, or otherwise used as a material in a workplace.

259 Particular risk control measures

(1) An employer must ensure that asbestos work is carried out, in a manner appropriate to that work, in accordance with the following documents published by the NOHS Commission in August 1988, as in force from time to time:

(a) “Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1988)]”, and

(b) “Code of Practice for the Safe Removal of Asbestos [NOHSC: 2002 (1988)]”.

(If a requirement of clause 51 (Atmospheric contaminants—particular risk control measures) is inconsistent with a requirement of this subclause, the clause 51 requirement prevails).

(2) An employer must ensure that:

(a) employees and other persons contracted to carry out asbestos work are informed of the dangers involved and of any precautions that should be taken in connection with the work, and

(b) employees, workplace owners and plant owners are informed when asbestos work

is being carried out, and

- (c) persons are warned, by the use of signs, labels or other similar measures, of the presence of asbestos or asbestos-containing material in a place at which construction work is being carried out.
- (3) An employer must identify, and implement, measures to prevent the uncontrolled disturbance of asbestos-containing material while construction work is being carried out.
- (4) An employer must ensure that procedures are in place for:
 - (a) the cleaning of premises at which asbestos work is carried out, and
 - (b) the laundering and cleaning of personal protective equipment used for asbestos work, and
 - (c) the containment of asbestos waste, and
 - (d) the disposal of asbestos and asbestos-containing material.
- (5) An employer must ensure that no asbestos-containing material, including asbestos cement, is reused in connection with the carrying out of construction work.
- (6) An employer must ensure that no high-pressure processes are used to clean the surface of asbestos-containing material, including asbestos cement or any structures that consist of or contain asbestos, during the carrying out of construction work.

Maximum penalty: Level 4.

260 Friable asbestos material

An employer must restrict access:

- (a) to friable asbestos material, and
- (b) to construction work processes involving friable asbestos material,

by persons who are not licensed to carry out friable asbestos removal work in accordance with Chapter 10.

Maximum penalty: Level 3.

261 Monitoring

- (1) If a risk assessment in connection with Division 5 (Atmosphere) of Part 4.3 of Chapter 4 indicates a need for atmospheric monitoring of a workplace in which asbestos or asbestos-containing material is located, the employer must ensure that the monitoring is carried out by a competent person in accordance with the document entitled "Guidance Note on the Membrane Filter Method for Estimating Airborne Asbestos Dust

[(NOHSC: 3003 (1988)]" published by the NOHSC Commission, as in force from time to time.

- (2) The analysis of samples obtained as a result of such monitoring must be carried out:
- (a) in a laboratory accredited by the National Association of Testing Authorities, and
 - (b) in accordance with the document referred to in subclause (1).

Maximum penalty: Level 3.

Part 8.8 Diving work—particular provisions

262 Definition

In this Part:

diving work means work carried out under water and while using underwater breathing apparatus, and includes work by the dive team in direct support of the diver.

263 Application

This Part applies to diving work carried out in connection with:

- (a) construction work, or
- (b) work in relation to a vessel while it is moored or while it is in a dock or in slips.

264 Particular risk control measures

An employer must ensure that:

- (a) diving hazards associated with environmental conditions, hyperbaric and physiological factors and the diving site are controlled, and
- (b) diving work carried out at depths of 50 metres (at sea level, or equivalent at altitude) or less complies with *AS/NZS 2299.1:1999 Occupational diving operations Part 1: Standard operational practice*, and
- (c) the person diving holds a certificate issued by a medical practitioner certifying that the person is medically fit for the diving work, and
- (d) the person diving holds an appropriate certificate issued under the Australian Diver Accreditation Scheme (ADAS) administered by the Department of Industry, Science and Resources of the Commonwealth.

Maximum penalty: Level 3.

Chapter 9 Certification of workers

Part 9.1 Certificates of competency for scaffolding, dogging, rigging, the operation and use of plant and other work

Division 1 Preliminary

265 Definitions

Note—

The definitions in this clause are for the purpose of the issue and use of certificates of competency only and do not limit or affect any definitions of similar terms in other Chapters of the Regulation.

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,
- (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:
 - (i) 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 that Committee and is certified by that person as having been so inspected, and
 - (ii) the locomotive containing the boiler is in the charge of a person of or above the age of 18 years whenever it is being operated in a public place,
- (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.

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

Note—

This definition includes former certificates of competency, licences and permits taken to be certificates of competency issued under this Part. See clauses 268 (Former authorities) and 269 (Recognised qualifications).

corresponding law means any of the following laws:

Occupational Health and Safety Act 1985 of Victoria

Workplace Health and Safety Act 1995 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

Work Health Act 1986 of the Northern Territory

Scaffolding and Lifts Act 1957 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.

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.

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.

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.

loadshifting machine means a dragline, excavator, fork-lift truck, front-end loader, front-end loader/backhoe, front-end loader of the skid-steer type 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 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 (Monographs General Series No 4).

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 a registered training organisation, 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.

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.

pesticide means a pesticide within the meaning of the [Pesticides Act 1999](#).

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

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

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 means an education or training provider registered under the [Vocational Education and Training Accreditation Act 1990](#) or under a law of the Commonwealth or of another State or Territory that corresponds to that Act.

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.

scheduled work—see clause 266.

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 scheduled work, 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, in relation to a kind of scheduled work, means a person who does not hold a certificate of competency or recognised qualification in relation to that work.

266 Scheduled work

For the purposes of this Part, ***scheduled 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 activities connected with the operation or use of plant including:

- (a) 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),
- but excluding:
- (f) cantilevered crane-loading platforms, and
 - (g) cantilevered and spurred scaffolds, and
 - (h) barrow ramps and sloping platforms, and
 - (i) perimeter safety screens and shutters, and
 - (j) mast climbers, and
 - (k) tube and coupler scaffolds (including tube and coupler covered ways and gantries), and
 - (l) hung scaffolds, including scaffolds hanging from tubes, wire ropes or chains, and
 - (m) suspended scaffolds.

1.2 Intermediate scaffolding, consisting of all basic scaffolding together with other scaffolding activities 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 and fences, and
- (e) mast climbers, and
- (f) tube and coupler scaffolds (including tube and coupler covered ways and gantries),

but excluding:

- (g) hung scaffolds, including scaffolds hanging from tubes, wire ropes or chains, and
- (h) suspended scaffolds.

1.3 Advanced scaffolding, consisting of all intermediate scaffolding together with all other scaffolding activities 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.

Dogging

2 Dogging.

Rigging

3.1 Basic rigging, consisting of rigging activities connected with the erection, movement or placement of plant or materials including:

- (a) steel or pre-cast concrete, and
- (b) hoists (including mast-climbing hoists), and
- (c) safety nets and static lines, and
- (d) perimeter safety screens and shutters, and
- (e) cantilevered crane-loading platforms,

but excluding:

- (f) load-equalising gear, and
- (g) cranes, conveyors, dredges and excavators, and
- (h) tilt slabs, and
- (i) hoists with jibs and wire-climbing hoists, and
- (j) plant, equipment or materials moved in demolition, and
- (k) dual lifts, and
- (l) gin poles and shear legs, and
- (m) flying foxes and cableways, and
- (n) guyed derricks and structures, and
- (o) suspended and fabricated hung scaffolds.

3.2 Intermediate rigging, consisting of all basic rigging together with other rigging activities 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 wire-climbing hoists, and
- (e) plant, equipment or materials moved in demolition, and
- (f) dual lifts,

but excluding:

- (g) gin poles and shear legs, and
- (h) flying foxes and cableways, and
- (i) guyed derricks and structures, and
- (j) suspended and fabricated hung scaffolds.

3.3 Advanced rigging, consisting of all intermediate rigging together with all other rigging activities 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.

Operation and use of cranes

- 4.1** Operation and use of a tower crane.
- 4.2** Operation and use of a derrick crane.
- 4.3** Operation and use of a portal boom crane.
- 4.4** Operation and use of a bridge or gantry crane (other than one that is remotely controlled and has 3 or fewer powered operations).
- 4.5** Operation and use of a vehicle-loading crane with a capacity of 10 metre-tonnes or more.
- 4.6** Operation and use of a non-slewing mobile crane with a capacity of greater than 3 tonnes.
- 4.7.1** Operation and use of a slewing mobile crane with a capacity of up to and including 20 tonnes.
- 4.7.2** Operation and use of a slewing mobile crane with a capacity of up to and including 60 tonnes.
- 4.7.3** Operation and use of a slewing mobile crane with a capacity of up to and including 100 tonnes.
- 4.7.4** Operation and use of a slewing mobile crane with a capacity of more than 100 tonnes.
- 4.8** Operation and use of a boom-type elevating work platform with a boom 11 metres or more in length.

Operation and use of hoists

5.1 Operation and use of a materials platform hoist.

5.2 Operation and use of a personnel and materials hoist.

Operation and use of truck-mounted concrete-placing booms

6 Operation and use of a truck-mounted concrete-placing boom.

Operation and use of boilers

7.1 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.

7.2 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.

7.3 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.

Operation and use of steam turbines

8 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.

Operation and use of reciprocating steam engines

- 9** Operation and use of a reciprocating steam engine containing a piston of 250 millimetres or more in diameter.

Operation and use of loadshifting machines

- 10.1** Operation and use of a fork-lift truck.
- 10.2** Operation and use of an order-picking fork-lift truck.
- 10.3** Operation and use of a dragline.
- 10.4** Operation and use of an excavator.
- 10.5** Operation and use of a front-end loader.
- 10.6** Operation and use of a front-end loader/backhoe.
- 10.7** Operation and use of a front-end loader of the skid-steer type.

Application of pesticides

- 11** Application of pesticides (other than fumigants), but not including the following:
 - (a) the application of pesticides by a person for the purposes of the carrying out of agriculture by the person, including:
 - (i) horticulture, or
 - (ii) the use of land for any purpose of husbandry, such as the keeping or breeding of livestock, poultry or bees, or
 - (iii) the growing of fruit and vegetables,but not including the processing or storing of agricultural products unless undertaken in connection with another agricultural purpose carried out

by the person,

- (b) the application of pesticides as authorised by or under the *Pesticides Act 1999*.

Use of fumigants

12 Use of fumigants.

267 Application of Part

- (1) This Part applies to scheduled work.
- (2) This Part applies only if that work is work as an employee or self-employed person.

268 Former authorities

- (1) In this clause, **former authority** means:
- (a) a certificate of competency in force under an Act or regulation repealed by the *Occupational Health and Safety Act 2000* immediately before that repeal (being a certificate of competency of a kind that could be issued under this Part), and
- (b) a pest control operator's licence, or fumigation permit, in force under the *Occupational Health and Safety (Pest Control) Regulation 1988* immediately before its repeal.
- (2) Unless sooner cancelled, a former authority is taken to be a certificate of competency issued under this Part authorising the doing of the same kind of work to which the authority relates until the expiration of the term (if any) for which the authority was issued.

269 Recognised qualifications

- (1) The following qualifications are recognised for the purposes of this Part in relation to scheduled work (other than work that involves the application of pesticides or the use of fumigants):
- (a) a qualification in force under a corresponding law,
- (b) a certificate of competency (however described) approved by WorkCover for the purposes of this clause.
- (2) The following qualifications are recognised for the purposes of this Part in relation to scheduled work that involves the application of pesticides or the use of fumigants:
- (a) a qualification obtained in another State or in a Territory, being a qualification approved by WorkCover for the purposes of this clause,
- (b) a certificate of competency (however described) approved by WorkCover for the

purposes of this clause.

- (3) A recognised qualification within the meaning of the *Occupational Health and Safety (Certificates of Competency) Regulation 1996* is a recognised qualification for the purposes of this Part.
- (4) A qualification does not have any force for the purposes of this Part while it is suspended.

Division 2 Work for which certificates of competency or recognised qualifications are required

270 Requirement to be qualified to do scheduled work

- (1) A person must not do any kind of scheduled work unless the person holds a certificate of competency 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 scheduled work unless the person doing the work holds a certificate of competency 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 certificate of competency or recognised qualification held by the person, or
- (b) direct or allow another person to contravene the conditions of a certificate of competency or recognised qualification held by that other person.

Maximum penalty: Level 3.

- (4) This clause is subject to the other provisions of this Part.

Note—

Additional exemptions may be granted by WorkCover under Chapter 12.

271 Exception for trainees

- (1) A trainee may do any kind of scheduled work to which a recognised course of training in which the trainee is engaged relates if the person:
 - (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 275.

- (2) For the purposes of this clause, a course of training is recognised in relation to a person if, when the person began that course, the course was recognised by the guidelines issued by WorkCover in relation to the training of trainees.

272 Responsibility for providing supervision of trainees

For the purposes of this Division, the person responsible for ensuring that a trainee is properly supervised in the doing of scheduled work is:

- (a) in the case of a trainee who is doing the work as an employee, the person's employer, or
- (b) in the case of a trainee who is doing the work under contract as an independent contractor, the person for whom he or she is doing the work under that contract, or
- (c) in the case of a trainee who is doing the work while engaged in a course of training for that work, the person by whom that course is being conducted, or
- (d) in the case of a trainee who is doing the work under an arrangement with some other person (whether or not for reward) otherwise than as referred to in paragraph (a), (b) or (c), that other person.

273 Responsible person's obligations

- (1) The person responsible for a trainee doing scheduled work must ensure that the following requirements are complied with:
- (a) the trainee must at all times be directly supervised by a supervisor designated by the person in accordance with subclause (2), unless the responsible person or supervisor has established:
 - (i) that the trainee's competency makes direct supervision unnecessary, and
 - (ii) that a lesser degree of supervision would not endanger the health or safety of the trainee or any other person,
 - (b) the trainee must receive directions, demonstrations, training and monitoring appropriate to the work and commensurate with the competence of the trainee,
 - (c) it must be possible for immediate remedial action to be taken in the event of an emergency arising out of the trainee's doing the work.

Maximum penalty: Level 3.

- (2) The person responsible for a trainee may designate a supervisor for the trainee only if:
- (a) the supervisor is a person who holds a certificate of competency or recognised qualification in relation to work of the kind being done by the trainee, or

(b) if no such person is available, the supervisor is a person who belongs to a class of persons that the guidelines issued by WorkCover in relation to the supervision of trainees recognise as competent to directly supervise a trainee in the doing of the type of work concerned.

(3) The person responsible for a trainee must ensure that the trainee keeps and maintains a record of training in accordance with clause 275.

Maximum penalty (subclause (3)): Level 1.

274 Supervisor's obligations

(1) The supervisor of a trainee doing scheduled 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 trainee's competency makes direct supervision unnecessary, and

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

Maximum penalty: Level 3.

(2) A supervisor designated to supervise a trainee by the trainee's employer:

(a) must ensure that the trainee keeps and maintains a record of training in accordance with clause 275, and

(b) must check the record on each date on which the scheduled work is done by the trainee, and:

(i) if satisfied that the record is correct in respect of that date, must sign the record on that date, or

(ii) if not so satisfied, must make and sign on that date a note to that effect on the record.

Maximum penalty (subclause (2)): Level 1.

275 Trainee's obligations

(1) A trainee must keep and maintain a record of training.

(2) The record must contain the following information in relation to scheduled work of the kind to which the training relates:

(a) the name and address of the trainee,

(b) the name and address of each employer for whom the trainee does that work,

- (c) the name of each person who supervises the trainee while the trainee is doing that work,
- (d) a description of that work as it is actually done by the trainee in the course of training,
- (e) a record of the dates on which that work was done.

Maximum penalty: Level 1.

276 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 scheduled 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 certificate of competency within that period, the person may continue to do work of that kind:
 - (a) until the person is issued with a certificate of competency, or
 - (b) until 14 days after the person receives notice that the application has been refused.

277 Exception for maintenance or demonstration

- (1) An unqualified person may do any kind of scheduled 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 certificate of competency or recognised qualification relating to rigging that qualifies the person to set up or dismantle a crane or hoist.

Division 3 Assessment of competency

278 Standards of competency

- (1) A person is competent to do a particular kind of scheduled work if the person's competency to do the work is of a standard equal to or better than the appropriate competency standard.

- (2) For the purposes of this Chapter, the appropriate competency standard for work that involves scaffolding, dogging or rigging or the operation or use of a crane, hoist, truck-mounted concrete-placing boom, boiler, steam turbine or reciprocating steam engine is:
 - (a) the standard of competency set out in Schedule A, B or C to the National Certification Standard in relation to that work, or
 - (b) any other standard of competency that WorkCover considers to be equivalent to that standard.
- (3) For the purposes of this Chapter, the appropriate competency standard for scheduled work involving the operation or use of a loadshifting machine is:
 - (a) the standard of competency set out in the National Competency Guidelines in relation to that work, or
 - (b) any other standard of competency that WorkCover considers to be equivalent to that standard.
- (4) For the purposes of this Chapter, the appropriate competency standard for work that involves the application of pesticides or the use of fumigants is the standard of competency set out in relation to that work in the National Standard for Licensing Pest Management Technicians.

279 Assessors

The following persons are assessors for the purposes of this Chapter:

- (a) WorkCover,
- (b) a person who is accredited as an assessor under Division 4,
- (c) a registered training organisation,
- (d) a person who is authorised under a corresponding law to carry out functions equivalent to those carried out by assessors under this Chapter.

280 Applications for assessment

- (1) A person may apply to an assessor for an assessment of the person's competency to do scheduled work if the person is at least 18 years of age.
- (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 assessor may require, and

(c) in the case of an application to WorkCover, must be accompanied by the fee fixed for the time being by WorkCover to cover expenses in connection with the regulation of assessments.

(3) An applicant must provide proof of the applicant's age and identity to the assessor.

281 Assessment of competency

(1) In assessing an applicant, an assessor may have regard to any of the following matters:

(a) any relevant qualifications held by the applicant, including, in particular, any qualifications that are for the time being accepted by WorkCover as being equivalent to a certificate of competency under this Chapter,

(b) the applicant's learning and experience,

(c) the applicant's demonstration of competency in tests or examinations carried out by the assessor or another person or body,

(d) the results of any previous assessments.

(2) If the assessor assesses the applicant as being competent to do scheduled work, the assessor must issue to the applicant a notice of satisfactory assessment specifying the scheduled work that the applicant has been assessed as being competent to do.

(3) An assessor (other than WorkCover or a registered training organisation), or a person employed or otherwise engaged by a registered training organisation, who does any of the following is guilty of an offence:

(a) assesses an applicant's competency to do scheduled work otherwise than in accordance with the guidelines applicable under clause 282 in relation to the conduct of assessments for such work,

(b) issues a notice of satisfactory assessment without assessing the applicant as being competent to do the scheduled work specified in the notice,

(c) falsely assesses the applicant as being competent to do scheduled work,

(d) assesses an applicant's competency to do scheduled work, being aware that the applicant has been assessed in relation to the same kind of work within the previous 21 days,

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

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

282 Assessment guidelines

- (1) An assessor who assesses an applicant's competency to do scheduled work (other than scheduled work involving the application of pesticides or the use of fumigants) must do so in accordance with the guidelines issued by WorkCover in relation to the conduct of assessments.
- (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.
- (3) An assessor who assesses an applicant's competency to do scheduled work involving the application of pesticides or the use of fumigants must do so in accordance with the document entitled "*National Assessment Principles*" published by the Australian National Training Authority in March 1999.

283 Appeals against decisions by assessors

- (1) A person who is affected by a decision of an assessor (other than a decision of a registered training organisation) may apply to WorkCover for a review of the decision.
- (2) An application for review under this clause must be made in writing within 14 days after the applicant receives notice of the relevant decision.
- (3) The decision of WorkCover on an application under this clause has effect as if it were the decision by an assessor.

Division 4 Accreditation of assessors

284 Accreditation of assessors

- (1) Any person may apply to WorkCover for accreditation as an assessor.
- (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 WorkCover may require, and

(c) must be accompanied by the fee fixed for the time being by WorkCover to cover expenses in connection with the regulation of assessors.

(3) WorkCover must not accredit a person as an assessor unless it is satisfied that the applicant is competent to carry out the functions of an assessor under this Chapter.

(4) If WorkCover accredits a person as an assessor, it must issue to the person a certificate of accreditation for the kinds of assessments for which the person is accredited.

(5) 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.

285 Form of certificates of accreditation

A certificate of accreditation for an assessor must be in the approved form and must specify:

(a) the date on which it was issued, and

(b) the date on which accreditation expires, and

(c) the kinds of assessment for which the assessor is accredited.

286 Term of accreditation

(1) Unless sooner cancelled, a person's accreditation as an assessor is in force for 3 years from the date on which the assessor was issued with a certificate of accreditation.

(2) A person's accreditation is of no effect while it is suspended.

287 Suspension and cancellation of accreditation

(1) WorkCover may suspend or cancel the accreditation of a person who is accredited as an assessor if it is satisfied that:

(a) the assessor is no longer competent to carry out the kinds of assessments for which the assessor is accredited, or

(b) the assessor 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 assessor was accredited on the basis of false or misleading information or a failure to disclose or provide required information, or

(d) the assessor 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 the case of an assessor who has carried out an assessment under a corresponding law, otherwise than in accordance with that law or any guidelines in force under that law.

(2) Before suspending or cancelling an assessor's accreditation, WorkCover:

- (a) must cause written notice of the proposed suspension or cancellation to be given to the assessor, and
- (b) must give the assessor 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.

(3) If, after having regard to any representations made by the assessor, WorkCover decides to proceed with the proposed suspension or cancellation, WorkCover must give to the assessor 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.

(4) The suspension or cancellation takes effect on the date on which notice of the suspension or cancellation is given to the assessor or such later date as may be specified in the notice.

288 Cancelled certificates of accreditation must be surrendered

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

Maximum penalty: Level 1.

Division 5 Issue of certificates of competency

289 Applications for certificates

An application for a certificate of competency to do scheduled work:

- (a) must be lodged with WorkCover, 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 certificates of competency of the class concerned.

290 Issue of certificates

- (1) WorkCover must issue a certificate of competency authorising a person to do a particular kind of scheduled work if:
 - (a) the person has complied with the application requirements in clause 289, 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
 - (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 certificate of competency to an applicant if:
 - (a) the applicant is less than 18 years of age, or
 - (b) any relevant certificate, 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 scheduled work for which a certificate of competency may be issued, WorkCover may (but is not required to) have regard to the certificate classifications set out in the National Certification Standard, the National Competency Guidelines and the National Standard for Licensing Pest Management Technicians.
- (5) If a person applies for a certificate of competency and the person has previously held a certificate of competency of the same type as that applied for, WorkCover may, if it thinks it appropriate to do so, dispense with the requirement under subclause (1) (b).

291 Conversion of recognised qualifications to certificates of competency

- (1) WorkCover may, on application or on its own motion, issue a certificate of competency authorising the doing of scheduled work to a person who holds a qualification or certificate referred to in clause 269 that authorises the holder to do the same kind of work.
- (2) An application under this clause:
 - (a) must be in the approved form, and

- (b) must be accompanied by such material or information to support the application as WorkCover may require, and
 - (c) must be accompanied by the fee fixed for the time being by WorkCover to cover expenses in connection with the regulation of holders of certificates of competency of the class concerned.
- (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.

292 Form of certificates

- (1) A certificate of competency must be in the approved form and must specify:
- (a) the name of the person to whom it is issued, and
 - (b) the date of its issue, and
 - (c) a description of the kind of scheduled work that the certificate authorises its holder to do, and
 - (d) a unique identifying number, and
 - (e) the expiry date of the certificate if the certificate is issued for a limited period, and
 - (f) any conditions attached to the certificate.
- (2) A certificate of competency that authorises work involving the application of pesticides or the use of fumigants must also contain a photograph of the person to whom it is issued and specify the person's date of birth.
- (3) The holder of a certificate of competency must sign the certificate as soon as practicable after receiving it.
- (4) The kind of scheduled work authorised by a certificate of competency may be referred to in the certificate by means of a code or symbol, in which case the holder of the certificate must be given, with the certificate, a document that fully describes the work to which the code or symbol refers.
- (5) Work that is authorised by a certificate of competency by reference to a code or symbol is unaffected by any subsequent change in the system of codes or symbols used by WorkCover to describe different kinds of scheduled work.

293 Term of certificates

- (1) Unless sooner cancelled:
- (a) a certificate of competency that authorises work involving the application of pesticides or the use of fumigants is in force for 5 years from the date of its issue,

and

(b) any other certificate of competency is in force for an unlimited period from the date of its issue.

(2) A certificate of competency is of no effect while it is suspended.

294 Replacement of lost, stolen, damaged or destroyed certificates of competency

(1) The holder of a certificate of competency 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 certificate of competency 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 a certificate of competency that is replaced under this clause:

(a) must surrender the original certificate if it is recovered, or

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

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

295 Holder to produce certificate

(1) An inspector may direct a person doing scheduled work to produce for inspection immediately:

(a) the recognised qualification or exemption 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 certificates of competency

296 Suspension or cancellation of certificates

- (1) WorkCover may suspend or cancel a certificate of competency if satisfied that:
 - (a) the holder of the certificate is no longer competent to do work of the kind authorised by the certificate, or
 - (b) the holder of the certificate can no longer be relied on to do work of the kind authorised by the certificate without endangering the health or safety of the holder or any other person, or
 - (c) the certificate 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 certificate of competency, WorkCover:
 - (a) must cause written notice of the proposed suspension or 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 suspension or 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 suspension or cancellation, WorkCover must give to the holder a written notice:
 - (a) stating that the certificate is suspended or cancelled, and
 - (b) in the case of a suspension, specifying the period for which the certificate 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 certificate or such later date as may be specified in the notice.

297 Immediate suspension

- (1) An inspector may, by notice served on the holder of a certificate of competency, immediately suspend the certificate for a period of up to 10 days if the inspector has a reasonable concern about:

- (a) the competency of the holder to do work of the kind authorised by the certificate, or
 - (b) the reliability of the holder to do work of the kind authorised by the certificate 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 certificate is suspended, and
 - (d) 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.
- (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.

298 Cancelled certificates must be surrendered

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

Maximum penalty: Level 1.

Part 9.2 Certificates of competency for formwork and the operation and use of explosive-powered tools

Division 1 Preliminary

299 Definitions

In this Part:

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

Note—

The definition includes former certificates of competency taken to be certificates of competency issued under this Part. See clause 300.

explosive-powered tool means a tool or device whereby a stud, pin, dowel, screw, rivet, spike or other object is driven against, into or through a substance by means of an explosive.

formwork means the erection and dismantling of the surface, supports and framing used to define the shape of concrete until it becomes self-supporting (a “formwork deck”), but

does not include the erection or dismantling of a formwork deck if:

- (a) the maximum distance a person or object could fall from it is less than 3 metres, or
- (b) its area (not interconnected with another formwork deck) is less than 16 square metres and it is designed to hold not more than 2.5 cubic metres or 6 tonnes of wet concrete (whichever form of measure is appropriate).

recognised course of training means a course of training that is recognised in accordance with clause 302 (2).

supervisor, in relation to a trainee, means a person who is designated as the trainee's supervisor under clause 304 (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.

work to which this Part applies means formwork or work involving the operation or use of explosive-powered tools.

300 Former certificates of competency

- (1) In this clause, **former certificate of competency** means a certificate of competency in force under an Act or regulation repealed by the [Occupational Health and Safety Act 2000](#) immediately before that repeal (being a certificate of competency of a kind that could be issued under this Part).
- (2) Unless sooner cancelled, a former certificate of competency is taken to be a certificate of competency issued under this Part authorising the doing of the same kind of work to which the certificate relates.

Division 2 Work for which certificates of competency are required

301 Requirement to be qualified to do work to which this Part applies

- (1) A person must not do any kind of work to which this Part applies unless the person holds a certificate of competency 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 work to which this Part applies unless the person doing the work holds a certificate of competency in relation to work of that kind.

Maximum penalty: Level 3.

(3) A person must not:

- (a) contravene the conditions of a certificate of competency held by the person, or
- (b) direct or allow another person to contravene the conditions of a certificate of competency held by that other person.

Maximum penalty: Level 3.

(4) This clause is subject to the other provisions of this Part.

(5) This clause does not apply to the use of an explosive-powered tool by an authorised person in connection with its repair, overhaul, testing or proving.

(6) In this clause, **authorised person** means:

- (a) in relation to explosive-powered tools of any class, a person who lawfully manufactures, repairs, tests or proves firearms, or a person working under the direct control and supervision of any such person, and
- (b) in relation to explosive-powered tools of a particular class, a manufacturer of explosive-powered tools of that class, a person authorised by the manufacturer to repair explosive-powered tools of that class or a person working under the direct control and supervision of either of those persons.

Note—

Additional exemptions may be granted by WorkCover under Chapter 12.

302 Exception for trainees

(1) A trainee may do any kind of work to which this Part applies to which the recognised course of training in which the trainee is engaged relates if the trainee:

- (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 306.

(2) For the purposes of this clause, a course of training is recognised in relation to a person if, when the person began that course, the course was recognised by the guidelines issued by WorkCover in relation to the training of trainees.

303 Responsibility for providing supervision of trainees

For the purposes of this Division, the person responsible for ensuring that a trainee is properly supervised in the doing of work to which this Part applies is:

- (a) in the case of a trainee who is doing the work as an employee, the person's employer, or

- (b) in the case of a trainee who is doing the work under contract as an independent contractor, the person for whom he or she is doing the work under that contract, or
- (c) in the case of a trainee who is doing the work while engaged in a course of training for that work, the person by whom that course is being conducted, or
- (d) in the case of a trainee who is doing the work under an arrangement with some other person (whether or not for reward) otherwise than as referred to in paragraph (a), (b) or (c), that other person.

304 Responsible person's obligations

- (1) The person responsible for a trainee doing work to which this Part applies must ensure that the following requirements are complied with:
 - (a) the trainee must at all times be directly supervised by a supervisor designated by the person in accordance with subclause (2), unless the responsible person or supervisor has established:
 - (i) that the trainee's competency makes direct supervision unnecessary, and
 - (ii) that a lesser degree of supervision would not endanger the health or safety of the trainee or any other person,
 - (b) the trainee must receive directions, demonstrations, training and monitoring appropriate to the work and commensurate with the competence of the trainee,
 - (c) it must be possible for immediate remedial action to be taken in the event of an emergency arising out of the trainee's doing the work.

Maximum penalty: Level 3.

- (2) The person responsible for a trainee may designate a supervisor for the trainee only if:
 - (a) the supervisor is a person who holds a certificate of competency in relation to work of the kind being done by the trainee, or
 - (b) if no such person is available, the supervisor is a person who belongs to a class of persons that the guidelines issued by WorkCover in relation to the supervision of trainees recognise as competent to directly supervise a trainee in the doing of the type of work concerned.
- (3) The person responsible for a trainee must ensure that the trainee keeps and maintains a record of training in accordance with clause 306.

Maximum penalty (subclause (3)): Level 1.

305 Supervisor's obligations

- (1) The supervisor of a trainee doing work to which this Part applies 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 trainee's competency makes direct supervision unnecessary, and
 - (b) that a lesser degree of supervision would not endanger the health or safety of the trainee or any other person.

Maximum penalty: Level 3.

- (2) A supervisor designated to supervise a trainee by the trainee's employer:
 - (a) must ensure that the trainee keeps and maintains a record of training in accordance with clause 306, and
 - (b) must check the record on each date on which the work to which this Part applies is done by the trainee, and:
 - (i) if satisfied that the record is correct in respect of that date, must sign the record on that date, or
 - (ii) if not so satisfied, must make and sign on that date a note to that effect on the record.

Maximum penalty (subclause (2)): Level 1.

306 Trainee's obligations

- (1) A trainee must keep and maintain a record of training.
- (2) The record must contain the following information in relation to work to which this Part applies of the kind to which the training relates:
 - (a) the name and address of the trainee,
 - (b) the name and address of each employer for whom the trainee does that work,
 - (c) the name of each person who supervises the trainee while the trainee is doing that work,
 - (d) a description of that work as it is actually done by the trainee in the course of training,
 - (e) a record of the dates on which that work was done.

Maximum penalty: Level 1.

Division 3 Assessment of competency

307 Assessment of competency

- (1) An applicant is competent to do formwork if WorkCover is satisfied:
 - (a) that the applicant has been assessed, to a standard considered satisfactory by WorkCover, as being competent in the following:
 - (i) the safe planning, preparation, erection and dismantling of formwork,
 - (ii) the erection and use of different types of scaffolding,
 - (iii) identifying and dealing with defects in structural timbers,
 - (iv) the use of tubular metal scaffolding, its connections and fittings,
 - (v) the methods used in the construction of scaffolding, and
 - (b) that the applicant has successfully completed such training as WorkCover considers appropriate for the performance of formwork.
- (2) An applicant is competent to do work that involves the use or operation of explosive-powered tools if WorkCover is satisfied that the applicant has been assessed, to a standard considered satisfactory by WorkCover, as competent in:
 - (a) the planning for the use of such tools, and
 - (b) the selection of charges for such tools, and
 - (c) the safe use, adjustment, assembly, taking apart and storage of such tools.
- (3) In assessing an applicant's competency to do work to which this Part applies, regard may be had to any of the following matters:
 - (a) any relevant qualifications held by the applicant, including, in particular, any qualifications that are for the time being accepted by WorkCover as being equivalent to a certificate of competency under this Part,
 - (b) the applicant's learning and experience,
 - (c) the applicant's demonstration of competency in tests or examinations carried out by WorkCover or another person or body,
 - (d) the results of any previous assessments.

Division 4 Issue of certificates of competency

308 Applications for certificates

- (1) A person may apply to WorkCover for a certificate of competency to do work to which

this Part applies if the person is at least 18 years of age.

(2) The application:

- (a) must be lodged with WorkCover, and
- (b) must be in the approved form, and
- (c) must be accompanied by such material or information to support the application 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 certificates of competency of the class concerned.

(3) An applicant must provide proof of the applicant's age and identity to WorkCover.

309 Issue of certificates

(1) WorkCover must issue a certificate of competency authorising a person to do any kind of work to which this Part applies if:

- (a) the person has complied with the application requirements in clause 308, and
- (b) WorkCover is satisfied with an assessment of the person's competency to do work of that kind, and
- (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 certificate of competency to an applicant if:

- (a) the applicant is less than 18 years of age, or
- (b) any relevant certificate, 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.

310 Form of certificates

(1) A certificate of competency must be in the approved form and must specify:

- (a) the name of the person to whom it is issued, and
- (b) the date of its issue, and
- (c) a description of the kind of work that the certificate authorises its holder to do, and

(d) a unique identifying number.

- (2) The holder of a certificate of competency must sign the certificate as soon as practicable after receiving it.
- (3) The kind of work authorised by a certificate of competency may be referred to in the certificate by means of a code or symbol, in which case the holder of the certificate must be given, with the certificate, a document that fully describes the work to which the code or symbol refers.
- (4) Work that is authorised by a certificate of competency by reference to a code or symbol is unaffected by any subsequent change in the system of codes or symbols used by WorkCover to describe different kinds of work.

311 Term of certificates

- (1) Unless sooner cancelled, a certificate of competency is in force for an unlimited period from the date of its issue.
- (2) A certificate of competency is of no effect while it is suspended.

312 Replacement of lost, stolen, damaged or destroyed certificates of competency

- (1) The holder of a certificate of competency 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 the issue of replacement certificates.
- (3) WorkCover may issue a replacement certificate if satisfied that the applicant's certificate of competency 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 a certificate of competency that is replaced under this clause:
 - (a) must surrender the original certificate if it is recovered, or
 - (b) in the case of a damaged certificate that is replaced, must surrender the damaged certificate.

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

313 Holder to produce certificate

- (1) An inspector may direct a person doing work to which this Part applies to produce for inspection immediately:
 - (a) the certificate of competency or exemption that authorises the person to do 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 5 Suspension or cancellation of certificates of competency

314 Suspension or cancellation of certificates

- (1) WorkCover may suspend or cancel a certificate of competency if satisfied that:
 - (a) the holder of the certificate is no longer competent to do work of the kind authorised by the certificate, or
 - (b) the holder of the certificate can no longer be relied on to do work of the kind authorised by the certificate without endangering the health or safety of the holder or any other person, or
 - (c) the certificate 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 certificate of competency, WorkCover:
 - (a) must cause written notice of the proposed suspension or 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 suspension or 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 suspension or cancellation, WorkCover must give to the holder a written notice:
 - (a) stating that the certificate is suspended or cancelled, and
 - (b) in the case of a suspension, specifying the period for which the certificate 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 certificate or such later date as may be specified in the notice.

315 Immediate suspension

(1) An inspector may, by notice served on the holder of a certificate of competency, immediately suspend the certificate for a period of up to 10 days if the inspector has a reasonable concern about:

(a) the competency of the holder to do work of the kind authorised by the certificate, or

(b) the reliability of the holder to do work of the kind authorised by the certificate 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 the reasons for the suspension, and

(c) must specify the period for which the certificate is suspended, and

(d) 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.

(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.

316 Cancelled certificates must be surrendered

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

Maximum penalty: Level 1.

Chapter 10 Licensing of certain businesses

Part 10.1 Preliminary

317 Definitions

(1) In this Chapter:

asbestos means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

bonded asbestos material means any material (other than friable asbestos material) that contains asbestos.

bonded asbestos removal work means work in which bonded asbestos material is removed, repaired or disturbed.

demolition work means any one or more of the following:

- (a) work comprising the total demolition of any building, structure or installation that is 10 metres or more in height,
- (b) work comprising the partial demolition of any building, structure or installation that is 10 metres or more in height so as to affect its structural integrity,
- (c) work comprising the total or partial demolition of any building, structure or installation, being work involving the use of load shifting machinery on suspended floors,
- (d) work comprising the total or partial demolition of pre-tensioned or post-tensioned structural components of a building or structure,
- (e) work done to a building, structure or installation that is 4 metres or more in height, being work involving mechanical demolition,
- (f) work done to a building, structure or installation involving explosives or methods of induced collapse (that is, where the structural stability of the whole or part of the building, structure or installation is deliberately altered in such a way that the collapse ensues suddenly).

friable asbestos material means any material that contains asbestos and is in the form of a powder or can be crumbled, pulverised or reduced to powder by hand pressure when dry.

friable asbestos removal work means work in which friable asbestos material is removed, repaired or disturbed.

licence means a licence to carry on the business of licensed work granted and in force under this Chapter.

Note—

Certain former licences and certificates are taken to be licences granted under this Chapter. See Part 10.4.

licensed work means work of one of the following kinds:

- (a) demolition work,
- (b) restricted demolition work,
- (c) friable asbestos removal work, other than:
 - (i) work done by a person, at the person's usual place of business, at a frequency of one hour per week or less, or
 - (ii) work done for the purpose only of obtaining a sample of asbestos for identification,
- (d) bonded asbestos removal work, other than:
 - (i) work done for the purpose only of obtaining a sample of asbestos for identification, or
 - (ii) work done in relation to bonded asbestos material having a total surface area of less than 200 square metres.

restricted demolition work means demolition work other than work comprising the following:

- (a) demolition of chemical installations,
 - (b) demolition above 15 metres in height,
 - (c) demolition using a tower crane on site,
 - (d) demolition using a mobile crane with a rated capacity of more than 100 tonnes,
 - (e) demolition of pre-tensioned or post-tensioned structures,
 - (f) demolition involving floor propping,
 - (g) demolition using explosives.
- (2) For the purposes of this Chapter:
- (a) a person carries on a business if the person carries on the business personally, in partnership or by employees or agents or if the person advertises that the person carries on such a business, and
 - (b) a person does work if the person does the work personally, in partnership or by employees or agents.

Part 10.2 Licences required for demolition or asbestos removal work

318 Licensed work not to be carried on without a licence

- (1) A person must not carry on the business of licensed work otherwise than in

accordance with a licence relating to that work.

- (2) A person must not employ, direct or allow another person to do licensed work unless that person holds a licence relating to that work.
- (3) For the purposes of subclauses (1) and (2), a licence to carry on the business of friable asbestos removal work, demolition work or restricted demolition work also authorises the holder to carry on the business of bonded asbestos removal work.
- (4) A person must not:
 - (a) contravene the conditions of a licence, or
 - (b) direct or allow another person to contravene the conditions of a licence.

Maximum penalty: Level 3.

Note—

See definitions of *licensed work* and *demolition work* in clause 317. Generally, a licence is not required for the manual demolition of a building, structure or installation under 10 metres in height.

Part 10.3 Provisions relating to licences

Note—

A decision of WorkCover to refuse an application for a licence, to impose conditions on a licence or to suspend or cancel a licence under this Part is subject to review by the Administrative Decisions Tribunal (also note that a failure to determine an application within 3 months is taken to be a refusal). See Part 12.5.

319 Applications for licences

- (1) An application for a licence:
 - (a) must specify the class or classes of licensed work for which the licence is required, and
 - (b) must be in the approved form, and
 - (c) must be accompanied by the fee fixed for the time being by WorkCover to cover expenses in connection with applications for licences of the class concerned, and
 - (d) must be lodged at the offices of WorkCover.
- (2) An application by persons who intend to carry on business in partnership may be made by any one or more of those persons.

320 Eligibility for licence

- (1) A person is eligible for a licence if WorkCover is satisfied that:
 - (a) in the case of an individual:

- (i) the individual is of or above the age of 18 years, and
 - (ii) the individual is a fit and proper person to hold a licence, and
 - (iii) the individual has appropriate qualifications in relation to the relevant licensed work, and
 - (iv) appropriate arrangements exist to ensure that the individual's employees do not do licensed work unless they have had training in safe working methods in relation to the licensed work, and
- (b) in the case of a corporation:
- (i) the corporation is a fit and proper person to hold a licence, and
 - (ii) each director of the corporation would, if he or she were the applicant, be a fit and proper person to hold a licence, and
 - (iii) at least one individual engaged in the management of the corporation has appropriate qualifications in relation to the licensed work, and
 - (iv) appropriate arrangements exist to ensure that the corporation's employees do not do the licensed work unless they have had training in safe working methods in relation to the licensed work, and
- (c) appropriate arrangements exist to ensure that, during the carrying out of the licensed work, a person holding appropriate qualifications in relation to the licensed work (whether or not the holder of the licence) will supervise the carrying out of the work.
- (2) For the purposes of this Chapter, a person holds appropriate qualifications in relation to licensed work if the person:
- (a) has demonstrated his or her knowledge of safe working methods in relation to the licensed work, or
 - (b) has completed a course of training approved by WorkCover in relation to the licensed work, or
 - (c) has, in the opinion of WorkCover, appropriate experience or training in the carrying out of the licensed work.

321 Determination of applications

- (1) After considering an application, WorkCover:
- (a) may grant the licence to which the application relates, either unconditionally or subject to conditions, or

(b) may refuse the application if satisfied that the applicant is not eligible for the licence.

- (2) A licence is to be in the approved form and is to specify the class of licensed work to which it relates.
- (3) If WorkCover grants more than one licence to an applicant, it may issue a single document in respect of those licences.

322 Notice of refusal

If WorkCover refuses to grant a licence, it must give written notice of the refusal, and of the reasons for the refusal, to the applicant.

323 Term of licences

A licence remains in force, unless sooner suspended or cancelled, for a period of 2 years commencing on the date on which it is granted, or until such later date as may be specified in the licence for its expiry.

324 Licence fees

- (1) The fee payable for a licence is the fee fixed for the time being by WorkCover to cover expenses in connection with the regulation of licensees of the class concerned.
- (2) A licence has no effect until the licence fee has been paid.

325 Condition of licence relating to supervision

It is a condition of a licence that, during the carrying out of the licensed work, a person holding appropriate qualifications in relation to the licensed work (whether or not the holder of the licence) must supervise the carrying out of the work.

326 Amendment of conditions of licences

- (1) WorkCover, on the application of the holder of a licence or on its own initiative:
 - (a) may amend or cancel any condition to which the licence is subject, or
 - (b) may impose further conditions on the licence.
- (2) An amendment to a condition, or a further condition, takes effect on the date on which notice of the amendment or further condition is given to the holder of the licence or on such later date as may be specified in the notice.

327 Licences to be displayed

A person who does licensed work at any place must cause a copy of the relevant licence to be displayed at that place while the work is being done.

Maximum penalty: Level 1.

328 Suspension or cancellation of licences

- (1) WorkCover may suspend or cancel a licence if satisfied that the holder of the licence:
 - (a) has made a statement, in or in connection with an application for the licence, that the holder knew, when the statement was made, to be false or misleading in a material particular, or
 - (b) has done or authorised licensed work in such a manner as to expose any person (including any of his or her employees or agents) to a health or safety risk from the licensed work that could reasonably have been avoided, or
 - (c) has contravened a condition of the licence, or
 - (d) has failed to comply with the requirements of an improvement notice or prohibition notice under this Regulation, or
 - (e) has been convicted of an offence against the Act or any regulation (including this Regulation) under the Act, or
 - (f) in the case of an individual, is no longer a fit and proper person to hold the licence, or
 - (g) in the case of a corporation, has a director who is no longer a fit and proper person to hold a licence.
- (2) Before suspending or cancelling a licence, WorkCover:
 - (a) must cause 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.
- (3) 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.

329 Cancelled licences to be returned to WorkCover

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

Maximum penalty: Level 1.

Part 10.4 Savings and transitional provisions

330 Savings and transitional provisions

- (1) A licence to carry out demolition work (Class 1, Unrestricted Licence) in force immediately before the repeal of the *Occupational Health and Safety (Demolition Licensing) Regulation 1996* is taken to be a licence granted under this Chapter authorising the carrying on of the business of demolition work.
- (2) A licence to carry out demolition work (Class 2, Restricted Licence) in force immediately before the repeal of the *Occupational Health and Safety (Demolition Licensing) Regulation 1996* is taken to be a licence granted under this Chapter authorising the carrying on of the business of restricted demolition work.
- (3) A licence to carry on the business of friable asbestos removal work in force immediately before the repeal of the *Occupational Health and Safety (Asbestos Removal Work) Regulation 1995* is taken to be a licence granted under this Chapter authorising the carrying on of the business of friable asbestos removal work.
- (4) A certificate of registration as a bonded asbestos removal contractor in force immediately before the repeal of the *Occupational Health and Safety (Asbestos Removal Work) Regulation 1995* is taken to be a licence granted under this Chapter authorising the carrying on of the business of bonded asbestos removal work.
- (5) A licence or certificate referred to in subclauses (1)-(4) that is taken to be a licence granted under this Chapter continues in force (unless sooner cancelled):
 - (a) for the term for which it was granted, or
 - (b) for a period of 2 years from the commencement of this Regulation,whichever is the lesser period.

Chapter 11 Permits for certain work

Part 11.1 Preliminary

331 Definitions

In this Chapter:

asbestos means the fibrous form of those mineral silicates that belong to the serpentine or amphibole groups of rock-forming minerals, including actinolite, amosite (brown asbestos), anthophyllite, chrysotile (white asbestos), crocidolite (blue asbestos) and tremolite.

demolition work means demolition work (as defined in Chapter 10) that:

- (a) is carried out by means of:

- (i) pushing or pulling using a mobile crane, or
- (ii) a crane using a demolition ball, or
- (b) involves the demolition of a building (or part of a building) that is more than 4 metres in height and that involves pulling with ropes or chains or similar means, or
- (c) involves the demolition of a building by means of explosives.

friable asbestos material means any material that contains asbestos and is in the form of a powder or can be crumbled, pulverised or reduced to powder by hand pressure when dry.

friable asbestos removal work means work in which friable asbestos material is removed, repaired or disturbed, other than:

- (a) work done by a person, at the person's usual place of business, at a frequency of one hour per week or less, or
- (b) work done for the purpose only of obtaining a sample of asbestos for identification.

permit means a permit to do demolition work or friable asbestos removal work granted and in force under this Chapter.

Note—

Certain former permissions and permits are taken to be permits granted under this Chapter. See Part 11.4.

Part 11.2 Permits required for demolition or friable asbestos removal work

332 Demolition work or friable asbestos removal work not to be done without a permit

- (1) A person must not do demolition work or friable asbestos removal work otherwise than in accordance with a permit.
- (2) A person does not contravene subclause (1) if the person is doing the work as an employee.
- (3) A person must not:
 - (a) contravene the conditions of a permit, or
 - (b) direct or allow another person to contravene the conditions of a permit.

Maximum penalty: Level 3.

Part 11.3 Provisions relating to permits

Note—

A decision of WorkCover to refuse an application for a permit, to impose conditions on a permit or to suspend or cancel a permit under this Part is subject to review by the Administrative Decisions Tribunal (also note that a failure to determine an application within 7 days (or 21 days in the case of demolition work involving explosives) is taken to be a refusal). See Chapter 12.

333 Applications for permits

- (1) An application for a permit to do demolition work or friable asbestos removal work:
 - (a) must be in the approved form, and
 - (b) may be made only by the holder of a licence granted under Chapter 10 in respect of work of that kind, and
 - (c) must specify the nature and extent of the work to be done and the method by which the applicant proposes to do the work, and
 - (d) must, if the work is the demolition of a building (or part of a building) that is more than 4 metres in height and the demolition work involves pulling with ropes or chains or similar means, be accompanied by a risk assessment and such other documents as WorkCover may require, and
 - (e) must specify the estimated cost of doing the work, and
 - (f) must be accompanied by the fee fixed for the time being by WorkCover to cover the administrative costs of WorkCover in connection with the regulation of the holders of permits of the class concerned, and
 - (g) must be lodged at the offices of WorkCover at least 7 days (or 21 days in the case of demolition work involving the use of explosives) before the work is due to commence.
- (2) An application by persons who do work in partnership may be made by any one or more of those persons.

334 Determination of applications

- (1) After considering an application, WorkCover:
 - (a) may grant the permit to which the application relates, either unconditionally or subject to conditions, or
 - (b) may refuse the application.
- (2) 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.
- (3) A permit is to be in the approved form.

335 Term of permits

- (1) A permit has effect for such period as may be specified in the permit.

- (2) A permit ceases to have effect while it is suspended or if it is cancelled.

336 Amendment of conditions of permits

- (1) WorkCover, on the application of the holder of a permit or on its own initiative:
- (a) may amend or cancel any condition to which the permit is subject, or
 - (b) may impose further conditions on the permit.
- (2) An amendment to a condition, or a further condition, takes effect on the date on which notice of the amendment or further condition is given to the holder of the permit or on such later date as may be specified in the notice.

337 Permits to be displayed

A person who does demolition work or friable asbestos removal work at any place must cause a copy of the relevant permit to be displayed at that place while the work is being done.

Maximum penalty: Level 1.

338 Suspension and cancellation of permits

- (1) WorkCover may suspend or cancel a permit if satisfied that the holder of the permit:
- (a) has made a statement, in or in connection with an application under this Regulation, that the holder knew, when the statement was made, to be false or misleading in a material particular, or
 - (b) has done demolition work or friable asbestos removal work in such a manner as to expose any person (including any of his or her employees or agents) to a health or safety risk from the work that could reasonably have been avoided, or
 - (c) has contravened a condition of the permit, or
 - (d) has failed to comply with the requirements of an improvement notice or prohibition notice issued under this Regulation, or
 - (e) has been convicted of an offence against the Act or any regulation (including this Regulation) under the Act.
- (2) Before suspending or cancelling a permit, WorkCover:
- (a) must cause notice of the proposed suspension or cancellation to be given to the holder of the permit, and
 - (b) must give the holder of the permit 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.

- (3) The suspension or cancellation of a permit takes effect on the date on which notice of the suspension or cancellation is given to the holder of the permit or on such later date as may be specified in the notice.

339 Cancelled permits to be returned to WorkCover

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

Maximum penalty: Level 1.

Part 11.4 Savings and transitional provisions

340 Savings and transitional provisions

- (1) A written permission to do demolition work given under Regulation 84AB or 84AH of the *Construction Safety Regulations 1950* and in force immediately before the repeal of those Regulations is taken to be a permit granted under this Chapter to do the same work.
- (2) A permit to do friable asbestos removal work granted under the *Occupational Health and Safety (Asbestos Removal Work) Regulation 1995* and in force immediately before the repeal of that Regulation is taken to be a permit granted under this Chapter to do the same work.

Chapter 12 Miscellaneous

Part 12.1 Notification of accidents and other matters

341 Notification of accidents and other matters—declaration under section 86 of the Act of additional occurrences to be notified to WorkCover

Note—

Section 86 of the Act requires the occupier of a place of work to give WorkCover notice in accordance with that section of certain occurrences at the place of work. These occurrences include occurrences that have resulted in a person being killed and occurrences prescribed in clause 344 for the purposes of section 87 of the Act. Section 86 of the Act also provides that additional occurrences can be declared by regulation to be occurrences required to be notified to WorkCover.

In accordance with section 86 (1) (b) of the Act, any event or circumstance listed below occurring at or in relation to a place of work is, if it is an event or circumstance that presents a risk to health or safety and is not immediately threatening to life, declared to be an occurrence that is required to be notified to WorkCover:

- (a) an injury to a person (supported by a medical certificate) that results in the person being unfit, for a continuous period of at least 7 days, to attend the person's usual

place of work, to perform his or her usual duties at his or her place of work or, in the case of a non-employee, to carry out his or her usual activities,

- (b) an illness of a person (supported by a medical certificate) that is related to work processes and results in the person being unfit, for a continuous period of at least 7 days, to attend the person's usual place of work or to perform his or her usual duties at that place of work,
- (c) damage to any plant, equipment, building or structure or other thing that impedes safe operation,
- (d) an uncontrolled explosion or fire,
- (e) an uncontrolled escape of gas, dangerous goods or steam,
- (f) a spill or incident resulting in exposure or potential exposure of a person to a notifiable or prohibited carcinogenic substance (as defined in Part 6.3),
- (g) removal of workers from lead risk work (as defined in Part 7.6) due to excessive blood lead levels,
- (h) exposure to bodily fluids that presents a risk of transmission of blood-borne diseases,
- (i) any incidence of violence at a place of work (supported by a medical certificate) that results in an employee being unfit, for a continuous period of at least 7 days, to attend the employee's usual place of work or to perform his or her usual duties at that place of work,
- (j) any occurrence that involves a risk of:
 - (i) explosion or fire, or
 - (ii) escape of gas, dangerous goods or steam, or
 - (iii) serious injury to, or illness of, a person, or
 - (iv) substantial property damage.

342 Variation of obligations under section 86 of the Act—employers to notify WorkCover of certain injuries and illnesses

- (1) In accordance with section 86 (4) of the Act, the obligations under that section are varied by requiring an employer of a person (instead of the occupier of the place of work) to give WorkCover notice in the case of an injury to, or illness of, the person, being an injury or illness that is an event or circumstance referred to in clause 341. This subclause does not apply if the employer is aware that another person has given the required notice to WorkCover.
- (2) Any such notice must:

- (a) be given as soon as practicable (but not later than 7 days) after:
 - (i) in the case of an injury—the employer becomes aware of the injury, and
 - (ii) in the case of an illness—the employer receives the relevant medical certificate, and
- (b) be in the approved form, and
- (c) be given by leaving it at, or by sending it by post or facsimile transmission to, an office of WorkCover.

343 Retention of copies of notices

- (1) A person who gives a notice under section 86 of the Act or clause 342 must retain a copy of the notice in a bound book or in loose-leaf form for a period of at least 5 years after the date the notice is given.
- (2) Any such person must make those copies available for inspection by an inspector in accordance with a request by the inspector, and in any event, no later than 7 days after the date of the request.

Maximum penalty: Level 1.

Part 12.2 Prescription of additional non-disturbance occurrences

344 Non-disturbance of places and plant involved in certain occurrences—prescription under section 87 of the Act of additional occurrences

Note—

Section 87 of the Act requires the occupier of a place of work involved in an occurrence that has resulted in a person being killed not to disturb the place (or plant at the place) for a period of 36 hours. The section provides that additional occurrences can be prescribed as non-disturbance occurrences by regulation. (The section does not prevent such actions as helping or removing trapped or injured persons or actions directed or permitted by an inspector in the 36 hour period—see section 87 (4).)

For the purposes of the definition of **non-disturbance occurrence** in section 87 (1) of the Act, the following occurrences at or in relation to a place of work are prescribed:

- (a) an injury to a person that results in the amputation of a limb,
- (b) the placing of a person on a life support system,
- (c) any event or circumstance listed below that presents an immediate threat to life:
 - (i) the loss of consciousness of a person caused by impact of physical force, exposure to hazardous substances, electric shock or lack of oxygen,
 - (ii) major damage to any plant, equipment, building or structure,

- (iii) an uncontrolled explosion or fire,
- (iv) an uncontrolled escape of gas, dangerous goods or steam,
- (v) imminent risk of explosion or fire,
- (vi) imminent risk of an escape of gas, dangerous goods or steam,
- (vii) a spill or incident resulting in exposure or potential exposure of a person to a notifiable or prohibited carcinogenic substance (as defined in Part 6.3),
- (viii) entrapment of a person in a confined space,
- (ix) collapse of an excavation,
- (x) entrapment of a person in machinery,
- (xi) serious burns to a person.

Part 12.3 Notifications of proposed work

345 Proposed work in respect of which notice to WorkCover is required

- (1) An employer must not commence to carry out work of the following kind at a place of work unless the employer has given WorkCover notice of the proposed work:
 - (a) work that involves the use of a notifiable or prohibited carcinogenic substance (as defined in Part 6.3),
 - (b) lead risk work (as defined in Part 7.6),
 - (c) bonded asbestos removal work (as defined in Part 10.1),
 - (d) demolition work (as defined in Part 10.1), other than work for which a permit under Chapter 11 is in force.
- (2) Any such notice must:
 - (a) be in the approved form, and
 - (b) except as provided in paragraph (c), be given at least 60 days before the commencement of the proposed work (or, if WorkCover has agreed in writing to accept a shorter period of notice, be given before the commencement of that shorter period), and
 - (c) in the case of work that involves the therapeutic use of cyclophosphamide in hospitals, be given on or before the day of use, and
 - (d) contain the information specified in any guidelines prepared by WorkCover for the purpose, and

- (e) be given by leaving it at, or by sending it by post or facsimile transmission to, an office of WorkCover.
- (3) If an employer has given notice of proposed work involving the use of a carcinogenic substance and the work is continuing work, the employer must give WorkCover a further notice (in accordance with subclause (2) (a), (d) and (e)) at least every 5 years while the work continues.
- (4) Any proposed work involving the use of carcinogenic substances that has been notified to WorkCover by an employer in accordance with the former Act is taken to be notified to WorkCover by the employer for the purposes of this clause.
- (5) An employer is not required to comply with subclause (1) (a) within the period of 12 months after the commencement of this clause to the extent that it applies to:
 - (a) the therapeutic use of cyclophosphamide, or
 - (b) the use of benzene as a feed stock containing more than 50 per cent of benzene by volume, or
 - (c) the use of chloromethyl ether, technical grade.
- (6) An employer is not required to comply with subclause (1) (b) within the period of 3 months after the commencement of this clause.

Maximum penalty: Level 4.

346 WorkCover to be notified of any reviews of risk assessments

An employer who is required to give notice of proposed work under clause 345 must notify WorkCover in writing of:

- (a) any review of a risk assessment relating to the work that is required to be carried out under Chapter 2, and
- (b) the name and address of the person or organisation carrying out the risk assessment if the assessment was not carried out by the employer.

Maximum penalty: Level 1.

Part 12.4 Exemptions

347 Exemptions for particular persons on application

- (1) A person may apply to WorkCover for an exemption from any provision of this Regulation.
- (2) Before making such an application, the person must cause notice of the proposed application to be given:

- (a) to all persons employed at any place of work concerned, or
 - (b) in accordance with any consultation arrangements agreed by the employer and the employees under the Act.
- (3) The notice:
- (a) must state that the person proposes to seek an exemption from this Regulation, and
 - (b) must state the effect of such an exemption, and
 - (c) must invite the persons to whom the notice is given to make submissions, in writing or orally, concerning the proposal to apply for the exemption, and
 - (d) must specify the person to whom, and the date by which, any such submissions would be made.
- (4) An application must be in writing and must include copies of the written submissions, and a summary of the oral submissions, made in connection with the application.
- (5) On receipt of the application, WorkCover:
- (a) may, by order in writing, exempt the person from a specified provision of this Regulation if it is satisfied that:
 - (i) the person is capable of achieving at least an equivalent level of safety as would be achieved if the provision had been complied with, or
 - (ii) the application of the provision to the person is inappropriate or unnecessary in the circumstances, or
 - (b) may dismiss the application.
- (6) An exemption under this clause may be given unconditionally or subject to such conditions as WorkCover considers appropriate and specifies in the order.
- (7) Unless withdrawn, an exemption under this clause has effect for such period (not exceeding 5 years) as is specified in the exemption. If no such period is specified, the exemption has effect for a period of 5 years after it is granted.
- (8) WorkCover may withdraw an exemption under this clause if it is satisfied that the withdrawal is justified on health or safety grounds.

Note—

See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to dismiss an application for an exemption, to impose a condition on an exemption or to withdraw an exemption.

348 Exemptions for classes of persons or things

- (1) WorkCover may, by order published in the Gazette, exempt any class of persons or things from a specified provision of this Regulation.
- (2) An exemption under this clause may be unconditional or subject to such conditions as WorkCover considers appropriate and specifies in the order.
- (3) Unless withdrawn, an exemption under this clause has effect for such period (not exceeding 5 years) as is specified in the exemption. If no such period is specified, the exemption has effect for a period of 5 years after it is granted.
- (4) WorkCover may, before granting an exemption under this clause, give notice of the proposed exemption to such persons or bodies as it considers appropriate.
- (5) WorkCover may withdraw an exemption under this clause if it is satisfied that the withdrawal is justified on health or safety grounds.

349 Register of exemptions

- (1) WorkCover is required to keep and make available for public inspection a register of all exemptions granted under this Part that are in force.
- (2) WorkCover is not required to include in the register confidential personal information about an individual or information relating to manufacturing or commercial secrets or working processes.

350 Phasing out of former exemptions

Any exemption given, issued or made under an Act or a provision of an Act referred to in clause 15 of Schedule 3 to the *Occupational Health and Safety Act 2000* and continued in force by the operation of that clause ceases to have effect at the end of the period of 12 months after the commencement of this Regulation.

Note—

This clause is authorised by clause 15 of Schedule 3 to the *Occupational Health and Safety Act 2000*.

Part 12.5 Reviews of WorkCover decisions

351 Decisions subject to review by the Administrative Decisions Tribunal: section 36 of the Act

- (1) A person aggrieved by a decision that belongs to one of the following classes of decisions made by WorkCover (being a decision made in respect of that person) may apply to the Administrative Decisions Tribunal for a review of the decision:
 - (a) decisions under clause 31 (4) to refuse to accredit the person as a trainer,
 - (b) decisions under Part 5.2:

- (i) to refuse to register a plant design, or
 - (ii) to refuse to register an item of plant, or
 - (iii) to impose a condition on registration of an item of plant, or
 - (iv) to cancel the registration of an item of plant, or
 - (v) to discontinue the registration of an item of plant,
- (c) decisions under Chapter 9:
- (i) to refuse to issue a certificate of competency, or
 - (ii) to suspend or cancel a certificate of competency, or
 - (iii) to refuse to replace a certificate of competency, or
 - (iv) to refuse to accredit a person as an assessor, or
 - (v) to suspend or cancel a person's accreditation as an assessor, or
 - (vi) to confirm the decision of an assessor on an application for a review of the decision,
- (d) decisions under Chapter 10:
- (i) to refuse to issue a licence, or
 - (ii) to impose a condition on a licence, or
 - (iii) to suspend or cancel a licence,
- (e) decisions under Chapter 11:
- (i) to refuse to issue a permit, or
 - (ii) to impose a condition on a permit, or
 - (iii) to suspend or cancel a permit,
- (f) decisions under Part 12.4:
- (i) to dismiss an application for an exemption from a provision of this Regulation,
or
 - (ii) to impose a condition on an exemption from a provision of this Regulation, or
 - (iii) to withdraw an exemption from a provision of this Regulation.
- (2) WorkCover is taken, for the purposes of an application for review by the Administrative Decisions Tribunal:

- (a) to have refused to grant an approval, permission or exemption, or
- (b) to have refused to register a plant design or an item of plant or amusement device, or
- (c) to have refused to issue a certificate of competency or licence, or
- (d) to have refused to amend or cancel a condition of an approval, registration, permission or exemption, or
- (e) to have refused to rescind a cancellation or discontinuance of registration, or
- (f) to have refused to accredit an assessor under Chapter 9, or
- (g) to have confirmed a decision of an assessor under Chapter 9,

if it does not determine an application in relation to the relevant matter within 3 months after the date of lodgment of the application.

- (3) WorkCover is taken, for the purposes of an application for review by the Administrative Decisions Tribunal, to have refused an application to issue a permit under Chapter 11 if it does not determine the application within 7 days (or 21 days in the case of an application for a permit to do demolition work involving the use of explosives) after the date of lodgment of the application.

Note—

The Minister administering the [Administrative Decisions Tribunal Act 1997](#) has concurred in the making of the above clause pursuant to section 36 (2) of the [Occupational Health and Safety Act 2000](#).

Part 12.6 Penalty notice offences

352 Definitions

In this Part:

Infringement Processing Bureau means the Infringement Processing Bureau within the Police Service.

IPB Code, in relation to an offence, means the code allocated to the offence by the Infringement Processing Bureau.

penalty notice means a notice served under section 108 of the Act.

353 Penalty notice offences and penalties

(1) For the purposes of section 108 of the Act:

- (a) each offence created by a provision specified in Column 1 of Schedule 2 is an offence for which a penalty notice may be served, and

(b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of the Schedule.

- (2) If the reference to a provision in Column 1 of Schedule 2 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

354 Authorised officers

An inspector under the Act is an authorised officer for the purposes of serving penalty notices for offences under the Act or this Regulation.

355 Short descriptions of offences

- (1) For the purposes of section 145B (2) of the *Justices Act 1902*, the prescribed expression for an offence created by a provision specified in Column 1 of Schedule 2 consists of the IPB Code set out in relation to the offence in Column 3 of that Schedule together with:
- (a) the expression specified in Column 4 of the Schedule opposite the offence, or
 - (b) if a choice of words is indicated in that expression—the words remaining after the omission of the words irrelevant to the offence.
- (2) For the purposes of any proceedings for an offence created by a provision specified in Column 1 of Schedule 2, the prescribed expression for the offence is taken to relate to the offence created by the provision as the provision was in force when the offence is alleged to have been committed.
- (3) The amendment or repeal of a prescribed expression does not affect the validity of any information, complaint, summons, warrant, notice, order or other document in which the expression is used and any such document continues to have effect as if that expression had not been amended or repealed.
- (4) Subclause (3) applies to any information, complaint, summons, warrant, notice, order or other document (whether issued, given or made before or after the amendment or repeal) that relates to an offence alleged to have been committed before the amendment or repeal.

Part 12.7 Other miscellaneous provisions

356 False or misleading information in applications

- (1) A person must not, in or in connection with a relevant application under this Regulation, make any statement that the person knows to be false or misleading in a material particular.

Maximum penalty: Level 3.

- (2) For the purposes of this clause, the following are relevant applications:
- (a) an application under Chapter 5, 9, 10 or 11,
 - (b) a notification under clause 117,
 - (c) an application for an exemption under this Chapter.

357 Additional officers authorised to consent to institution of proceedings for offences

For the purposes of section 106 (1) (b) of the Act, the following are prescribed officers:

- (a) in relation to proceedings for an offence against the Act concerning a place of work that is a mine within the meaning of the *Mines Inspection Act 1901*—the Director-General of the Department of Mineral Resources, or
- (b) in relation to proceedings for an offence against the Act concerning a place of work that is a mine within the meaning of the *Coal Mines Regulation Act 1982*—the Director-General of the Department of Mineral Resources.

358 Application of Act to mines: references to WorkCover

In accordance with section 133 of the Act, a reference in any of the following provisions of the Act to WorkCover, in connection with the application of the provision to a mine, is taken to be a reference to the Department of Mineral Resources:

Division 2 of Part 2 (Duty to consult)

Section 114 (Orders regarding costs and expenses of investigation).

359 Continuation of former OHS shop provisions

- (1) In this clause,

former OHS shop provisions means, subject to subclause (4):

- (a) the provisions of Part 3 of the *Factories, Shops and Industries Act 1962* that, immediately before the commencement of this Regulation, applied to shops, and
 - (b) the provisions of the *Factories (Health and Safety) General Regulations 1913* that, immediately before the commencement of this Regulation, applied to shops.
- (2) The former OHS shop provisions continue to have effect as provisions of this Regulation. Those provisions have effect in addition to the provisions of this Regulation.
- (3) A person who contravenes any of the former OHS shop provisions with which the person is, under those provisions, required to comply is guilty of an offence.

Maximum penalty: Level 4.

Note—

Immediately before the commencement of this Regulation, certain provisions applied to shops by virtue of section 61 of the *Factories, Shops and Industries Act 1962*.

- (4) For the purpose of the definition of **former OHS shop provisions** in subclause (1), the following provisions are taken to have applied to shops immediately before the commencement of this Regulation:
- (a) sections 19, 20, 21, 23, 24, 33, 34, 38, 40, 45, 50, 57, 58, 59, 60 and 61 of the *Factories, Shops and Industries Act 1962*,
 - (b) Regulations 3, 4, 6, 8, 9, 10, 11, 12, 16A, 17, 17A and 25 of the *Factories (Health and Safety) General Regulations 1913*.

360 Notes

The explanatory note, table of contents and notes in the text of this Regulation do not form part of this Regulation.

361 Transitional application of sentencing guideline provisions

- (1) This clause applies to guideline proceedings under Division 4 of Part 7 of the Act relating to offences under the Act.
- (2) Nothing in this clause limits any jurisdiction or discretion of the Full Bench under Division 4 of Part 7 of the Act.
- (3) In exercising its powers and jurisdiction to give a guideline judgment relating to an offence under the Act, the Full Bench may, if the provision creating the offence substantially re-enacts a provision of the former Act creating an offence (the **corresponding offence**), consider matters relating to the corresponding offence.

Schedule 1 Standards covering design and manufacture of plant

(Clauses 3 (2) and (3), 94, 103 (3) (b) and (c), 107 (2) (a) and 122 (1) (c))

Note—

Subclauses (2) and (3) of clause 3 provide that:

- (a) in this Regulation, a reference to an Australian Standard is a reference to an Australian Standard (AS) or an Australian/New Zealand Standard (AS/NZS) published by Standards Australia in the year referred to in the citation of the Standard, as in force from time to time, and
- (b) if WorkCover has indicated that it is satisfied that another standard provides an equivalent standard of safety to an Australian Standard or an Australian/New Zealand Standard, that other standard may be applied instead for the purposes of the relevant provision of this Regulation, and
- (c) if there is an inconsistency between a provision of this Regulation and a provision of an Australian Standard or another

standard referred to in this Regulation, the provision of this Regulation prevails.

Boilers and pressure vessels

AS 1210—1997	<i>Pressure vessels</i>
AS 1210 Supp 1—1990	<i>Unfired pressure vessels—Advanced design and construction</i>
AS 1210 Supp 2—1999	<i>Pressure vessels—Cold-stretched austenitic stainless steel</i>
AS 1228—1997	<i>Pressure equipment—Boilers</i>
AS 2971—1987	<i>Serially produced pressure vessels</i>
AS/NZS 3509:1996	<i>LP gas fuel vessels for automotive use</i>
AS 3892—2001	<i>Pressure equipment—Installation</i>
AS 4343—1999	<i>Pressure equipment—Hazard levels</i>
AS 4458—1997	<i>Pressure equipment—Manufacture</i>

Australian Miniature Boiler Safety Committee Code—Part 1: Copper Boilers

Australian Miniature Boiler Safety Committee Code—Part 2: Steel Boilers

Cranes (including hoists and winches)

AS 1418.1—1994	<i>Cranes (including hoists and winches) Part 1—General requirements</i>
AS 1418.2—1997	<i>Cranes (including hoists and winches) Part 2—Serial hoists and winches</i>
AS 1418.3—1997	<i>Cranes (including hoists and winches) Part 3: Bridge, gantry and portal cranes (including container cranes)</i>
AS 1418.4—2001	<i>Cranes (including hoists and winches) Part 4: Tower cranes</i>
AS 1418.5—1995	<i>Cranes (including hoists and winches) Part 5: Mobile and vehicle-loading cranes</i>
AS 1418.6—1988	<i>SAA Crane Code Part 6—Guided storing and retrieving appliances</i>
AS 1418.7—1999	<i>Cranes (including hoists and winches) Part 7: Builders' hoists and associated equipment</i>
AS 1418.8—1989	<i>SAA Crane Code Part 8—Special purpose appliances</i>
AS/NZS 1418.9:1996	<i>Cranes (including hoists and winches) Part 9: Vehicle hoists</i>
AS 1418.10—1996	<i>Cranes (including hoists and winches) Part 10: Elevating work platforms</i>
AS 1418.12—1991	<i>Cranes (including hoists and winches) Part 12: Crane collector systems</i>

AS 1418.13—1996	<i>Cranes (including hoists and winches) Part 13: Building maintenance units</i>
AS 1418.14—1996	<i>Cranes (including hoists and winches) Part 14: Requirements for cranes subject to arduous working conditions</i>
AS 1418.15—1994	<i>Cranes (including hoists and winches) Part 15: Concrete placing equipment</i>
AS 1418.16—1997	<i>Cranes (including hoists and winches) Part 16: Mast climbing work platforms</i>
AS 1418.17—1996	<i>Cranes (including hoists and winches) Part 17: Design and construction of workboxes</i>
AS 1418.18—2001	<i>Cranes (including hoists and winches) Part 18: Crane runways and monorails</i>

Scaffolding

AS/NZS 1576.1:1995	<i>Scaffolding Part 1: General requirements</i>
AS 1576.2—1991	<i>Scaffolding Part 2: Couplers and accessories</i>
AS/NZS 1576.3:1995	<i>Scaffolding Part 3: Prefabricated and tube-and-coupler scaffolding</i>
AS 1576.4—1991	<i>Scaffolding Part 4: Suspended scaffolding</i>
AS/NZS 1576.5:1995	<i>Scaffolding Part 5: Prefabricated splitheads and trestles</i>
AS/NZS 1576.6:2000	<i>Scaffolding Part 6: Metal tube-and-coupler scaffolding—Deemed to comply with AS/NZS 1576.3</i>

Lifts, escalators and moving walks

AS 1735.1—1999	<i>Lifts, escalators and moving walks Part 1: General requirements</i>
AS 1735.2—1997	<i>Lifts, escalators and moving walks Part 2: Passenger and goods lifts—Electric</i>
AS 1735.3—2001	<i>Lifts, escalators and moving walks Part 3: Passenger and goods lifts—Electrohydraulic</i>
AS 1735.4—1986	<i>SAA Lift Code Part 4: Service lifts—Power operated</i>
AS 1735.5—2001	<i>Lifts, escalators and moving walks Part 5: Escalators and moving walks</i>
AS 1735.6 (Int)—1996	<i>Lifts, escalators and moving walks Part 6: Moving walks</i>
AS 1735.7—1998	<i>Lifts, escalators and moving walks Part 7: Stairway lifts</i>
AS 1735.8—1986	<i>SAA Lift Code Part 8: Inclined lifts</i>
AS 1735.9—1994	<i>Lifts, escalators and moving walks Part 9: Special purpose industrial lifts</i>
AS 1735.10 (Int)—1998	<i>Lifts, escalators and moving walks Part 10: Tests</i>

AS 1735.11—1986	<i>SAA Lift Code Part 11: Fire-rated landing doors</i>
AS 1735.12—1999	<i>Lifts, escalators and moving walks Part 12: Facilities for persons with disabilities</i>
AS 1735.13—1986	<i>SAA Lift Code Part 13: Lifts for persons with limited mobility—Manually powered</i>
AS 1735.14—1998	<i>Lifts, escalators and moving walks Part 14: Low rise platforms for passengers</i>
AS 1735.15—1990	<i>Lifts, escalators and moving walks Part 15: Lifts for people with limited mobility—Restricted use—Non-automatically controlled</i>
AS 1735.16—1993	<i>Lifts, escalators and moving walks Part 16: Lifts for people with limited mobility—Restricted use—Automatically controlled</i>
AS 1735.17—1995	<i>Lifts, escalators and moving walks Part 17: Lifts for people with limited mobility—Restricted use—Water drive</i>

Gas cylinders

AS 2030.1—1999	<i>The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases—Part 1: Cylinders for compressed gases other than acetylene</i>
AS 2030.2—1996	<i>The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases—Part 2: Cylinders for dissolved acetylene</i>
AS 2030.4—1985	<i>The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases—Part 4: Welded cylinders—insulated</i>

Amusement devices

AS 3533.1—1997	<i>Amusement rides and devices Part 1: Design and construction</i>
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Schedule 2 Penalty notices

(Clauses 353 and 355)

Column 1	Column 2	Column 3	Column 4
Provision	Penalty (\$)	IPB Code	Short description
Offence under the Act			
Section 8 (1)	1000	9450	Employer fails to ensure health/safety/welfare of employees
Section 8 (2)	1000	9451	Employer allows risk to health/safety of non-employees
Section 9	1000	9452	Self-employer allows risk to health/safety of non-employees

Section 13	600	7257	Employer fail to consult with employees about OHSW
Section 20 (1)	200	7558	Employee fail to take care for health & safety of others
Section 20 (2)	200	8502	Fail to co-operate to enable compliance with Act/Regulation
Section 21	200	7634	Intentionally/recklessly interfere with/misuse thing provided for OHSW
Section 22	600	7258	Charge for thing done/provided in pursuance of Act/Regulation
Section 86 (1) (a)	600	7259	Fail to give notice of non-disturbance occurrence
Section 86 (1) (b)	600	8529	Fail to give notice of accident/matter to WorkCover
Section 87 (2) (a)	600	7260	Fail to take non-disturbance measures (plant)
Section 87 (2) (b)	600	8530	Fail to take non-disturbance measures (area)
Section 90	1,500	7004	Fail to stop/comply with investigation notice
Section 92	1,500	7005	Fail to comply with improvement notice
Section 102 (2)	200	7737	Destroy/damage/remove exhibited notice without approval

Offence under this Regulation

Clause 11 (1)	1,000	7012	Employer fail to eliminate health/safety risks
Clause 11 (2)	1,000	8531	Employer fail to control health/safety risks
Clause 11 (3)	1,000	8533	Fail to ensure risk measures properly used & maintained
Clause 15 (1)	600	7261	Fail to comply with protective equipment requirement
Clause 18 (1)	600	7262	Fail to provide appropriate amenities
Clause 19 (1) (a)	600	7263	Fail to maintain amenities in safe and healthy condition
Clause 19 (1) (b)	600	8536	Fail to keep accommodation in safe and healthy condition
Clause 20 (2) (a)	600	7264	Fail to provide adequate first aid facilities
Clause 20 (2) (b)	600	8537	Fail to provide trained first aid personnel
Clause 36 (1)	1,000	7015	Controller of premises fail to eliminate OHS risks

Clause 36 (2)	1,000	8538	Controller of premises fail to control OHS risks
Clause 36 (3)	1,000	8540	Fail to ensure risk measures properly used & maintained
Clause 44 (a)	200	7738	Fail to prepare and maintain asbestos register
Clause 44 (b)	200	8542	Fail to record details of asbestos actions in register
Clause 44 (c)	200	8544	Fail to provide occupiers with copies/updates of register
Clause 89 (1)	1,000	7091	Fail to design plant to eliminate/control risks
Clause 103 (1)	1,000	7092	Incorporate risk/fail to control risk in plant
Clause 121 (1)	1,000	7143	Seller/transferor of plant fail to eliminate/control risks
Clause 121 (2)	1,000	8546	Seller/transferor not notify purchaser/intended owner of faults/rectification needed
Clause 127 (1)	1,000	7255	Hirer/lessor of plant fail to eliminate/control risk
Clause 131	200	7739	Hirer/lessor of plant fail to keep required records
Clause 136 (1)	600	7265	Employer use plant w/o design registration number
Clause 136 (2)	600	7266	Employer use plant w/o item registration number
Clause 136 (3)	600	8119	Employer use plant contrary to requirements
Clause 139 (1)	600	7269	Fail to ensure amusement device competently operated
Clause 139 (2)	600	8549	Fail to ensure amusement device maintained/ repaired/ inspected/tested
Clause 143 (1)	200	7740	Employer fail to keep required records
Clause 143 (2) (a)	200	8550	Employer fail to record required details in log book
Clause 143 (2) (b)	200	8551	Not keep log book/operating/maintenance manual with amusement device
Clause 151	600	7337	Manufacturer fail to provide copy of MSDS
Clause 155 (1)	600	7339	Supplier fail to provide MSDS as required
Clause 160	200	7944	Fail to keep records of carcinogenic substances
Clause 162 (1) (a)	600	7340	Employer fail to obtain MSDS
Clause 162 (1) (b)	600	8552	Fail to ensure MSDS accessible to employees

Clause 162 (1) (c)	600	8553	Fail to prevent MSDS being altered
Clause 167 (1)	200	8092	Fail to keep/maintain hazardous substance register
Clause 167 (2)	200	8554	Fail to ensure register kept/maintained as required
Clause 167 (3)	200	8555	Fail to make register accessible
Clause 168 (1)	200	8095	Fail to record risk assessment results
Clause 168 (2)	200	8556	Fail to make risk assessment report accessible
Clause 169	200	8104	Fail to keep employee record of carcinogenic exposure
Clause 170 (1)	200	8107	Fail to provide carcinogenic exposure statement
Clause 171 (1)	200	8108	Fail to keep required record
Clause 171 (2)	200	8559	Fail to offer records to WorkCover (ex-employer)
Clause 174 (1)	200	8109	Fail to make record available to WorkCover/ emergency service
Clause 213 (1)	600	7341	Principal contractor direct/allow person to work w/o OHS training
Clause 213 (2) (a)	600	8560	Principal contractor fail to identify OHS changes
Clause 213 (2) (b)	600	8561	Fail to ensure further OHS training done
Clause 214 (1)	600	7342	Employer fail to ensure OHS training provided
Clause 214 (2)	600	8562	Employer direct/allow employee to work w/o OHS training
Clause 214 (3) (a)	600	8563	Employer fail to identify OHS changes
Clause 214 (3) (b)	600	8564	Fail to ensure further OHS training done
Clause 215 (1)	600	7343	Self-employed person work w/o OHS training
Clause 215 (2) (a)	600	8570	Self-employed person fail to identify OHS changes
Clause 215 (2) (b)	600	8572	Self-employed person fail to undergo further OHS training
Clause 220 (1)	200	8110	Fail to issue OHS training statement
Clause 220 (2)	200	8577	Fail to keep record of OHS training statements
Clause 223 (1) (a) and (b)	200	8112	Principal contractor fail to keep records
Clause 223 (2) (a) and (b)	200	8578	Employer fail to keep records

Clause 226 (2)	600	7344	Fail to prepare/maintain/keep up to date OHS management plan
Clause 226 (3)	600	8580	Fail to keep OHS management plan
Clause 226 (4)	600	8581	Fail to make copy of OHS management plan available
Clause 226 (5)	600	8582	Fail to provide relevant part of plan to sub-contractor
Clause 226 (6)	600	8584	Fail to provide changed part/s of plan to sub-contractor
Clause 227 (2)	600	7349	Fail to obtain work method statement from sub-contractor
Clause 227 (3)	600	8586	Fail to ensure compliance with work method statement/Act/Regulation
Clause 228 (2) (a)	200	8113	Fail to keep & maintain hazardous substances register
Clause 228 (2) (b)	200	8588	Hazardous substances register not accessible
Clause 228 (2) (c)	200	8591	Fail to keep copies of atmospheric monitoring/health surveillance
Clause 228 (2) (d)	200	8592	Fail to keep copies of haz. substance risk assessments
Clause 228 (3)	200	8593	Hazardous substances register not fully detailed
Clause 229 (2)	600	7504	Sub-contractor commence work contrary to requirement
Clause 229 (3)	600	8595	Allow employee to work w/o required OHS training
Clause 229 (4)	600	8596	Fail to maintain/keep up/notify of changes to work method statement
Clause 229 (5)	600	8597	Not provide info/records of haz. substances/atmos. monitoring/hlth. surveillance
Clause 235 (1)	600	7505	Fail to provide perimeter fencing
Clause 235 (3)	600	8599	Fail to provide perimeter fencing adequate for purpose
Clause 235 (4)	600	8600	Fail to provide signs
Clause 240 (1)	600	7506	Fail to ensure adequate excavation safety system
Clause 240 (3)	600	8601	Fail to provide adequate shoring equipment and material
Clause 240 (4)	600	8602	Fail to take adequate anti-collapse measures

Clause 247 (1)	600	7513	Fail to ensure work done in accord with Aust. Standard/Regulation
Clause 253	600	7541	Fail to ensure compliant overhead protective structure
Clause 254 (2)	600	7542	Scaffolding not erected/kept erected as required
Clause 254 (3)	600	8603	Fail to provide scaffolding platforms as required
Clause 254 (4)	600	8604	Scaffold platform fail to meet requirements
Clause 254 (5)	600	8605	Scaffold platform dismantled/repositioned/ removed contrary to requirement
Clause 254 (6)	600	8606	Fail to enclose scaffolding as required
Clause 254 (7)	600	8607	Fail to overlap and secure edges of wire mesh
Clause 254 (8)	600	8608	Fail to fix adequate anti-dust material to wire mesh
Clause 256	200	8118	Fail to notify police of unstable building/danger of building collapse
Clause 259 (1)	600	7543	Fail to carry out asbestos work in manner required
Clause 259 (2)	600	8609	Fail to inform/warn about asbestos as required
Clause 259 (3)	600	8610	Fail to identify/implement anti-asbestos disturbance measures
Clause 259 (4)	600	8611	Fail to implement anti-asbestos procedures as required
Clause 259 (5)	600	8612	Allow asbestos-containing material to be reused
Clause 259 (6)	600	8613	Allow high-pressure process to clean asbestos-containing material
Clause 270 (1)	600	7544	Do scheduled work without qualification
Clause 270 (2)	600	8614	Employ/direct/allow person to do scheduled work without qualification
Clause 270 (3)	600	8615	Contravene/direct/allow person to contravene conditions of qualification
Clause 301 (1)	600	7545	Do explosive-powered tool work/formwork without certificate
Clause 301 (2)	600	8617	Employ/direct/allow person to do explosive-powered tool work/formwork w/o cert
Clause 301 (3)	600	8621	Contravene/direct/allow person to contravene competency cert conditions
Clause 318 (1)	600	7546	Carry on licensed work business w/o licence

Clause 318 (2)	600	8622	Employ/direct/allow person to do licensed work w/o licence
Clause 318 (4)	600	8623	Contravene/direct/allow person to contravene conditions of licence
Clause 332 (1)	600	7556	Do demolition work/friable asbestos removal work w/o permit
Clause 332 (3)	600	8624	Contravene/direct/allow person to contravene conditions of permit
Clause 345 (1)	600	7558	Commence specified work w/o notifying WorkCover
Clause 345 (3)	600	8625	Fail to give WorkCover further notice as required