

# EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

## Work Safety Regulation 2009

### Subordinate Law SL2009-

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The Australian Capital Territory Executive makes the following regulation under the *Work Safety Act 2008*.

Dated \_\_\_\_\_ 2009.

Minister

Minister

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## Work Safety Regulation 2009

**Subordinate Law SL2009-**

made under the

**Work Safety Act 2008**

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## **EXPOSURE DRAFT**

## Part 1 Preliminary

### 1 Name of regulation

This regulation is the *Work Safety Regulation 2009*.

### 2 Commencement

This regulation commences on the commencement of the *Work Safety Act 2008*.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

### 3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

*Note 1* The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*dangerous substance*—see the *Dangerous Substances Act 2004*, section 10.' is defined in that dictionary and the definition applies to this regulation.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

### 4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

*Note* See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

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## 5 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

*Note 1 Criminal Code*

The Criminal Code, ch 2 applies to all offences against this regulation (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Part 2 Injury and dangerous occurrence reporting and records

### 6 Period of incapacity for work—Act, s 36 (b)

The period of incapacity for work is 7 days.

### 7 Requirements for notice—Act, s 38 (2)

- (1) For the Act, section 38 (2) (a), the following are the times for giving notice:
  - (a) if the serious event involves the death of a worker or another person—
    - (i) as soon after the event as is reasonably practicable; and
    - (ii) in writing not later than 48 hours after the event;
  - (b) for any other serious event—not later than 7 days after the day the serious event happened.
- (2) For the Act, section 38 (2) (b), the following are the methods for giving notice:
  - (a) in writing;
  - (b) by telephone;
  - (c) by facsimile or other electronic means.
- (3) If the chief executive receives notice other than in writing, the chief executive must give the employer—
  - (a) details of the information received; or
  - (b) an acknowledgment of receiving the notice.

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- (4) If the serious event involves the death of a worker or another person the chief executive must be notified in writing not later than 48 hours after the event.

*Note* If a form is approved under the Act, s 229 for the notice, the form must be used.

## **8 Keeping information given by chief executive**

- (1) This section applies if a person conducting a business or undertaking at a workplace gives notice of an event other than in writing and the chief executive gives the person—
- (a) a copy of the information received; or
  - (b) an acknowledgement of receiving the notice.
- (2) A person conducting a business or undertaking at a workplace commits an offence if—
- (a) a copy or acknowledgement mentioned in subsection (1) is given to the person; and
  - (b) the person does not keep the copy or acknowledgement for 5 years after the day it is given.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.

## **9 Content of records**

- (1) The chief executive may approve the content of a record required to be maintained under the Act, section 39.
- (2) An approval is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.



## **Part 3                      Facilities**

### **Division 3.1              Amenities**

#### **10                      Person conducting a business or undertaking to provide amenities**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide adequate amenities for workers while they are at the workplace.

Maximum penalty: 20 penalty units.

- (2) What is adequate for subsection (1) must be decided having regard to the circumstances, including—
- (a) the nature of the work undertaken at the workplace; and
  - (b) the size, nature and location of the workplace; and
  - (c) the number of workers at the workplace and their characteristics including gender, age and special needs.

- (3) In this section:

*amenities* means facilities for the welfare or personal hygiene needs of people.

**Examples**

- 1    toilets
- 2    seating
- 3    meal rooms
- 4    change rooms

- 5 drinking water
- 6 lockers for personal belongings
- 7 showers or washing facilities

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **11 Amenities to be safe and clean**

- (1) A person conducting a business or undertaking at a workplace commits an offence if amenities at the workplace are not kept safe and clean.

Maximum penalty: 20 penalty units.

- (2) A person in control of premises commits an offence if amenities at the premises are not kept safe and clean.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

- (4) In this section:

*amenities*—see section 10 (3).

## **12 Facility for personal belongings**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide workers at the workplace with reasonable access to a facility for keeping clothes and personal belongings.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

## **13 Facility for changing clothes**

- (1) This section applies if—
  - (a) a worker needs to change clothes before, during or after work because of the nature of the work or the usual working conditions; and
  - (b) the work is usually performed at the same place; and
  - (c) the workplace is in or near a building where a changing facility for the workers can be provided.
- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide—
  - (a) a separate changing facility for male and female workers at or near the workplace; or
  - (b) if the person ensures privacy and security between male and female workers—a single changing facility at or near the workplace.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) In this section:

*changing facility* means a place for changing clothes—

- (a) with enough space and seating for the maximum number of people who may be changing at a particular time; and
- (b) with a reasonable number of mirrors and shelves; and
- (c) that is hygienic; and
- (d) that gives reasonable privacy.

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## 14 Facility for changing clothes—temporary workplaces

- (1) This section applies if—
  - (a) a worker needs to change clothes before, during or after work because of the nature of the work or the usual working conditions; and
  - (b) either—
    - (i) the work is not usually performed at the same place; or
    - (ii) the workplace is not in or near a building where a changing facility for the workers can be provided.
- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide—
  - (a) a separate temporary changing facility for male and female workers in the person’s business or undertaking; or
  - (b) if the person ensures privacy and security between male and female workers—a single temporary changing facility.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) In this section:

***temporary changing facility*** means a place for changing clothes that—

- (a) is accessible from the workplace; and
- (b) is hygienic; and
- (c) gives reasonable privacy.

**15 Meal facility**

- (1) This section applies if it is reasonable for a meal facility to be provided for workers at the person's workplace because of the nature of the work or the usual working conditions.
- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide workers at the workplace with access to a reasonable meal facility.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) In this section:

*meal facility* means a facility where a meal can be eaten that is—

- (a) accessible from the workplace; and
- (b) hygienic; and
- (c) protected from the weather.

**16 Combined facilities**

- (1) A person conducting a business or undertaking at a workplace may provide a required facility as part of a combined facility if—
  - (a) it is reasonable for combined facilities to be provided for workers because of the nature of the work or the usual working conditions; and
  - (b) if the combined facility includes a meal facility—the health or welfare of anyone eating in the combined facility will not be adversely affected because the facilities are combined.

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(2) In this section:

***required facility*** means a facility required under, and complying with, any of the following:

- (a) section 12 (Facility for personal belongings);
- (b) section 13 (Facility for changing clothes);
- (c) section 14 (Facility for changing clothes—temporary workplaces);
- (d) section 15 (Meal facility).

## **17 Toilet facility**

(1) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide reasonable access to a toilet facility for workers at the workplace.

Maximum penalty: 20 penalty units.

(2) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide workers at the workplace with adequate and hygienic means for the disposal of sanitary items.

Maximum penalty: 20 penalty units.

(3) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide—

- (a) a separate toilet facility for male and female workers at the workplace; or

- (b) privacy and security between male and female workers using a toilet facility at the workplace.

Maximum penalty: 20 penalty units.

- (4) This section does not apply to a person conducting a business or undertaking in relation to a temporary workplace if—
  - (a) not more than 5 people are working at the workplace; and
  - (b) premises with a toilet facility are reasonably accessible from the workplace; and
  - (c) the owner of the premises gives permission for workers to use the toilet facility.

- (5) An offence against this section is a strict liability offence.

- (6) In this section:

*toilet facility* means a toilet that is—

- (a) accessible from the workplace; and
- (b) hygienic; and
- (c) protected from the weather; and
- (d) kept in a clean and hygienic working condition.

## **18 Washing facility**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide workers at the workplace with reasonable access to a washing facility.

Maximum penalty: 20 penalty units.

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- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not—
- (a) ensure that each washing facility at the workplace has running water; or
  - (b) if it is not reasonably practicable for a washing facility to have running water—workers have access to clean water near the facility.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) In this section:

*washing facility* means a facility set aside for use to wash and dry the hands, arms, neck and face.

## 19 Shower facility

- (1) This section applies if a worker carrying out work in relation to a business or undertaking needs to shower before, during or after work because of the nature of the work or the usual working conditions.
- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that a worker for the business or undertaking has reasonable access to shower facilities.

Maximum penalty: 20 penalty units.

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- (3) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure privacy and security between male and female workers using shower facilities.

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

## **20 Drinking water**

- (1) A person conducting a business or undertaking at a workplace commits an offence if drinking water is not provided for workers at the workplace.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

## **21 Seating**

- (1) A person conducting a business or undertaking at a workplace commits an offence if—

(a) it is reasonable for a worker at the workplace to work while seated; and

(b) the person does not provide seating for the worker.

Maximum penalty: 20 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if—

(a) it is reasonable for a worker at the workplace to perform some tasks while seated; and

(b) the person does not make seating available for the worker to use from time to time.

Maximum penalty: 20 penalty units.

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- (3) An offence against this section is a strict liability offence.
- (4) What is reasonable for subsection (1) or (2) must be decided having regard to the nature of the work undertaken by the worker.
- (5) In this section:  
*seating* means a place for a person to sit that—
  - (a) is ergonomically sound; and
  - (b) provides suitable support; and
  - (c) is adequate for the type of work.

## **22 Working space**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide sufficient working space at the workplace to allow workers to work safely.

*Note* For specific requirements for confined spaces, see div 7.8.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

## **Division 3.2 First aid and sickness**

### **23 First aid**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide adequate first aid equipment at the workplace so that each person at the workplace has reasonable access to the equipment.

Maximum penalty: 20 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that an adequate number of people trained in first aid are available to give first aid at the workplace.

Maximum penalty: 20 penalty units.

- (3) What is adequate for subsection (1) and (2) must be decided having regard to—
- (a) the nature of the work undertaken at the workplace; and
  - (b) the size and location of the workplace; and
  - (c) the number of workers at the workplace and their characteristics including gender, age and special needs.

- (4) In this section:

*first aid* means the immediate treatment or care of a person who is injured or who becomes sick.

## **24 Arrangements for sick workers**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not—
- (a) provide a first aid room or health centre at the workplace; or
  - (b) make adequate arrangements to ensure the wellbeing of a worker who is injured, or becomes sick, at the workplace.

Maximum penalty: 20 penalty units.

- (2) An offence against this section is a strict liability offence.

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## **Part 4 Work safety representatives**

### **Division 4.1 Work safety representatives—election process**

#### **25 Work safety representative—eligibility**

- (1) A person is eligible to be a work safety representative for a worker consultation unit if the person is—
  - (a) a represented worker; or
  - (b) a suitably qualified person.
- (2) For this section, a person is *suitably qualified* if the person holds at least a certificate IV in occupational health and safety.

#### **26 Election process—number of work safety representatives**

A worker consultation unit may elect more than 1 eligible person as a work safety representative for the unit.

#### **27 Election process—worker consultation unit may ask others to conduct election**

- (1) A worker consultation unit may ask any of the following people to conduct the election of a work safety representative on behalf of the unit:
  - (a) an employer of a worker in the unit;
  - (b) a registered organisation;
  - (c) someone else.

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- (2) An employer commits an offence if—
- (a) a worker consultation unit asks the employer to conduct the election of a work safety representative; and
  - (b) the employer does not conduct the election within 42 days after the day the employer is asked.

Maximum penalty: 10 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.

## **28 Election process—notice of election of work safety representatives**

- (1) This section applies if a work safety representative is elected for a worker consultation unit.
- (2) The person who conducted the election must give notice of the result of the election to—
  - (a) each represented worker’s employer; and
  - (b) if the worker consultation unit had a work safety representative before the election (a *previous work safety representative*) who is replaced by the elected work safety representative—the previous work safety representative.
- (3) The notice must include the work safety representative’s name.
- (4) An employer must, if given notice of the election of a work safety representative for a worker consultation unit, tell workers in the unit the employer engages to carry out work that the person elected is a work safety representative.

### **Examples—how to tell workers who elected work safety representative is**

- email
- notice posted

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- staff handbook

*Note 1* The Act, pt 6 (Compliance measures) imposes requirements on people who are required to do something under a provision of this regulation.

*Note 2* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **29 Election process—replacement work safety representatives**

- (1) This section applies if—
  - (a) a worker consultation unit has a work safety representative (a *previous work safety representative*); and
  - (b) the worker consultation unit elects a work safety representative to replace the previous work safety representative.
- (2) The previous work safety representative stops being a work safety representative when given notice under section 28 of the result of the election.

## **30 Work safety representative—deputy**

- (1) A deputy work safety representative may be elected for each work safety representative in the same way that the work safety representative is elected.
- (2) If the work safety representative stops being the representative, or is unable to exercise the functions of a representative—
  - (a) the deputy work safety representative may exercise the work safety representative's functions; and

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- (b) the Act (other than this section) applies to the deputy work safety representative as if the deputy were the work safety representative.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

## **Division 4.2 Work safety representatives—general**

### **31 Work safety representative—additional function—Act, s 58 (2)**

The additional functions of a work safety representative for a worker consultation unit are to—

- (a) investigate a complaint if—
- (i) the complaint is made to the representative by a represented worker; and
  - (ii) the complaint is about the work safety of a represented worker at a workplace of the worker; and
- (b) participate in an interview if—
- (i) the interview is between a represented worker and—
    - (A) an inspector; or
    - (B) the worker’s employer; and
  - (ii) the interview is in relation to work safety; and
  - (iii) the worker consents to the presence of the work safety representative at the interview; and

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- (c) inspect records of a work safety committee if a committee is established for the unit.

*Note* A work safety representative must not exercise a function unless the representative has completed an approved training course or, if required, an approved refresher training course—see s 39 (5).

**32 Work safety representative—exercising functions—Act, s 58 (3)**

- (1) In exercising a function, the work safety representative for a worker consultation unit may—

- (a) access any information under the employer’s control in relation to the work safety of a represented worker, other than information that the representative is not entitled to under section 33; and

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (b) inspect all or part of a workplace where a represented worker works if—

- (i) there has, in the immediate past, been an accident or dangerous occurrence at the workplace; or
- (ii) the representative believes on reasonable grounds that there is an immediate threat of an accident or dangerous occurrence at the workplace; or
- (iii) the representative gives the employer reasonable notice of the inspection; and

- (c) for all or part of a workplace where a represented worker works—

- (i) ask an inspector to carry out an inspection at the workplace; and

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- (ii) accompany an inspector during an inspection of the workplace.
- (2) A work safety representative must not exercise the representative's functions until each represented worker's employer is given notice under section 28.

### **33 Work safety representative—access to information**

A work safety representative is not entitled to access personal health information about a represented worker, or former represented worker, unless—

- (a) the worker agrees in writing to the representative having access to the information; or
- (b) the information does not identify the worker or allow the worker to be identified.

*Note* **Personal health information**—see the *Health Records (Privacy and Access) Act 1977*, dictionary.

## **Division 4.3 Work safety representatives— conditions of office**

### **34 Work safety representative—term of office**

- (1) A person elected or re-elected as a work safety representative holds office for the period, not longer than 2 years, decided by the worker consultation unit.
- (2) However, the person's term ends if—
  - (a) the person resigns as a work safety representative for the unit; or
  - (b) the person stops being eligible to be a work safety representative for the unit; or

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(c) the person is disqualified under section 38.

*Note* A person is eligible to be a work safety representative for a worker consultation unit if the person is a represented worker or is a suitably qualified person—see s 25.

(3) A person resigns as a work safety representative for a worker consultation unit by giving written notice to the employer.

### **35 Work safety representative—application for disqualification**

(1) One or more of the following may apply to the chief executive for the disqualification of a work safety representative for a worker consultation unit:

(a) an employer of a represented worker;

(b) a represented worker;

(c) if a worker in the unit is, or is eligible to be, a member of a registered organisation—the registered organisation.

(2) The application—

(a) must be in writing; and

(b) must set out the grounds on which the disqualification is sought; and

(c) may ask for the work safety representative to be suspended.

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**36 Work safety representative—grounds for disqualification**

Each of the following is a ground for disqualifying a work safety representative:

- (a) the representative did something, or is doing something, in the exercise, or purported exercise, of the representative's functions—
  - (i) with the intention of causing harm to an employer or an undertaking of an employer; or
  - (ii) for a purpose not connected with the exercise of the function;
- (b) the representative intentionally used, or disclosed to someone else, information obtained from an employer for a purpose not connected with the exercise of the representative's functions;
- (c) the representative failed to reasonably exercise the representative's functions.

**37 Work safety representative—notice of intention to disqualify**

- (1) If, on application, the chief executive is satisfied that a ground may exist to disqualify a work safety representative, the chief executive must—
  - (a) give the representative written notice (a *show cause notice*); and
  - (b) if the chief executive considers it appropriate, suspend the representative until the chief executive decides the application for disqualification.

- (2) The show cause notice must—
- (a) contain a statement to the effect that the work safety representative may, not later than 14 working days after the day the representative is given the notice, give the chief executive written reasons explaining why the representative should not be disqualified; and
  - (b) be accompanied by a summary of the reasons for the application; and
  - (c) if applicable—be accompanied by a notice of suspension.

**38 Work safety representative—disqualification**

- (1) The chief executive may disqualify a work safety representative if—
- (a) satisfied that there is a ground for disqualification under section 36; and
  - (b) a show cause notice has been given under section 37 in relation to the ground; and
  - (c) the time for the representative to respond to the notice has ended.
- (2) In deciding whether to disqualify a work safety representative, the chief executive must consider the following:
- (a) if a ground for disqualification is that the representative did something, or is doing something, in the exercise, or purported exercise, of the representative's functions, with the intention of causing harm to an employer, or undertaking of an employer—
    - (i) the harm caused or likely to be caused to the employer or undertaking because of the thing the representative did or is doing; and

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- (ii) the effect (if any) on the public interest of the thing the representative did or is doing;
  - (b) the representative's past record in exercising the representative's functions;
  - (c) any response by the representative given in accordance with the show cause notice.
- (3) The chief executive may consider anything else the chief executive considers relevant.
- (4) If the chief executive disqualifies a person from being a work safety representative, the chief executive must tell the following people in writing about the disqualification—
- (a) the person; and
  - (b) the person who applied under section 35 for the person to be disqualified; and
  - (c) each employer of workers in the workers consultation unit the person represented.

### **39 Work safety representative—training**

- (1) A work safety representative for a worker consultation unit must complete a training course approved in writing by the council (an *approved training course*).
- (2) If the work safety representative is re-elected for a consecutive term, the representative must complete a refresher training course approved in writing by the council (an *approved refresher training course*) once every 2 years the representative holds office.
- (3) An approval under subsection (1) or (2) is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

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- (4) An employer must take all reasonable steps to ensure that the work safety representative completes the training course not later than 3 months after the day the representative was elected.
- (5) A work safety representative must not exercise a function under division 4.5 (Work safety representatives—provisional improvement notices) or division 4.6 (Work safety representatives—emergency procedures) unless the representative has completed an approved training course and, if required, an approved refresher training course.

*Note* A work safety representative must not exercise the representative's functions until notice is given of the election to employers of workers in the worker consultation unit—see s 32 (2).

## **Division 4.4 Work safety representatives— employer's duties**

### **40 Work safety representative—employer to allow for time to exercise functions and undertake training**

- (1) The employer of a work safety representative has a duty to allow the representative to take the time off work, without loss of pay or other entitlements, that is reasonably necessary for the representative—
  - (a) to exercise the functions of a work safety representative; and
  - (b) to undertake an approved training course, or an approved refresher training course, within 3 months after the day the representative is elected.
- (2) An employer commits an offence if the employer fails to comply with the duty in subsection (1).

Maximum penalty: 30 penalty units.

## **EXPOSURE DRAFT**

- (3) An employer commits an offence if—
- (a) a work safety representative, or deputy work safety representative, engaged by the employer, undertakes an approved training course or approved refresher training course; and
  - (b) the employer fails to do 1 or both of the following:
    - (i) pay the fees for the course;
    - (ii) reimburse the reasonable expenses incurred by the representative in undertaking the course.

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

## **Division 4.5                      Work safety representatives— provisional improvement notices**

### **41                      Provisional improvement notice—Act, dict, def *provisional improvement notice***

A provisional improvement notice must be in accordance with section 43.

### **42                      Provisional improvement notice—issue of notice**

- (1) This section applies if a work safety representative for a worker consultation unit believes on reasonable grounds that—
- (a) a person (a *responsible person*) is contravening, or is likely to contravene, a provision of the Act; and
  - (b) the contravention affects, or is likely to affect, 1 or more represented workers.

- (2) The work safety representative may give the responsible person a provisional improvement notice requiring the person to rectify the matters or activities causing the contravention or likely contravention.
- (3) The work safety representative must not give a provisional improvement notice to a responsible person unless the representative believes on reasonable grounds that taking any further steps to consult the person about rectifying the matter or activity causing the contravention or likely contravention is unlikely to result in the rectification of the matter or activity.
- (4) A work safety representative must not give a provisional improvement notice to a responsible person in relation to a matter or activity that is the subject of an improvement notice or prohibition notice.

#### **43 Provisional improvement notice—content of notice**

- (1) A provisional improvement notice must—
  - (a) state the circumstance that is occurring, or is likely to occur, that the work safety representative giving the notice believes is causing a contravention or may cause a contravention and the reasons for the belief; and
  - (b) either—
    - (i) if the rectification is necessary to prevent or minimise the risk of serious harm to the health or safety of a worker, or someone else, from a hazard—require the responsible person to rectify the matter or activity that the notice relates to within 24 hours starting when the notice is given personally to the person; or

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- (ii) in any other case—state a period of not less than 7 days starting on the day after the day the notice is issued within which the responsible person must rectify the matter or activity that the notice relates to.
- (2) A provisional improvement notice may state the action the responsible person may take to rectify the matter or activity that the notice relates to.
- (3) If subsection (1) (b) (ii) applies, before the end of the 7-day period stated in the notice, the work safety representative who issued the provisional improvement notice may, by written notice given to the responsible person, extend the period.

**44 Provisional improvement notice—service of notice on chief executive etc**

A work safety representative who gives a provisional improvement notice to a responsible person must—

- (a) give a copy of the notice to the chief executive; and
- (b) if the responsible person is a worker, and the notice is given to the person in relation to work carried out by the person for an employer—take all reasonably practicable steps to give a copy of the notice to the worker’s employer.

**45 Provisional improvement notice—service of notice on other employers etc**

- (1) This section applies to—
  - (a) if the responsible person is a worker, and a provisional improvement notice is given to the person in relation to work carried out by the person for an employer—the employer; or

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- (b) if a provisional improvement notice is given to a responsible person in any other case—the responsible person.
- (2) A person to whom this section applies must give a copy of the provisional improvement notice to each of the following people:
  - (a) if the notice relates to something that affects workplaces where workers not engaged by the employer work—each other employer of workers at each affected workplace;
  - (b) if the notice relates to premises—
    - (i) each owner of the premises; and
    - (ii) if the premises are leased—the lessor and lessee of the premises; and
    - (iii) anyone else with a right to immediate possession of the premises;
  - (c) if the notice relates to plant or other thing and the thing is hired under a hire-purchase agreement or contract of hire—the person from whom the thing is hired;
  - (d) if the notice relates to plant or a substance or other thing, whether or not the thing is hired—anyone else with a right to immediate possession of the thing.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.

**46 Provisional improvement notice—display**

- (1) This section applies if a provisional improvement notice is given to an employer.

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- (2) The employer must take all reasonably practicable steps to—
- (a) notify each worker whose work is affected by the contravention to which the notice relates that the notice has been issued; and
  - (b) while the notice is in force—display a copy of the notice in a prominent place at or near each workplace where the work to which the notice relates is usually carried out.
- (3) A person commits an offence if the person contravenes subsection (2).

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

#### **47 Provisional improvement notice—compliance**

- (1) This section applies if a work safety representative gives a responsible person a provisional improvement notice.
- (2) The responsible person commits an offence if the person fails to—
- (a) ensure that the notice is complied with in relation to each matter that—
    - (i) the notice relates to; and
    - (ii) the person has control over; and
  - (b) take reasonable steps to inform the representative of the action taken to comply with the notice.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

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**48 Provisional improvement notice—revocation of notice**

- (1) This section applies if a work safety representative gives a responsible person a provisional improvement notice.
- (2) The work safety representative must revoke the provisional improvement notice if the representative believes on reasonable grounds that the responsible person—
  - (a) ensured that the notice was complied with in relation to each matter that—
    - (i) the notice related to; and
    - (ii) the person had control over; and
  - (b) took reasonable steps to inform the representative of the action taken to comply with the notice.
- (3) If the work safety representative revokes the notice, the representative must—
  - (a) give the responsible person written notice of the revocation; and
  - (b) give the chief executive a copy of the revocation notice.

**49 Provisional improvement notice—review**

- (1) This section applies to—
  - (a) a responsible person in relation to whom a provisional improvement notice is in force; and
  - (b) if the responsible person is a worker, and the notice is in force in relation to work carried out by the person for an employer—the employer.

- (2) A person to whom this section applies may ask the chief executive to arrange an inspection to investigate the circumstances relating to the issue of the provisional improvement notice—
- (a) by written notice given to the chief executive; and
  - (b) not later than 7 days after the day the person receives the notice.
- (3) If a request is made under this section—
- (a) the chief executive must arrange for an inspector to investigate the circumstances relating to the issue of the provisional improvement notice; and
  - (b) the operation of the notice is suspended until an inspector completes an investigation of the circumstances relating to the issue of the notice.
- (4) The inspector must revoke the provisional improvement notice if, after the investigation, the inspector believes on reasonable grounds that—
- (a) the notice should not have been given to the person; or
  - (b) the person to whom the notice was given—
    - (i) ensured the notice was complied with in relation to each matter that—
      - (A) the notice related to; and
      - (B) the person had control over; and
    - (ii) took reasonable steps to inform the representative of the action taken to comply with the notice; or
  - (c) for any other reason, the notice should not remain in force.

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- (5) If a provisional improvement notice is revoked under this section, the inspector must give written notice of the revocation to—
- (a) the work safety representative; and
  - (b) the responsible person; and
  - (c) if the responsible person is a worker, and the provisional improvement notice is in relation to work carried out by the person for an employer—the employer; and
  - (d) each person mentioned in section 45 (2) (Provisional improvement notice—service of notice on other employers etc) to whom a copy of the provisional improvement notice has been given.

## **Division 4.6 Work safety representatives— emergency procedures**

### **50 Emergency procedure**

- (1) This section applies if a work safety representative for a worker consultation unit believes on reasonable grounds that there is an immediate threat to the work safety of a represented worker unless the worker stops carrying out particular work.
- (2) The work safety representative must—
- (a) tell a supervisor supervising the worker’s work about the threat to the worker’s work safety; or
  - (b) if a supervisor cannot be contacted immediately—direct the worker to stop, in a safe way, carrying out the work and, as soon as practicable, tell a supervisor that the direction has been given.

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- (3) If a supervisor is told about a threat under subsection (2) (a), the supervisor must do what the supervisor considers appropriate to remove the threat, including directing the worker to stop, in a safe way, carrying out the work.
- (4) The work safety representative or the supervisor who is told about the threat under subsection (2) may ask the chief executive to arrange for an inspector to investigate the worker's work if—
  - (a) if the supervisor is told about the threat under subsection (2) (a)—the representative and supervisor cannot agree that what the supervisor has done is sufficient to remove the threat; or
  - (b) if the supervisor is told about the direction given under subsection (2) (b)—the representative and supervisor cannot agree that the direction is necessary.
- (5) If a request is made under subsection (4)—
  - (a) the chief executive must arrange an inspector to investigate the work; and
  - (b) the inspector must exercise the inspector's powers under the Act that the inspector considers necessary in relation to the work.

## **51 Emergency procedure—alternative work**

Nothing in this division affects an employer's right to require a worker to carry out alternative work while a direction under section 50 (2) (b) is in force in relation to the work the worker usually carries out.

## **EXPOSURE DRAFT**

## **Part 5 Work safety committees**

### **Division 5.1 Work safety committees— establishment**

#### **52 Work safety committee—eligibility**

- (1) A person is eligible to be a member of the work safety committee for a worker consultation unit if the person is—
  - (a) a worker in the worker consultation unit; or
  - (b) if there is a work safety representative for the worker consultation unit—the work safety representative; or
  - (c) nominated by an employer of a worker in the worker consultation unit to represent the employer on the committee; or
  - (d) if a worker in the unit is, or is eligible to be, a member of a registered organisation—a representative of the registered organisation.
- (2) At least half the members of the work safety committee must be workers in the worker consultation unit.

*Note* A worker consultation unit may consist of workers of 1 or more employers—see the Act, s 48 (3) (b).

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**53 Election process—worker consultation unit may ask others to conduct election**

- (1) A worker consultation unit may ask any of the following people to conduct the election of a work safety committee member on behalf of the unit:
  - (a) the employer;
  - (b) a registered organisation;
  - (c) someone else.
- (2) An employer commits an offence if—
  - (a) a worker consultation unit asks the employer to conduct the election of a work safety committee member; and
  - (b) the employer does not conduct the election within 42 days after the day the employer is asked.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.

**54 Election process—notice of election of work safety committee members**

- (1) This section applies if a work safety committee member is elected to the work safety committee for a worker consultation unit.
- (2) The person who conducted the election must give notice of the result of the election to each represented worker's employer.
- (3) The notice must include the work safety committee member's name.

- (4) An employer must, if given notice of the election of a work safety committee member for a worker consultation unit, tell workers in the unit the employer engages to carry out work that the person elected is a work safety committee member.

**Examples—how to tell workers who elected work safety committee member is**

- email
- notice posted
- staff handbook

*Note 1* The Act, pt 6 (Compliance measures) imposes requirements on people who are required to do something under a provision of this regulation.

*Note 2* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## **Division 5.2 Work safety committees—general**

### **55 Work safety committee—exercising functions**

In exercising a function, the work safety committee for a worker consultation unit may—

- (a) give information, ideas and feedback to the employer and managers about how to implement work safety best practice; and
- (b) provide a forum for the employer to raise work safety concerns for the committee to consider; and

*Note* An employer has a duty to consult, if reasonably practicable, with workers to allow the workers to contribute to matters directly affecting their work safety—see the Act, s 47.

- (c) encourage workers to take an interest in work safety issues in their workplace; and

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- (d) review the circumstances of injuries, diseases and serious incidents in the workplace, and make recommendations to the employer; and
- (e) undertake other activities agreed between the employer and the committee that the committee members have suitable qualifications and training to deal with.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

## **56 Work safety committee—governance**

A work safety committee may conduct its proceedings (including its meetings) as it considers appropriate.

## **57 Work safety committee—employer’s duties**

- (1) If a work safety committee is established for a worker consultation unit, the employer must—
  - (a) give the committee any information the employer has in relation to risks to work safety for a represented worker—
    - (i) at a workplace under the employer’s control; or
    - (ii) caused by the employer’s conduct in, or plant or substances used for, an undertaking of the employer; and
  - (b) allow a worker who is a member of the committee to take the time off work, without loss of pay or other entitlements, that is reasonably necessary for the worker—
    - (i) to attend meetings of the committee; and
    - (ii) to undertake a work safety course; and

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- (iii) with the committee's approval—to exercise the committee's functions.

*Note* The Legislation Act, s 170 and s 171 deals with the application of the privilege against selfincrimination and client legal privilege.

- (2) An employer commits an offence if the employer fails to comply with subsection (1).

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.  
(4) In this section:

***work safety course***, for a worker, means a training course in work safety that is—

- (a) necessary and reasonable for the worker to undertake to be able to perform the duties of a work safety committee member; and  
(b) approved in writing by the work safety committee.

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## Part 6 Authorised representatives

### 58 Authorised representative—training—Act, s 62 (2) (b)

An authorised representative must hold at least a certificate IV in occupational health and safety.

### 59 Authorised representative—application for disqualification

- (1) One or more of the following may apply to the chief executive for the disqualification of an authorised representative:
  - (a) an employer of a represented worker that has been affected by an action of the authorised representative;
  - (b) a represented worker that has been affected by an action of the authorised representative;
  - (c) if a worker in the worker consultation unit is, or is eligible to be, a member of a registered organisation—the registered organisation.
- (2) The application—
  - (a) must be in writing; and
  - (b) must set out the grounds on which the disqualification is sought; and
  - (c) may ask for the authorised representative to be suspended.

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**60 Authorised representative—grounds for disqualification**

Each of the following is a ground for disqualifying an authorised representative:

- (a) the representative has contravened the Act, division 4.4 (Authorised representatives—entry to workplace);

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

- (b) the representative is likely to contravene the Act, division 4.4;
- (c) the representative has, in exercising a function under this part intentionally hindered or obstructed an employer or worker or otherwise acted improperly.

**61 Authorised representative—notice of intention to disqualify**

- (1) If, on application, the chief executive is satisfied that a ground may exist to disqualify an authorised representative, the chief executive must give the representative written notice (a *show cause notice*)—
  - (a) that the chief executive intends to disqualify the representative; and
  - (b) telling the representative why the chief executive intends to disqualify the representative; and
  - (c) telling the representative that the representative may, not later than 14 days after the day the representative is given the notice, give the chief executive written reasons explaining why the representative should not be disqualified.

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- (2) However, the chief executive may, at the same time as or immediately after giving the authorised representative notice, suspend the authorised representative if satisfied on reasonable grounds that, if not immediately suspended, the representative may—
- (a) injure a worker; or
  - (b) cause significant damage to premises or a business or undertaking.

## **62 Authorised representative—disqualification**

- (1) The chief executive may disqualify an authorised representative if—
- (a) satisfied that there is a ground for disqualification under section 60; and
  - (b) a show cause notice has been given under section 61; and
  - (c) the time for the representative to respond to the show cause notice has ended.
- (2) In deciding whether to disqualify an authorised representative, the chief executive must consider the following:
- (a) the representative's past record in exercising the representative's function;
  - (b) any response by the representative given in accordance with the show cause notice.
- (3) The chief executive may consider anything else the chief executive considers relevant.

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- (4) If the chief executive disqualifies a person under subsection (1), the chief executive must tell the following people in writing about the disqualification—
- (a) the representative in writing of the disqualification; and
  - (b) the person who applied under section 59 for the person to be disqualified; and
  - (c) a registered organisation if the chief executive knows, or believes, that the person is an employee of, or holds an office in, the organisation.

**63 Authorised representative—revocation of disqualification**

- (1) The chief executive may revoke a disqualification under section 62 if the chief executive believes on reasonable grounds that it is no longer appropriate for the disqualification to remain in force.
- (2) The chief executive may revoke a disqualification on application or on the chief executive's own initiative.



## **Part 7**                      **Particular safety measures**

### **Division 7.1**              **Entry and exit**

#### **64**              **Entry to and exit from workplaces**

- (1) A person conducting a business or undertaking at a workplace commits an offence if anyone coming into or leaving the workplace is not able to—
- (a) enter, exit and move safely about the workplace; and
  - (b) leave the workplace in an emergency.

Maximum penalty: 20 penalty units.

- (2) A person in control of premises commits an offence if anyone coming into or leaving the premises is not able to—
- (a) enter, exit and move safely about the premises; and
  - (b) leave the premises in an emergency.

Maximum penalty: 20 penalty units.

#### **65**              **Movement within workplaces**

- (1) A person conducting a business or undertaking at a workplace commits an offence if anyone allowed at the workplace does not have safe access to—
- (a) each place at the workplace where the person is allowed; and
  - (b) any amenities at the workplace where the person is allowed.

Maximum penalty: 20 penalty units.

- (2) A person in control of premises commits an offence if anyone allowed at the premises does not have safe access to—
- (a) each place at the premises where the person is allowed; and
  - (b) any amenities at the premises where the person is allowed.

Maximum penalty: 20 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence if a passage or emergency exit at the workplace contains anything that could hinder or prevent the safe and quick exit of anyone in an emergency.

Maximum penalty: 20 penalty units.

- (4) A person in control of premises commits an offence if a passage or emergency exit at the premises contains anything that could hinder or prevent the safe and quick exit of anyone in an emergency.

Maximum penalty: 20 penalty units.

- (5) An offence against subsection (3) or (4) is a strict liability offence.

## **Division 7.2 Personal protective and safety equipment**

### **66 Person conducting business or undertaking to provide personal protective and safety equipment**

- (1) A person conducting a business or undertaking at a workplace commits an offence if measures taken at the workplace to minimise a risk include the use of personal protective and safety equipment and—
- (a) the equipment provided is not adequate for the person; or

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- (b) the equipment provided does not minimise the risk for the person; or
- (c) the person is not told of any limitation of the equipment; or
- (d) the person is not given the instruction and training necessary to ensure that the equipment minimises the risk for the person; or
- (e) the equipment is not properly maintained and repaired or replaced as frequently as is necessary to minimise the risk for the person; and
- (f) the equipment is not kept in a clean and hygienic condition.

*Note* See also any relevant Australian Standards relating to the provision and use of personal protective and safety equipment.

Maximum penalty: 20 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if personal protective and safety equipment used to minimise risk at the workplace is not stored in an accessible place at the workplace.

Maximum penalty: 20 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence if—
  - (a) there are areas in the workplace where personal protective and safety equipment must be used; and
  - (b) the areas are not clearly identified.

Maximum penalty: 20 penalty units.

- (4) An offence against this section is a strict liability offence.

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**67 Responsibilities of users of personal protective and safety equipment**

- (1) This section applies if a worker has been provided with personal protective and safety equipment for use at the worker's workplace.
- (2) A worker commits an offence if—
  - (a) the worker is given the instruction and training necessary to ensure that personal protective and safety equipment minimises the risk for the worker; and
  - (b) either the worker intentionally—
    - (i) does not use the equipment at the worker's workplace; or
    - (ii) does not use the equipment in accordance with the instructions given.

Maximum penalty: 20 penalty units.

- (3) A worker commits an offence if the worker intentionally misuses or damages personal protective and safety equipment at the worker's workplace.

Maximum penalty: 20 penalty units.

- (4) A worker commits an offence if—
  - (a) the worker becomes aware of damage to, a defect in, or a need to clean or sterilise, personal protective and safety equipment at the worker's workplace; and
  - (b) the worker intentionally does not tell the person conducting the business or undertaking at the workplace about the damage, defect or need.

Maximum penalty: 20 penalty units.

**68 Certain personal protective and safety equipment to be provided**

- (1) This section applies if—
- (a) it is reasonably foreseeable that a person could, while at a workplace—
    - (i) be struck by an object or other material capable of causing injury; or
    - (ii) be injured by coming into contact with a sharp object; or
    - (iii) be subject to a risk to health or safety because of exposure to a substance, agent, contaminant, radiation or extreme of temperature; or
    - (iv) be exposed to a risk of injury to eyesight or to hearing capacity; or
  - (b) the person should be highly visible because of the nature of the workplace.

**Examples—par (b)**

- 1 poor lighting conditions
- 2 the proximity of the work to vehicles or other mobile plant

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A person conducting a business or undertaking at a workplace commits an offence if adequate personal protective and safety equipment is not provided to anyone at the workplace.

Maximum penalty: 30 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence if—
- (a) the use of personal protective equipment at the workplace may affect a person’s ability to communicate with other people; and
  - (b) appropriate steps are not taken to ensure that this does not create a risk to the health or safety of the person or anyone else.

Maximum penalty: 30 penalty units.

- (4) A person in control of premises commits an offence if adequate personal protective and safety equipment is not provided to anyone at the premises.

Maximum penalty: 30 penalty units.

- (5) A person in control of premises commits an offence if—
- (a) the use of personal protective equipment at the premises may affect a person’s ability to communicate with other people; and
  - (b) appropriate steps are not taken to ensure that this does not create a risk to the health or safety of the person or anyone else.

Maximum penalty: 30 penalty units.

- (6) An offence against this section is a strict liability offence.

## **69 Air supplied respiratory equipment**

- (1) This section applies if air supplied respiratory equipment is used, or provided for use, at a workplace.

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- (2) A person conducting a business or undertaking at a workplace commits an offence if the air supplied respiratory equipment, provided at the workplace, supplies air—
- (a) at less than 170L/min; and
  - (b) that contains less than 19.5% or more than 22% oxygen.

Maximum penalty: 30 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence unless the air supplied to a person using the air supplied respiratory equipment, provided at the workplace, passes through—
- (a) an efficient purifying device that ensures that—
    - (i) the air does not have an objectionable or nauseous odour; and
    - (ii) if measured at 15°C and 100kPa, the air would contain not more than 11mg/m<sup>3</sup> of carbon monoxide, not more than 900mg/m<sup>3</sup> of carbon dioxide and not more than 1mg/m<sup>3</sup> of oil; and
  - (b) an efficient conditioner that ensures that—
    - (i) the air is supplied at a temperature not colder than 15°C and not warmer than 25°C; and
    - (ii) the humidity is not less than 20% and not more than 85%; and
  - (c) an efficient condensate trap that is fitted with a drain cock to remove any condensed liquid; and

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- (d) an efficient ring circuit or controlled leak-off system that eliminates stale air.

Maximum penalty: 30 penalty units.

- (4) A person conducting a business or undertaking at a workplace commits an offence if the air supplied respiratory equipment, provided at the workplace, is not—
  - (a) kept in efficient working order; and
  - (b) kept in a place where it cannot be contaminated; and
  - (c) maintained in a way that ensures that the air supply does not overheat; and
  - (d) provided with fittings that cannot be connected to any other compressed air equipment at the workplace.

Maximum penalty: 30 penalty units.

- (5) A person conducting a business or undertaking at a workplace commits an offence if the air supplied respiratory equipment provided at the workplace—
  - (a) does not include an automatic warning device; and
  - (b) is used in circumstances in which—
    - (i) inadequate air supply might represent an immediate hazard to the user of the equipment; and
    - (ii) an auxiliary air supply is not provided.

Maximum penalty: 30 penalty units.

- (6) An offence against this section is a strict liability offence.

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## **Division 7.3                  Prevention of falls**

### **70                  Meaning of *anchorage*—div 7.3**

In this division:

*anchorage* means a secure point for attaching a safety line or other component of a travel restraint system or fall arrest system.

### **71                  Protection against falls**

- (1) This section applies if—
  - (a) because of the nature of the work, a worker must work in a workplace from which the worker could fall; and
  - (b) if the worker fell—it is likely that the worker would be injured.
- (2) A person conducting a business or undertaking at the workplace commits an offence if the person does not provide adequate protection against the worker falling from the workplace.

Maximum penalty: 30 penalty units.

- (3) For this section, a person provides *adequate protection* at the workplace if the person—
  - (a) provides a safe means of entry to and exit from the workplace; and
  - (b) either—
    - (i) if it is reasonably practicable to provide a protective barrier for the workplace—provides the barrier; or
    - (ii) if it is not reasonably practicable to provide a protective barrier for the workplace—provides and maintains a safe system of work for the workplace.

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(4) In this section:

*provides and maintains a safe system of work* includes each of the following:

- (a) providing training in relation to risks associated with working in the workplace;
- (b) providing supervision or assistance for people working in the workplace;
- (c) using a fall-arresting device in the workplace if practicable;
- (d) if a safe working platform can reasonably be provided in the workplace—providing a safe working platform;
- (e) if a safe working platform cannot reasonably be provided in the workplace—using a safety harness or pole safety static-line system if practicable.

## **72 Protection against falls—maintenance work**

- (1) A person conducting a business or undertaking at a workplace commits an offence if a worker is carrying out maintenance work on a structure at the workplace, and the person conducting the business or undertaking does not ensure that the worker uses—
  - (a) a properly installed building maintenance unit; or
  - (b) scaffolding or a working platform; or

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- (c) if it is not reasonably practicable to use a building maintenance unit, scaffolding or a working platform—a safety harness attached to a safety line attached to an anchorage that is appropriate taking into account the situation of the work and the construction of the structure.

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.  
(3) In this section:

*building maintenance unit* means a power-operated suspended platform and related equipment that—

- (a) is designed to provide access to a face of a building for maintenance purposes; and  
(b) is permanently installed on the building.

### **73 Use of safety harness, safety line and anchorage**

- (1) This section applies if a safety harness, a safety line or anchorage is used, or provided for use, at a workplace.

*Note* For maintenance work on a structure, a safety harness, safety line or anchorage may be used only if it is not reasonably practicable to provide a building maintenance unit, scaffolding or a working platform (see s 72 (1) (c)).

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that the safety harness, safety line or anchorage used at the workplace is—  
(a) regularly inspected; and  
(b) kept in efficient working order.

Maximum penalty: 30 penalty units.

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- (3) For subsection (2) (b), an anchorage that is permanently fixed to a structure is not kept in efficient working order if it is not inspected at least every 6 months.
- (4) A person commits an offence if the person intentionally uses a safety harness or safety line at a workplace that is not—
- (a) suitable for the use; and
  - (b) undamaged and effective; and
  - (c) maintained in a suitable condition for the use.

Maximum penalty: 30 penalty units.

- (5) A person commits an offence if the person intentionally uses an anchorage at a workplace and the load-bearing capacity of the anchorage is impaired.

Maximum penalty: 30 penalty units.

- (6) A person conducting a business or undertaking at a workplace commits an offence if the person—
- (a) is aware that the load-bearing capacity of the anchorage at the workplace is impaired, and
  - (b) allows the anchorage to be used before it is repaired or replaced.

Maximum penalty: 30 penalty units.

- (7) An offence against subsection (2) is a strict liability offence.

## **74 Use of ladders**

- (1) A person conducting a business or undertaking at a workplace commits an offence if a ladder used, or provided for use, at the workplace is not—
- (a) of sound construction; and
  - (b) kept in a safe condition.

Maximum penalty: 20 penalty units.

- (2) A person commits an offence if the person intentionally uses a ladder at a workplace in a way that creates a risk to the safety of anyone.

Maximum penalty: 20 penalty units.

- (3) An offence against subsection (1) is a strict liability offence.

## **75 Use of particular types of ladders**

- (1) A person commits an offence if the person uses a portable single ladder or extension ladder at a workplace in any of the following circumstances:

- (a) the horizontal distance between the ladder's top support point and its foot is more than  $\frac{1}{4}$  of its supported length;
- (b) the ladder is not placed on a firm footing;
- (c) the ladder is not secured to prevent slipping and sideways movement.

Maximum penalty: 30 penalty units.

- (2) A person commits an offence if—
- (a) the person uses a ladder at a workplace to support planks for a working platform; and

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(b) the ladder is not a trestle ladder.

Maximum penalty: 30 penalty units.

(3) A person commits an offence if—

(a) the person uses a working platform supported by trestle ladders at a workplace; and

(b) the working platform is used for work other than light duty work.

Maximum penalty: 30 penalty units.

(4) An offence against this section is a strict liability offence.

(5) In this section:

*light duty work* means work on a ladder if the total weight on the ladder is less than 2.2kN (224kg), including a single point limit of 1kN (102kg).

*Note 1* Australian Standard AS 1892 provides detailed standards for portable ladders and light duty work.

*Note 2* This standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

## Division 7.4 Atmosphere and ventilation

### 76 Definitions—div 7.4

In this division:

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

*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.

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***safe unclassified inhalable dust level*** means a level of unclassified inhalable dust of 10mg/m<sup>3</sup> (TWA) or less.

***TWA or time-weighted average*** means—

- (a) for workers working standard hours—the average airborne concentration of a particular substance when calculated over an 8-hour working day for a 5-day working week; or
- (b) for workers working non-standard hours—the average airborne concentration of a particular substance taking into account any adjustment needed under the Australian Safety and Compensation Council *Guidance Note on the Interpretation of Exposure Standards for Atmospheric Contaminants in the Occupational Environment*, NOHSC 3008 (1995) 3rd Edition, part 5A.

***unclassified inhalable dust*** means inhalable dust of a type that is not classified in the national exposure standards.

*Note* ***National exposure standards***—see the dictionary.

***unsafe oxygen level*** means an oxygen level other than a safe oxygen level.

***unsafe unclassified inhalable dust level*** means a level of unclassified inhalable dust other than a safe unclassified inhalable dust level.

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**77 Ventilation**

- (1) A person conducting a business or undertaking commits an offence if the person's workplace is not reasonably ventilated.

Maximum penalty: 30 penalty units.

- (2) A person in control of premises commits an offence if the person's premises are not reasonably ventilated.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

**78 Unsafe oxygen levels—particular measures**

- (1) A person conducting a business or undertaking at a workplace commits an offence if—

- (a) atmospheres in the workplace contain, or are reasonably likely to develop, unsafe oxygen levels; and  
(b) the person does not manage the risk associated with unsafe oxygen levels.

Maximum penalty: 30 penalty units.

*Note* For what someone is required to do to manage risk—see the Act, s 14.

- (2) A person in control of premises commits an offence if—

- (a) atmospheres in the premises contain, or are reasonably likely to develop, unsafe oxygen levels; and  
(b) the person does not manage the risk associated with unsafe oxygen levels.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.



**79            Unsafe levels of unclassified inhalable dust—particular measures**

- (1) A person conducting a business or undertaking at a workplace commits an offence if—
- (a) atmospheres in the workplace contain, or are reasonably likely to develop, unsafe unclassified inhalable dust levels; and
  - (b) the person does not manage the risk associated with unsafe unclassified inhalable dust levels.

Maximum penalty: 30 penalty units.

*Note 1* For what someone is required to do to manage risk—see the Act, s 14.

*Note 2* Classified inhalable dust is a dangerous substance. Dangerous substances are dealt with under the *Dangerous Substances Act 2004*.

- (2) A person in control of premises commits an offence if—
- (a) atmospheres in the premises contain, or are reasonably likely to develop, unsafe unclassified inhalable dust levels; and
  - (b) the person does not manage the risk associated with unsafe unclassified inhalable dust levels.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

**80            Unsafe levels of oxygen and unclassified inhalable dust—entry**

- (1) A person conducting a business or undertaking at a workplace where there is a risk of unsafe oxygen levels or unsafe levels of unclassified inhalable dust commits an offence if the person does not ensure that—

- (a) the unsafe place in the person's workplace is isolated; and

- (b) appropriate warning signs are displayed at entry points to the unsafe place.

Maximum penalty: 30 penalty units.

- (2) A person in control of premises where there is a risk of unsafe oxygen levels or unsafe levels of unclassified inhalable dust commits an offence if the person does not ensure that—
  - (a) the unsafe place in the premises is isolated; and
  - (b) appropriate warning signs are displayed at entry points to the unsafe place.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

## **81 Monitoring levels of oxygen and unclassified inhalable dust**

- (1) A person conducting a business or undertaking at a workplace where there is a risk of unsafe oxygen levels or unsafe levels of unclassified inhalable dust commits an offence if the person does not ensure that—
  - (a) appropriate monitoring is undertaken at the workplace in accordance with a suitable procedure; and
  - (b) the results of the monitoring are recorded; and
  - (c) the monitoring records are readily accessible to anyone who may be put at risk by an unsafe level of oxygen or unclassified inhalable dust at the workplace; and

- (d) safe oxygen levels and unclassified inhalable dust levels are maintained at the workplace.

Maximum penalty: 30 penalty units.

- (2) A person in control of premises where there is a risk of unsafe oxygen levels or unsafe levels of unclassified inhalable dust commits an offence if the person does not ensure that—

- (a) appropriate monitoring is undertaken at the premises in accordance with a suitable procedure; and
- (b) the results of the monitoring are recorded; and
- (c) the monitoring records are readily accessible to anyone who may be put at risk by an unsafe level of oxygen or unclassified inhalable dust at the premises; and
- (d) safe oxygen levels and unclassified inhalable dust levels are maintained at the premises.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

## **Division 7.5            Heat and cold**

### **82            Air temperature**

- (1) A person conducting a business or undertaking at a workplace commits an offence if work practices at the workplace do not protect workers from extremes of heat and cold.

Maximum penalty: 30 penalty units.

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- (2) A person conducting a business or undertaking at a fixed workplace commits an offence if the person does not ensure that heating and cooling are provided at the workplace to allow workers to work in a reasonably comfortable environment.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

### **83 Heat—particular measures**

- (1) This section applies if a workplace environment becomes, or could reasonably be expected to become, hot.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that—

- (a) adequate ventilation and air movement is provided at the workplace; and
- (b) adequate personal protective and safety equipment is provided at the workplace to each worker exposed to heat; and
- (c) appropriate work and rest regimes are provided at the workplace for each worker exposed to heat.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

### **84 Cold—particular measures**

- (1) This section applies if a workplace environment becomes, or could reasonably be expected to become, cold.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that—
- (a) workers exposed to cold at the workplace have adequate access to—
    - (i) heated or sheltered work areas; and
    - (ii) warm clothing or other personal protective and safety equipment; and
  - (b) appropriate work and rest regimes are provided at the workplace for each worker exposed to cold.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

## **Division 7.6 Surfaces and floors**

### **85 Floors—general**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that floors and surfaces at the workplace are constructed and maintained to minimise the risk of slips, trips and falls.

Maximum penalty: 30 penalty units.

- (2) A person in control of premises commits an offence if the person does not ensure that floors and surfaces at the premises are constructed and maintained to minimise the risk of slips, trips and falls.

Maximum penalty: 30 penalty units.

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- (3) A person in control of the design of a workplace, or a place that could reasonably be expected to be used as a workplace, commits an offence if the person does not ensure that floors and surfaces at the workplace are constructed to minimise the risk of slips, trips and falls.

Maximum penalty: 30 penalty units.

- (4) An offence against this section is a strict liability offence.

## **86 Floors that become slippery**

- (1) This section applies if a floor at a workplace becomes slippery, whether because of something on the surface of the floor or for any other reason.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not—

(a) take all reasonably practicable steps at the workplace—

- (i) to warn people of the risk; and
- (ii) to remove the hazard; and

(b) take other appropriate steps at the workplace to minimise the risk.

Maximum penalty: 30 penalty units.

- (3) A person in control of premises commits an offence if the person does not—

(a) take all reasonably practicable steps at the premises—

- (i) to warn people of the risk; and
- (ii) to remove the hazard; and

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- (b) take other appropriate steps at the premises to minimise the risk.

Maximum penalty: 30 penalty units.

- (4) An offence against this section is a strict liability offence.

## **87 Floors—hard surfaces**

- (1) A person conducting a business or undertaking at a workplace commits an offence if—
- (a) a worker must stand at the workplace for a significant proportion of a work shift in substantially the same position on a floor or work platform that is a hard surface; and
- (b) either or both of the following apply:
- (i) the covering for the hard surface does not have low thermal conductivity;
- (ii) the floor or work platform is not designed to give reasonable relief from the hard surface.

Maximum penalty: 30 penalty units.

- (2) An offence against this section is a strict liability offence.

## **Division 7.7 Electricity**

### **88 Definitions—div 7.7**

In this division:

*electrical inspector* means an inspector appointed under the *Electricity Safety Act 1971*, section 41.

*electrical installation*—see the *Electricity Safety Act 1971*, dictionary.

## 89 Electricity—measures for electrical installations

- (1) This section applies to a workplace if there is an electrical installation at the workplace.
- (2) A person conducting a business or undertaking at a workplace must ensure that—
  - (a) each electrical installation at the workplace is safe; or
  - (b) if an electrical installation at the workplace is not safe—
    - (i) the installation, or unsafe part of the installation, is disconnected from the electricity supply; and
    - (ii) if the installation, or part of the installation, has been found unsafe by an electrical inspector—the installation, or the part of the installation that is unsafe, is danger labelled and secured to prevent inadvertent reconnection.

### **Examples—electrical installations, and parts of installations, with possible electrical hazards**

- 1 streetlight network
- 2 switchboard and related cables
- 3 mechanical services plant room
- 4 socket outlet
- 5 fixed wired electrical equipment

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A person in control of premises must ensure that—
  - (a) each electrical installation at the premises is safe; or
  - (b) if an electrical installation at the premises is not safe—
    - (i) the installation, or unsafe part of the installation, is disconnected from the electricity supply; and

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- (ii) if the installation, or part of the installation, has been found unsafe by an electrical inspector—the installation, or the part of the installation that is unsafe, is danger labelled and secured to prevent inadvertent reconnection.

**Examples**

See examples to s (2).

- (4) A person conducting a business or undertaking at a workplace commits an offence if—
  - (a) an electrical installation at the workplace is not suitably enclosed; and
  - (b) someone can make inadvertent contact with parts supplied with electricity.

Maximum penalty: 10 penalty units.

- (5) A person in control of premises commits an offence if—
  - (a) an electrical installation at the premises is not suitably enclosed; and
  - (b) someone can make inadvertent contact with parts supplied with electricity.

Maximum penalty: 10 penalty units.

- (6) A person conducting a business or undertaking at a workplace commits an offence if—
  - (a) someone enters an electrical installation at the workplace that has an electrical hazard; and
  - (b) the person entering the installation is not appropriately trained in safe entry, emergency procedures and the safe use of electrical plant and equipment.

Maximum penalty: 10 penalty units.

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- (7) A person in control of premises commits an offence if—
- (a) someone enters an electrical installation at the premises that has an electrical hazard; and
  - (b) the person entering the installation is not appropriately trained in safe entry, emergency procedures and the safe use of electrical plant and equipment.

Maximum penalty: 10 penalty units.

- (8) An offence against this section is a strict liability offence.

## **90 Electricity—measures for articles of electrical equipment**

- (1) This section applies if an article of electrical equipment is provided for use at, or in connection with an electrical installation at a workplace.
- (2) A person conducting a business or undertaking at a workplace must ensure that—
- (a) the article of electrical equipment is safe; or
  - (b) if the article of electrical equipment is not safe—
    - (i) the article is disconnected from the electricity supply; and
    - (ii) if found unsafe by an electrical inspector—the article, or the part of the article that is unsafe, is danger labelled and secured to prevent inadvertent reconnection.

*Note* See also the *Electricity Safety Act 1971*, s 26 and s 51.

- (3) A person in control of premises must ensure that—
- (a) the article of electrical equipment is safe; or
  - (b) if the article of electrical equipment is not safe—
    - (i) the article is disconnected from the electricity supply; and

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- (ii) if found unsafe by an electrical inspector—the article, or the part of the article that is unsafe, is danger labelled and secured to prevent inadvertent reconnection.

*Note* See also the *Electricity Safety Act 1971*, s 26 and s 51.

- (4) In this section:

***article of electrical equipment***—see the *Electricity Safety Act 1971*, dictionary.

## **91 Electricity—measures for preventing contact**

- (1) A person conducting a business or undertaking at a workplace must ensure that a person working in, or undertaking maintenance at, the workplace is prevented from making inadvertent contact with a live, conductive part of an electrical installation.
- (2) A person in control of premises must ensure that a person working in, or undertaking maintenance at, the premises is prevented from making inadvertent contact with a live, conductive part of an electrical installation.
- (3) A person conducting a business or undertaking at a workplace must ensure that a person working in, or undertaking maintenance at, the workplace is prevented from going within an unsafe distance of overhead or underground electrical power lines or exposed cables.
- (4) A person in control of premises must ensure that a person working in, or undertaking maintenance at, the premises is prevented from going within an unsafe distance of overhead or underground electrical power lines or exposed cables.
- (5) Subsections (1), (2) (3) and (4) do not apply in relation to a person undertaking electrical work if the person is licensed under the *Construction Occupations (Licensing) Act 2004* to undertake the work.

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- (6) Subsections (3) and (4) do not apply if—
- (a) a written risk assessment is given to the electricity network operator; and
  - (b) the electricity network operator is satisfied—
    - (i) with the content of the risk assessment; and
    - (ii) that work to be done in accordance with the risk assessment will be safe.

- (7) In this section:

*electricity distributor*—see the *Utilities Act 2000*, dictionary.

*electricity network operator* means the person responsible for network operations for the relevant electricity distributor.

*relevant electricity distributor*, in relation to electrical power lines or exposed cables, means the electricity distributor of whose network the power lines or cables are a part.

## Division 7.8 Confined spaces

### 92 Definitions—div 7.8

In this division:

*atmospheric contaminant* means—

- (a) a dangerous substance in the form of a fume, mist, gas, dust or vapour; or
- (b) an asphyxiant; or
- (c) nuisance dust.

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***confined space***, for a workplace, means an enclosed, or partly enclosed, space in the workplace that—

- (a) is not designed as, or intended to be, a workplace; and
- (b) is at atmospheric pressure while people are in it; and
- (c) may have—
  - (i) an atmosphere with potentially harmful contaminants; or
  - (ii) an unsafe oxygen level; or
  - (iii) stored substances that may cause engulfment; and
- (d) may have restricted entry and exit.

**Examples**

- 1 storage tanks, tank cars, process vessels, boilers, pressure vessels, silos and other tank-like compartments
- 2 pits, degreasers and other open-topped spaces
- 3 pipes, sewers, shafts, ducts and similar structures

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***entry permit*** means a written document that—

- (a) identifies the confined space; and
- (b) clearly describes the work to be carried out in the confined space; and
- (c) sets out the risk management steps to be taken; and
- (d) states the name of each person who may enter or work in the confined space; and
- (e) states the date and time when each person may enter or be in the confined space to carry out the work.

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*safe oxygen level*—see section 76.

*unsafe oxygen level*—see section 76.

**93 Design etc—confined spaces**

- (1) A person in control of the design, manufacture or supply of a confined space commits an offence if the person does not ensure that—
- (a) the space is designed so that there is ordinarily no need for anyone to enter it; and
  - (b) if entry is needed—the space has a safe means of entry and exit.

Maximum penalty: 30 penalty units.

- (2) A person who modifies a confined space commits an offence if the person does not ensure that the modification does not adversely affect the safe means of entry and exit.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

**94 Hazard identification and risk assessment—confined spaces**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not—
- (a) identify each confined space at the workplace; and
  - (b) identify each reasonably foreseeable hazard associated with working in the space.

Maximum penalty: 30 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that a risk assessment is undertaken by a suitably qualified person before any work involving entering a confined space at the workplace is started for the first time.

Maximum penalty: 30 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence if—
- (a) there is evidence that risk assessment does not address, or no longer addresses, the risks posed by the confined space for which the assessment is undertaken; and
  - (b) the person does not ensure that the risk assessment is reviewed.

Maximum penalty: 30 penalty units.

- (4) An offence against this section is a strict liability offence.
- (5) In this section:

*risk assessment* includes at least an assessment of—

- (a) the nature of the space and the work to be done; and
- (b) whether work can be done without entering the space; and
- (c) different ways that the work can be done; and
- (d) the risks associated with the method of work, the plant to be used and any potential hazard in the space.

*suitably qualified person*, for a risk assessment, means someone who is suitably qualified by experience or training to carry out the risk assessment.

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## 95 Entry to and work in confined spaces

- (1) A person conducting a business or undertaking at a workplace commits an offence if—
- (a) there is an uncontrolled risk to the health or safety of someone entering, occupying or working in a confined space or an uncontrolled risk of fire or explosion in a confined space; and
  - (b) the person does not ensure that either—
    - (i) no-one enters the confined space at the workplace; or
    - (ii) work is not performed in the confined space at the workplace.

Maximum penalty: 30 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that, before anyone enters a confined space at the workplace—
- (a) the space contains a safe oxygen level; and
  - (b) any atmospheric contaminant in the space is reduced to below the exposure standard under the national exposure standards for the contaminant; and
- Note* *National exposure standards*—see the dictionary.
- (c) the concentration of any flammable contaminant in the atmosphere of the space is below 5% of its LEL; and
  - (d) the space is not extremely hot or extremely cold; and
  - (e) steps are taken to minimise any risk associated with the presence of vermin in the space.

Maximum penalty: 30 penalty units.

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- (3) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that no-one enters or stays in a confined space at the workplace if the concentration of any flammable contaminant in the atmosphere of the space is 10% or more of its LEL.

Maximum penalty: 30 penalty units.

- (4) A person in control of premises commits an offence if—
- (a) there is an uncontrolled risk to the health or safety of someone entering, occupying or working in a confined space or an uncontrolled risk of fire or explosion in a confined space; and
  - (b) the person does not ensure that either—
    - (i) no-one enters the confined space at the premises; or
    - (ii) work is not performed in the confined space at the premises.

Maximum penalty: 30 penalty units.

- (5) A person in control of premises commits an offence if the person does not ensure that, before anyone enters a confined space at the premises—
- (a) the space contains a safe oxygen level; and
  - (b) any atmospheric contaminant in the space is reduced to below the exposure standard under the national exposure standards for the contaminant; and
- Note* *National exposure standards*—see the dictionary.
- (c) the concentration of any flammable contaminant in the atmosphere of the space is below 5% of its LEL; and
  - (d) the space is not extremely hot or extremely cold; and

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(e) steps are taken to minimise any risk associated with the presence of vermin in the space.

Maximum penalty: 30 penalty units.

(6) A person in control of premises commits an offence if the person does not ensure that no-one enters or stays in a confined space at the premises if the concentration of any flammable contaminant in the atmosphere of the space is 10% or more of its LEL.

Maximum penalty: 30 penalty units.

(7) An offence against this section is a strict liability offence.

(8) In this section:

*LEL*, or *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.

## 96 Isolation and control of potentially hazardous services—particular measures

(1) This section applies if a service that may present a hazard in a confined space (a *potentially hazardous service*) is normally connected to a confined space.

### Examples—potentially hazardous service

- 1 a gas supply line
- 2 electrical wiring or cabling

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that no-one enters a confined space at the workplace unless the potentially hazardous service is isolated or controlled in a way that prevents—
- (a) the introduction of any material, contaminant, agent, or the creation of a condition, that may be harmful to someone in the 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 someone in the space.

Maximum penalty: 30 penalty units.

- (3) A person in control of premises commits an offence if the person does not ensure that no-one enters a confined space at the premises unless the potentially hazardous service is isolated or controlled in a way that prevents—
- (a) the introduction of any material, contaminant, agent, or the creation of a condition, that may be harmful to someone in the 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 someone in the space.

Maximum penalty: 30 penalty units.

- (4) An offence against this section is a strict liability offence.

## **97 Clearing containment before entry—particular measures**

- (1) This section applies if a confined space must be cleared of contaminants to comply with section 95 (Entry to and work in confined spaces).

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- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that, if appropriate, the confined space at the workplace is cleared of all contaminants by using a suitable purging agent that displaces contaminants from the space.

Maximum penalty: 30 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that pure oxygen or a gas mixture in a concentration of more than 21% of oxygen by volume is not used to purge or ventilate the confined space at the workplace.

Maximum penalty: 30 penalty units.

- (4) A person in control of premises commits an offence if the person does not ensure that, if appropriate, the confined space at the premises is cleared of all contaminants by using a suitable purging agent that displaces contaminants from the space.

Maximum penalty: 30 penalty units.

- (5) A person in control of premises commits an offence if the person does not ensure that pure oxygen or a gas mixture in a concentration of more than 21% of oxygen by volume is not used to purge or ventilate the confined space at the premises.

Maximum penalty: 30 penalty units.

- (6) An offence against this section is a strict liability offence.

## **98 Unsafe level of oxygen and atmospheric contaminants**

- (1) This section applies if—
- (a) a safe oxygen level cannot be provided in a confined space at a workplace; or

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- (b) an atmospheric contaminant in a confined space at a workplace cannot be reduced to below the exposure standard under the national exposure standards.
- (2) A person conducting a business or undertaking at a workplace commits an offence if the person allows—
- (a) someone to enter a confined space at the workplace; and
  - (b) the person entering is not equipped with suitable personal protective and safety equipment including air supplied respiratory protective equipment.

Maximum penalty: 30 penalty units.

*Note* For requirements if a person conducting a business or undertaking provides air supplied respiratory equipment for use at a workplace, see s 69.

- (3) A person in control of premises commits an offence if the person allows—
- (a) someone to enter a confined space at the premises; and
  - (b) the person entering is not equipped with suitable personal protective and safety equipment including air supplied respiratory protective equipment.

Maximum penalty: 30 penalty units.

*Note* For requirements if a person conducting a business or undertaking provides air supplied respiratory equipment for use at a workplace, see s 69.

- (4) An offence against this section is a strict liability offence.

**99 Entry permits—particular measures**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not give an entry permit to the person in direct control of work to be done in a confined space at the workplace.

Maximum penalty: 30 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not give each person who is required to do work in a confined space at the workplace—

- (a) a copy of the entry permit; and
- (b) reasonable time to read the entry permit before the person is required to enter the space.

Maximum penalty: 30 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence if—

- (a) someone enters or works in a confined space at the workplace; and
- (b) the entry or work does not comply with an entry permit under this section.

Maximum penalty: 30 penalty units.

- (4) A person conducting a business or undertaking at a workplace commits an offence if—

- (a) a confined space at the workplace is returned to normal use; and

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(b) the person does not have written confirmation from the person in direct control of the work in the confined space, that—

- (i) the work has been completed; and
- (ii) each person involved in the work has left the space.

Maximum penalty: 30 penalty units.

(5) A person in control of premises commits an offence if the person does not ensure that each person who is to do work in a confined space at the premises is told about, and understands, the entry permit.

Maximum penalty: 30 penalty units.

(6) A person in control of premises commits an offence if—

- (a) someone enters or works in a confined space at the premises; and
- (b) the entry or work does not comply with an entry permit under this section.

Maximum penalty: 30 penalty units.

(7) A person in control of premises commits an offence if—

- (a) a confined space at the premises is returned to normal use; and
- (b) the person does not have written confirmation from the person in direct control of the work in the confined space, that—
  - (i) the work has been completed; and
  - (ii) each person involved in the work has left the space.

Maximum penalty: 30 penalty units.

(8) An offence against this section is a strict liability offence.

## **100 Standby people—particular measures**

- (1) This section applies if—
  - (a) there is a confined space at a workplace; and
  - (b) someone is in the confined space.
- (2) A person conducting a business or undertaking at the workplace commits an offence if the person does not appoint 1 or more people as standby people for the work in the confined space at the workplace.

Maximum penalty: 30 penalty units.

- (3) A person conducting a business or undertaking at the workplace commits an offence if the person appoints a person as a standby person for the work in the confined space at the workplace and the person appointed—
  - (a) has not undertaken training in accordance with section 104 (Training about confined spaces); and
  - (b) cannot operate the monitoring equipment used to ensure safety during entry to, and work in, the confined space; and
  - (c) cannot initiate emergency procedures (including rescue procedures).

Maximum penalty: 30 penalty units.

- (4) A person conducting a business or undertaking at the workplace commits an offence if the person does not ensure that a standby person—
  - (a) remains outside and near the confined space at the workplace while anyone is in the confined space; and

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(b) is able to communicate continuously with anyone in the confined space; and

(c) if practicable, is able to see anyone in the confined space.

Maximum penalty: 30 penalty units.

(5) An offence against this section is a strict liability offence.

### **101 Emergencies—particular measures**

(1) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that appropriate emergency equipment is provided when someone is in a confined space at the workplace.

Maximum penalty: 30 penalty units.

(2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that emergency procedures are established and rehearsed in relation to people in a confined space at the workplace.

Maximum penalty: 30 penalty units.

(3) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that—

(a) the openings for entry to and exit from a confined space at the workplace are large enough to allow the rescue of anyone in the space; and

(b) the openings are not obstructed by anything that could impede the rescue or, if this is not possible, that another suitable means of rescue is provided.

Maximum penalty: 30 penalty units.

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- (4) A person in control of premises commits an offence if the person does not ensure that appropriate emergency equipment is provided when someone is in a confined space at the premises.

Maximum penalty: 30 penalty units.

- (5) A person in control of premises commits an offence if the person does not ensure that emergency procedures are established and rehearsed in relation to people in a confined space at the premises.

Maximum penalty: 30 penalty units.

- (6) A person in control of premises commits an offence if the person does not ensure that—

- (a) the openings for entry to and exit from a confined space at the premises are large enough to allow the rescue of anyone in the space; and
- (b) the openings are not obstructed by anything that could impede the rescue or, if this is not possible, that another suitable means of rescue is provided.

Maximum penalty: 30 penalty units.

- (7) An offence against this section is a strict liability offence.

## **102 Entry protection—particular measures**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that appropriate signs are displayed and protective barriers are erected to prevent the entry of anyone who does not have an entry permit for a confined space at the workplace.

Maximum penalty: 30 penalty units.

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- (2) A person in control of premises commits an offence if the person does not ensure that appropriate signs are displayed and protective barriers are erected to prevent the entry of anyone who does not have an entry permit for a confined space at the premises.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

### **103 Atmospheric testing and monitoring—particular measures**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that appropriate atmospheric testing and monitoring is carried out in a confined space at the workplace if the space—

(a) is or may be contaminated with an atmospheric contaminant;  
or

(b) is or may be contaminated with a flammable contaminant; or

(c) has or may have an unsafe oxygen level.

Maximum penalty: 30 penalty units.

- (2) A person in control of premises commits an offence if the person does not ensure that appropriate atmospheric testing and monitoring is carried out in a confined space at the premises if the space—

(a) is or may be contaminated with an atmospheric contaminant;  
or

(b) is or may be contaminated with a flammable contaminant; or

(c) has or may have an unsafe oxygen level.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

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## **104 Training about confined spaces**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide training relating to entering and working in confined spaces to anyone who is required to work in a confined space at the workplace.

Maximum penalty: 30 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide training relating to entering and working in confined spaces to anyone who is appointed as a standby person for the workplace.

Maximum penalty: 30 penalty units.

- (3) A person conducting a business or undertaking at a workplace may also provide the training to—

- (a) anyone who does 1 or more of the following:

- (i) assesses the safety of confined spaces;
- (ii) issues entry permits for confined spaces;
- (iii) designs and fixes the layout of workplaces;
- (iv) supervises people working in or near confined spaces;
- (v) maintains equipment used in confined spaces;
- (vi) purchases, distributes, fits, wears or maintains personal protective and safety equipment used for work in confined spaces; and

- (b) anyone who could be involved in rescue and first aid procedures involving a confined space.

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- (4) A person conducting a business or undertaking at a workplace commits an offence if the person fails to make a written record of—
- (a) the training given under this section; and
  - (b) the people to whom the training is given.

Maximum penalty: 20 penalty units.

- (5) An offence against this section is a strict liability offence.
- (6) In this section:

*standby person* means a person appointed as a standby person under section 100.

*training* must include instruction in each of the following:

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

## **105 Record keeping**

- (1) A person conducting a business or undertaking at a workplace must keep—
- (a) entry permits for a confined space at the workplace for 1 month after the day the space is returned to normal use; and
  - (b) risk assessment reports for work in a confined space at the workplace for 5 years after the last entry in the report; and

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- (c) a record of training relating to work in a confined space at the workplace while the person to whom the training has been given is engaged.

*Note* For reporting and records in relation to injuries and dangerous occurrences, see pt 2.

- (2) A person conducting a business or undertaking at a workplace commits an offence if—
  - (a) an inspector requests access to a record made under subsection (1) in relation to the workplace; and
  - (b) the person does not give access to the record.

Maximum penalty: 20 penalty units.

- (3) If a record made under subsection (1) contains information personal to a worker, a person conducting the business or undertaking must give the worker access to the record on request.
- (4) An offence against this section is a strict liability offence.

## **Division 7.9                      Lighting**

### **106                      Person conducting business or undertaking to provide lighting**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not provide adequate lighting at the workplace.

Maximum penalty: 30 penalty units.

- (2) What is adequate for subsection (1) must be decided having regard to the nature of the tasks performed by each worker at the workplace.

- (3) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that the lighting provided at the workplace—
- (a) allows workers to work safely; and
  - (b) does not create excessive glare or reflection; and
  - (c) allows people who are not workers to move safely within the workplace; and
  - (d) facilitates safe entry to, and exit from, the workplace.
- Maximum penalty: 30 penalty units.
- (4) An offence against this section is a strict liability offence.

## **Division 7.10          Noise management**

### **107          Definitions—div 7.10**

In this division:

*exposure standard* means—

- (a) an 8-hour equivalent continuous A-weighted sound pressure level,  $L_{Aeq,8h}$  of 85dB (A) referenced to 20 $\mu$ Pa; and
- (b) a C-weighted peak sound pressure level,  $L_{C,peak}$  of 140dB (C) referenced to 20 $\mu$ Pa.

*sound pressure level*, in relation to a person, means the level of noise worked out, at the person's ear position, in accordance with AS 1269, without taking into account any protection that may be given by a personal hearing protector.

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**108 Working out  $L_{C,peak}$  value—div 7.10**

For this division, the value of  $L_{C,peak}$  must be worked out by using sound-measuring equipment with a peak detector-indicator characteristic that complies with AS 1259.

**109 Noise management—duties of designers etc**

- (1) A person in control of the design, manufacture, import or supply of plant that may emit an unsafe level of noise must ensure that the plant is designed and constructed so that the noise emitted by the plant is as low as reasonably practicable, when installed and used in a reasonable way.
- (2) A person in control of the manufacture, import or supply of plant commits an offence if—
  - (a) plant that may emit an unsafe level of noise is supplied to a person; and
  - (b) the person in control of the manufacture, import or supply of the plant fails to provide the person to whom the plant is supplied with information about—
    - (i) the noise emitted by the plant; and
    - (ii) ways to keep the noise to the lowest level that is reasonably practicable to achieve.

Maximum penalty: 20 penalty units.

- (3) An offence against this section is a strict liability offence.



**110 Noise management—duties of person conducting business or undertaking**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not—
- (a) properly maintain noise control measures at the workplace; and
  - (b) give workers at the workplace information and training about noise control measures; and
  - (c) ensure that any personal hearing protectors given to a worker are properly used and maintained.

Maximum penalty: 30 penalty units.

- (2) If action is required to reduce the noise level to which a worker is exposed, the person conducting a business or undertaking at a workplace must—
- (a) as far as is reasonably practicable, implement engineering noise controls to reduce the noise level; and
  - (b) if action under paragraph (a) does not reduce the noise level to the exposure standard or less—as far as is reasonably practicable, implement administrative noise controls to reduce the noise to which the worker is exposed; and
  - (c) if action under paragraph (a) and (b) does not reduce the noise level to the exposure standard or less—give the worker personal hearing protectors that—
    - (i) meet the requirements of AS 1270; and
    - (ii) have been selected according to the procedures stated in AS 1269.

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- (3) A person conducting a business or undertaking at a workplace commits an offence if—
- (a) noise levels at the workplace exceed the exposure standards for a worker; and
  - (b) the person does not—
    - (i) take the action mentioned in subsection (2) (a) and (b) to reduce the noise level to which the worker is exposed; or
    - (ii) give the worker the personal hearing protectors required under subsection (2) (c).

Maximum penalty: 30 penalty units.

- (4) An offence against this section is a strict liability offence.

### **111 Noise management—duties of workers**

- (1) A worker commits an offence if—
- (a) noise control measures are taken at a workplace under this division; and
  - (b) the worker intentionally does not comply with the measures at the workplace, as far as reasonably practicable.

Maximum penalty: 20 penalty units.

- (2) A worker commits an offence if the worker—
- (a) is given personal hearing protectors as a noise control measure for use at work; and
  - (b) does not use the protectors, as far as reasonably practicable.

Maximum penalty: 20 penalty units.

## **Division 7.11 Isolated work**

### **112 Isolated workers**

- (1) This section applies if a person conducting a business or undertaking allows a worker in the business or undertaking to work alone in—
- (a) an area that is remote from other people or is isolated from other people because of the time, location or nature of the work; or
  - (b) a situation that involves the operation or maintenance of hazardous plant or the handling of a dangerous substance; or
  - (c) work that is dangerous to perform alone.

**Examples—par (c)**

- 1 tree felling
- 2 security patrolling at night
- 3 working in an interview room

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A person conducting a business or undertaking commits an offence if the person fails to ensure that—
- (a) a worker in the business or undertaking is able to call for help; and
  - (b) there is a procedure for regular contact with the worker; and
  - (c) the worker is trained in the procedure.

Maximum penalty: 30 penalty units.

- (3) An offence against this section is a strict liability offence.

## Division 7.12 Fire and explosion

### 113 Fire and explosion—risk control

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that risks of fire or explosion at the workplace are managed.

Maximum penalty: 30 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not—

(a) eliminate potential ignition sources from proximity to flammable substances, combustible dusts or waste materials at the workplace; and

(b) regularly remove waste materials and accumulated dust at the workplace.

Maximum penalty: 30 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence if—

(a) there are flammable substances, combustible dusts or waste materials at the workplace; and

(b) the person does not monitor the workplace regularly to ensure the continued effectiveness of control measures for fire or explosion at the workplace.

Maximum penalty: 30 penalty units.

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- (4) A person in control of premises commits an offence if the person does not ensure that risks of fire or explosion at the premises are managed.

Maximum penalty: 30 penalty units.

- (5) A person in control of premises commits an offence if the person does not—

- (a) eliminate potential ignition sources from proximity to flammable substances, combustible dusts or waste materials at the premises; and
- (b) regularly remove waste materials and accumulated dust from the premises.

Maximum penalty: 30 penalty units.

- (6) A person in control of premises commits an offence if—

- (a) there are flammable substances, combustible dusts or waste materials at the premises; and
- (b) the person does not monitor the premises regularly to ensure the continued effectiveness of control measures for fire or explosion at the premises.

Maximum penalty: 30 penalty units.

- (7) An offence against this section is a strict liability offence.

## **114 Fire and explosion—facilities**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that appropriate fire appliances are—
- (a) available at the workplace; and

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(b) maintained to a reasonable standard by a suitably qualified person.

Maximum penalty: 30 penalty units.

(2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that portable fire extinguishers are installed at the workplace in accordance with AS 2444.

Maximum penalty: 30 penalty units.

(3) A person in control of premises commits an offence if the person does not ensure that appropriate fire appliances are—

(a) available at the premises; and

(b) maintained to a reasonable standard by a suitably qualified person.

Maximum penalty: 30 penalty units.

(4) A person in control of premises commits an offence if the person does not ensure that portable fire extinguishers are installed at the premises in accordance with AS 2444.

Maximum penalty: 30 penalty units.

(5) An offence against this section is a strict liability offence.

(6) In this section:

*fire appliance* includes—

(a) a vehicle, equipment, implement or thing used to prevent, extinguish or contain fire or smoke; and

(b) a fire alarm; and

- (c) apparatus for alerting the occupants of a building to a fire or facilitating the evacuation of the building; and
- (d) equipment used to control smoke in, or remove smoke from, a building.

*suitably qualified person*, for maintaining an appliance, means someone who is suitably qualified by experience or training to maintain the appliance.

## **Division 7.13            Emergency procedures**

### **115            Person conducting business or undertaking to provide for emergencies**

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that, in an emergency at the workplace, appropriate systems are in place for—
  - (a) the safe and rapid evacuation of people from the workplace; and
  - (b) emergency communications; and
  - (c) the medical treatment of injured people.

Maximum penalty: 30 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person engages workers at the workplace and does not ensure that—
  - (a) arrangements are made for shutting down and evacuating the workplace in an emergency; and
  - (b) details of the arrangements are displayed in appropriate places at the workplace; and

- (c) an appropriate number of people are properly trained to oversee any evacuation and use any on-site fire appliances.

Maximum penalty: 30 penalty units.

- (3) What is appropriate for subsection (1) and subsection (2) (b) and (c) must be decided having regard to—
  - (a) the nature of the hazards at the workplace; and
  - (b) the size and location of the workplace; and
  - (c) the number, mobility and capability of people at the workplace.
- (4) An offence against this section is a strict liability offence.

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## **Part 8                      Licensing high risk work**

### **Division 8.1              Important concepts**

#### **116              Definitions—pt 8**

In this part:

*Australian qualifications framework (AQF)* means the policy framework that defines all qualifications recognised nationally in post-compulsory education and training in Australia.

*Australian quality training framework (AQTF)* means the national quality arrangements for the vocational education and training system agreed to by the Ministerial Council.

*Commonwealth regulatory authority* means the government authority responsible for administering the *Occupational Health and Safety Act 1991* (Cwlth).

*competency* means the ability to perform a task or duty to a competency standard.

*competency standard* means an industry-determined specification of performance setting out the skills, knowledge and attitudes required to operate effectively in employment made up of units of competency.

*corresponding law* means a law mentioned in schedule 2.

*direct supervision*, of a trainee, means overseeing the work of the trainee for the purpose of directing, demonstrating, monitoring and checking the trainee's performance appropriate to the trainee's competency level and ensuring a capacity to respond to emergency situations.

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**high risk work** means work in a class mentioned in schedule 1, part 1.2, column 2.

**licensing authority** means the authority responsible for the administration of high risk work licensing under a corresponding law.

**Ministerial Council** means the council consisting of the Ministers responsible for employment, education and training, from the ACT, each State and the Commonwealth.

*Note*     **State** includes the Northern Territory (see Legislation Act, dict, pt 1, def **State**).

**national licence** means a licence to carry out high risk work issued under—

- (a) this part; or
- (b) a corresponding law.

**nationally endorsed**, for a training package, means endorsed by the committee known as the national training quality committee established by MINCO.

**recognised qualification**, to carry out high risk work under a corresponding law, means any of the following:

- (a) a certificate of competency to carry out high risk work issued under the corresponding law;
- (b) another qualification (other than a licence) recognised under the corresponding law.

**registered training organisation** means—

- (a) a training organisation registered under the *Training and Tertiary Education Act 2003*, chapter 3; or

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- (b) a training organisation registered by a state registering body in accordance with the Australian quality training framework within a defined scope of registration.

***statement of attainment*** means a statement issued by a registered training organisation registered in the ACT under the Australian qualifications framework certifying that a person has achieved—

- (a) part of a qualification; or
- (b) 1 or more units of competency from a nationally endorsed training package; or
- (c) all the units of competency or modules comprising learning outcomes for an accredited course that do not meet the requirements for a qualification.

***state registering body*** means the body responsible under a State's vocational education training legislation and decision-making framework, for all processes related to the registration of training organisations, including the imposition of sanctions.

*Note* ***State*** includes the Northern Territory (see Legislation Act, dict, pt 1, def ***State***).

***supervisor***, for a trainee carrying out a class of high risk work, means a person who is licensed to carry out the work.

***trainee*** means a person who is not licensed to carry out a class of high risk work but who is undertaking training provided by a registered training organisation towards obtaining a licence to do the work.

***training package*** means an integrated set of competency standards, assessment guidelines and AQF qualifications for a particular industry, industry sector or enterprise.

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*unit of competency* means the specification of knowledge and skill and their application to the standard of performance expected in a workplace.

## Division 8.2 High risk work licence

### 117 Carrying out high risk work without licence

- (1) A person commits an offence if—
  - (a) the person carries out high risk work; and
  - (b) the person is not licensed to carry out the work.Maximum penalty: 20 penalty units.
- (2) Subsection (1) does not apply to a person if—
  - (a) the person holds a national licence to carry out the high risk work; or
  - (b) the person—
    - (i) is a trainee; and
    - (ii) carries out the high risk work in accordance with division 8.4 (Trainees under supervision); or
  - (c) the high risk work is exempt under an exemption granted by the chief executive under division 8.7 (Exemptions).

### 118 Allowing unlicensed person to carry out work

- (1) A person commits an offence if—
  - (a) the person conducts a business or undertaking at a workplace; and
  - (b) the person directs or allows someone else (a *worker*) to carry out high risk work at the workplace; and

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- (c) the worker—
  - (i) carries out the work; and
  - (ii) is not licensed to carry out the work.

Maximum penalty: 30 penalty units.

- (2) Subsection (1) does not apply if—
  - (a) the worker carrying out the high risk work holds a national licence to carry out the high risk work; or
  - (b) the person carrying out the high risk work is a trainee and the work done by the trainee is in accordance with division 8.4 (Trainees under supervision); or
  - (c) the high risk work is exempt under an exemption granted by the chief executive under division 8.7 (Exemptions).

## **119 Licence application**

- (1) A person may apply to the chief executive for a licence to carry out a class of high risk work.

*Note* If a form is approved under the Act, s 229 for this provision, the form must be used.

- (2) The application must state each class of high risk work for which the licence is required.
- (3) The application must be accompanied by the following:
  - (a) proof of the applicant's identity and age;
  - (b) a sample of the person's usual signature;
  - (c) a recent photograph of the applicant;

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- (d) either—
- (i) a current statement of attainment issued to the person for each class of high risk work; or
  - (ii) a certified copy of a national licence to carry out each class of high risk work under a corresponding law;
- (e) a statutory declaration stating whether the applicant, in the 5 years before the day the application is made—
- (i) has held a certificate of competency, a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that has been suspended or cancelled; and
  - (ii) has been convicted or found guilty of a serious offence under the *Occupational Health and Safety Act 1989*, the *Work Safety Act 2008*, the *Crimes Act 1900*, part 2A (Industrial manslaughter) or a corresponding offence against the law of a State; and

*Note* **State** includes the Northern Territory (see Legislation Act, dict, pt 1, def **State**).

- (f) any other document or further information required in writing by the chief executive that is relevant to the application.

*Note* A fee may be determined under the Act, s 228 for this provision.

## **120 Licence issue**

- (1) If a person applies under section 119 for a licence to carry out a class of high risk work, the chief executive must—
- (a) issue the licence; or
  - (b) refuse to issue the licence.

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- (2) The chief executive must issue the licence if satisfied that the applicant—
- (a) is aged 18 years or over; and
  - (b) has either—
    - (i) a current statement of attainment for the class of high risk work that was valid on the day the application was made; or
    - (ii) a national licence to carry out the class of high risk work under a corresponding law; and
  - (c) does not hold a current ACT licence to carry out the class of high risk work; and
  - (d) does not hold a certificate of competency, a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that is or has been suspended in the 5 years before the day the application was made; and
  - (e) has not held a certificate of competency, a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that has been cancelled in the 5 years before the day the application was made; and
  - (f) has not been convicted or found guilty of a serious offence under the *Occupational Health and Safety Act 1989*, the *Work Safety Act 2008*, the *Crimes Act 1900*, part 2A (Industrial manslaughter) or a corresponding offence against the law of a State in the 5 years before the day the application was made.

*Note* **State** includes the Northern Territory (see Legislation Act, dict, pt 1, def **State**).

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**121 Licence conditions**

The chief executive may issue a licence on conditions.

**122 Failing to comply with condition of licence**

- (1) A person commits an offence if—
- (a) the person is licensed to carry out a class of high risk work on conditions; and
  - (b) the person carries out the work; and
  - (c) the person does not comply with the conditions when carrying out the work.

Maximum penalty: 10 penalty units.

*Note* The effect of the Criminal Code, s 45 is that a person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the commission of an offence is taken to have committed the offence. For example, a person who aided or abetted or counselled or procured another person to carry out a class of high risk work without a licence (s 117) or contrary to the conditions of a licence (s 121) would also commit the offence.

**123 Form of licence**

A licence to carry out high risk work must contain the following details:

- (a) the licensee's full name and date of birth;
- (b) the licensee's signature;
- (c) the licensee's photograph;
- (d) the date of issue, and expiry, of the licence;
- (e) each class of high risk work for which the licence is issued;



- (f) a unique identifying number for the licence.

**124 Term of licence**

A licence to carry out high risk work is issued for 5 years.

**125 Renewal of licence**

- (1) A licensee may apply to the chief executive to renew a licence to carry out high risk work—
- (a) before the licence term ends; or
  - (b) if the chief executive extends the time for an application to renew—before the end of the extended time.

*Note* If a form is approved under the Act, s 229 for this provision, the form must be used.

- (2) The application must be accompanied by the following:
- (a) a certified copy of the licence;
  - (b) evidence of the licensee's continued competency to carry out the class of high risk work, satisfactory to the chief executive;
  - (c) proof of the licensee's identity;
  - (d) a statutory declaration stating whether the applicant, in the 5 years before the day the application is made—
    - (i) has held a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that has been suspended or cancelled; and

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- (ii) has been convicted or found guilty of a serious offence under the *Occupational Health and Safety Act 1989*, the *Work Safety Act 2008*, the *Crimes Act 1900*, part 2A (Industrial manslaughter) or a corresponding offence against the law of a State;

*Note* **State** includes the Northern Territory (see Legislation Act, dict, pt 1, def **State**).

- (e) any other document or further information required in writing by the chief executive that is relevant to the application.

*Note* A fee may be determined under the Act, s 228 for this provision.

## **126 Issue of renewed licence**

- (1) If a licensee applies under section 125 to renew a licence to carry out high risk work, the chief executive must—
  - (a) renew the licence; or
  - (b) refuse to renew the licence.
- (2) The chief executive must renew a licence to carry out high risk work if satisfied that—
  - (a) the licensee—
    - (i) demonstrates continuing competency in safely carrying out the high risk work under workplace conditions; and
    - (ii) does not hold a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that is or has been suspended in the 5 years before the day the application for renewal was made; and

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- (iii) has not held a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that has been cancelled in the 5 years before the day the application for renewal was made; and
- (iv) has not been convicted or found guilty of a serious offence under the *Occupational Health and Safety Act 1989*, the *Work Safety Act 2008*, the *Crimes Act 1900*, part 2A (Industrial manslaughter) or a corresponding offence against the law of a State in the 5 years before the day the application for renewal was made; and

*Note* **State** includes the Northern Territory (see Legislation Act, dict, pt 1, def **State**).

- (b) no complaints against the licensee in relation to the licence in the ACT or another state or territory have been upheld in the 5 years before the day the application for renewal was made.
- (3) The chief executive may renew a licence to carry out high risk work if satisfied that—
- (a) the licensee demonstrates continuing competency in safely carrying out the high risk work under workplace conditions; and
  - (b) it is otherwise appropriate to renew the licence.
- (4) The renewal of a licence begins on the day after the licence being renewed ends.

## **127 Application to vary licence**

- (1) A licensee may apply to the chief executive to vary a licence to carry out high risk work—
  - (a) to add or remove a class of high risk work; or

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(b) to change the licensee's name.

*Note* If a form is approved under the Act, s 229 for this provision, the form must be used.

- (2) If the application is to add or remove a class of high risk work, the application must state each class of high risk work to be added to, or removed from, the licence.
- (3) The application must be accompanied by the following:
- (a) a certified copy of the licence;
  - (b) proof of the licensee's identity;
  - (c) if the application is to change the licensee's name—evidence that the licensee has changed name;

**Examples**

- 1 marriage certificate
- 2 change of name certificate

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (d) if the application is to add a class of high risk work—either—
  - (i) a current statement of attainment for each class of high risk work to be added; or
  - (ii) a certified copy of a national licence to carry out each class of high risk work under a corresponding law;
- (e) if the application is to add a class of high risk work—a statutory declaration stating whether the applicant has held a licence to carry out high risk work that has been suspended or cancelled in the 5 years before the day the application is made.

*Note* A fee may be determined under the Act, s 228 for this provision.

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**128 Variation of licence**

- (1) If a licensee applies under section 127 to vary a licence to carry out high risk work, the chief executive must—
  - (a) vary the licence; or
  - (b) refuse to vary the licence.
- (2) The chief executive must vary the licence to add a class of high risk work mentioned in the application if satisfied that the licensee—
  - (a) has a current statement of attainment for the additional class of high risk work; and
  - (b) does not hold a current ACT licence to carry out the additional class of high risk work; and
  - (c) does not hold a licence to carry out the additional high risk work, or a recognised qualification to carry out the additional high risk work under a corresponding law, that is or has been suspended in the 5 years before the day the application for variation was made; and
  - (d) has not held a licence to carry out the additional high risk work, or a recognised qualification to carry out the additional high risk work under a corresponding law, that has been cancelled in the 5 years before the day the application for variation was made.
- (3) The chief executive must vary the licence to change the licensee's name if satisfied that the licensee's name has changed to the name set out in the application.
- (4) The variation of the licence takes effect on the day the chief executive varies the licence.

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**129 Licensee not to hold other licence**

- (1) A licence to carry out a class of high risk work issued under this part is cancelled if the licensee is issued with a licence to carry out the work under a corresponding law.
- (2) The cancellation takes effect when the licence under the corresponding law is issued.
- (3) If a licence to carry out a class of high risk work is cancelled under this section, the licensee must surrender the licence to the chief executive not later than 14 days after the day the cancellation takes effect.

Maximum penalty: 5 penalty units.

**130 Replacement of lost etc licence**

- (1) This section applies if a licence to carry out high risk work issued to a licensee is lost, stolen or damaged.
- (2) The licensee may apply to the chief executive for a replacement licence.

*Note* If a form is approved under the Act, s 229 for this provision, the form must be used.

- (3) The application must be accompanied by a statutory declaration made by the licensee setting out the circumstances in which the licence to carry out high risk work was lost, stolen or damaged.

*Note* A fee may be determined under the Act, s 228 for this provision.

- (4) If a licensee applies for a replacement licence to carry out high risk work, the chief executive must—
  - (a) replace the licence; or
  - (b) refuse to replace the licence.

- (5) The chief executive must replace the licence to carry out high risk work if satisfied that—
- (a) the licensee held a licence to carry out the class of high risk work mentioned in the application; and
  - (b) the licence is current; and
  - (c) the licence is lost, stolen or damaged.

### **Division 8.3                      Suspension or cancellation of licence**

#### **131                      Grounds for compulsory cancellation of licence**

Each of the following is a ground for the chief executive to cancel a licence to carry out a class of high risk work:

- (a) the licence was issued to the licensee because information given to the chief executive in relation to the application was false or misleading in a material particular;
- (b) the licensee is not competent to carry out the work without endangering the health and safety of the licensee or someone else.

#### **132                      Compulsory cancellation of licence**

- (1) The chief executive must cancel the licence if the chief executive—
- (a) has given notice to the licensee of an intention to cancel the licence; and
  - (b) has considered any reasons given by the licensee in accordance with the notice; and
  - (c) is satisfied that there is a ground for cancellation under section 131; and
  - (d) is not satisfied that it is appropriate to suspend the licence.

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- (2) A notice of intention to cancel a licence must—
  - (a) set out the grounds for cancellation; and
  - (b) state that the licensee may, not later than 14 days after the day the notice is given to the licensee, give reasons why the licensee considers that the licence should not be cancelled; and
  - (c) include a statement to the effect that the chief executive may suspend the licence if satisfied that it is just to do so.
- (3) The cancellation takes effect—
  - (a) on the day after the day the chief executive gives the licensee notice in writing that the licence is cancelled; or
  - (b) if a later date is stated in the notice of cancellation—the later date.

### **133 Grounds for discretionary cancellation of licence**

Each of the following is a ground for the chief executive to cancel a licence to carry out a class of high risk work:

- (a) the licensee contravened, or is contravening—
  - (i) a condition of the licence; or
  - (ii) this regulation;
- (b) the statement of attainment issued for the licence is not valid because—
  - (i) the assessor who assessed the licensee for the statement was not competent to conduct the assessment; or
  - (ii) the statement was issued by a registered training organisation that was subsequently deregistered for issuing invalid statements of attainment;

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- (c) the assessor who assessed the licensee for the statement of attainment for the licence was approved by the chief executive under section 145 because—
  - (i) information given to the chief executive was false or misleading in a material particular; or
  - (ii) the assessor failed to give information relevant to the approval to the chief executive;
- (d) the assessor who assessed the licensee for the statement of attainment for the licence has been convicted or found guilty of an offence against the Act or a corresponding law in relation to the assessment of the licensee;
  - Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).
- (e) the licensee's assessment for the statement of attainment for the licence was not conducted in accordance with—
  - (i) this part or any guidelines under this part; or
  - (ii) a corresponding law, or any guidelines under the corresponding law.

### **134 Discretionary cancellation of licence**

- (1) The chief executive may cancel the licence if the chief executive—
  - (a) has given notice to the licensee of an intention to cancel the licence; and
  - (b) has considered any reasons given by the licensee in accordance with the notice; and
  - (c) is satisfied that there is a ground for cancellation under section 133; and

## **EXPOSURE DRAFT**

- (d) is not satisfied that it is appropriate to suspend the licence.
- (2) A notice of intention to cancel a licence must—
  - (a) set out the grounds for cancellation; and
  - (b) state that the licensee may, not later than 14 days after the day the notice is given to the licensee, give reasons why the licensee considers that the licence should not be cancelled; and
  - (c) include a statement to the effect that the chief executive may suspend the licence if satisfied that it is just to do so.
- (3) The cancellation takes effect—
  - (a) on the day after the day the chief executive gives the licensee notice in writing that the licence is cancelled; or
  - (b) if a later date is stated in the notice of cancellation—the later date.

**135 Suspension of licence after notice**

- (1) The chief executive may, after considering any representations made by the licensee in accordance with a notice under section 132 (2) or section 134 (2), by written notice given to the licensee, suspend the licence until the earlier of—
  - (a) 28 days after the notice is given to the licensee; or
  - (b) the chief executive advises the licensee that the suspension is revoked.
- (2) A suspension takes effect on the day after the chief executive gives the notice to the licensee.

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**136 Immediate suspension of licence**

- (1) The chief executive may by written notice given to a licensee suspend a licence to carry out a class of high risk work immediately if the chief executive reasonably believes that—
  - (a) there is a ground for cancellation under section 131 or section 133; and
  - (b) the health or safety of the licensee or someone else may be endangered if the chief executive does not immediately suspend the licence.
- (2) The suspension—
  - (a) operates immediately the licensee is given notice of the suspension; and
  - (b) continues to operate until the earlier of—
    - (i) 28 days after the day the notice is given to the licensee; or
    - (ii) the chief executive advises the licensee in writing that the suspension is revoked; or
    - (iii) the chief executive cancels the licence under section 132 or section 134.

**137 Review of licence suspension or cancellation**

- (1) The chief executive may, on the chief executive's own initiative or on application by a licensee, review—
  - (a) the suspension of a licence; or
  - (b) if the cancellation of a licence has not taken effect—the cancellation of the licence.

- (2) The chief executive may, in carrying out a review, consider any information (*new information*) given to the chief executive that was not available to the chief executive when the decision to suspend or cancel was made.
- (3) If the new information is given to the chief executive by someone other than the licensee whose licence is suspended or cancelled, the chief executive must—
  - (a) if the review is on the chief executive’s own initiative—
    - (i) tell the licensee that the chief executive is conducting the review; and
    - (ii) warn the licensee that the chief executive may cancel, or extend the suspension of, a suspended licence; and
  - (b) give the information to the licensee; and
  - (c) give the licensee not less than 14 days to respond to the information.
- (4) The chief executive may, after considering the new information and any response from the licensee—
  - (a) if the licence is suspended—
    - (i) revoke the suspension; or
    - (ii) confirm the suspension; or
    - (iii) extend the period of the suspension; or
    - (iv) if the chief executive is satisfied that there is a ground for cancellation under section 132 or section 134—cancel the licence; or

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- (b) if the licence is cancelled, but the cancellation has not taken effect—
  - (i) revoke the cancellation; or
  - (ii) confirm the cancellation.
- (5) The chief executive must revoke a suspension or cancellation if, after considering the new information, the chief executive is satisfied that—
  - (a) the licence should not have been suspended or cancelled; or
  - (b) the licence would not have been suspended or cancelled if the new information was known to the chief executive at the time of the original consideration.

### **138 Surrender of suspended or cancelled licence**

- (1) If a licence to carry out a class of high risk work is suspended or cancelled under this division, the licensee must surrender the licence to the chief executive not later than—
  - (a) if the licence is suspended—14 days after the day the notice of the suspension is given; or
  - (b) if the licence is cancelled—14 days after the day the cancellation takes effect.

Maximum penalty: 5 penalty units.

- (2) If a surrendered licence includes a class of high risk work that is not suspended or cancelled, the chief executive must issue a licence to the licensee for that class of work at no cost to the licensee.
- (3) The chief executive must return a suspended licence to the licensee if—
  - (a) the suspension period has expired; or

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- (b) the suspension is revoked.
- (4) Subsection (3) does not apply if the licence expires or is further suspended or cancelled under this part.

**139 Cooperation with other jurisdictions**

- (1) The chief executive must tell a licensing authority, and the Commonwealth regulatory authority, if—
  - (a) the chief executive has information about a licensee whose licence was issued by the licensing authority; and
  - (b) having regard to the information, the chief executive reasonably believes that the licensee’s licence should be suspended or cancelled.
- (2) If the chief executive receives information from a licensing authority about a licensee whose licence was issued by the chief executive, the chief executive must—
  - (a) investigate the matter; and
  - (b) if the chief executive is satisfied that there is a ground for cancellation under section 131 or section 133—take action to suspend or cancel the licence under this part.

**Division 8.4 Trainees under supervision**

**140 Supervisor’s obligations**

- (1) A supervisor for a trainee must directly supervise the trainee when the trainee is carrying out high risk work.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply if the supervisor is satisfied on reasonable grounds that—
- (a) either—
- (i) because of the circumstances of the work, direct supervision is impractical or unnecessary; or
  - (ii) because of the trainee's level of competence, supervision may be reduced; and
- (b) the reduced level of supervision will not endanger the health and safety of the trainee or someone else.
- (3) A supervisor for a trainee must sign the trainee's record each day the trainee carries out high risk work under the supervisor's supervision.

Maximum penalty: 5 penalty units.

- (4) A supervisor for a trainee must ensure that the trainee receives directions, demonstrations and training appropriate to the trainee's level of competence for the high risk work the trainee is carrying out.

Maximum penalty: 10 penalty units.

## **141 Trainee's obligations**

A trainee must keep a written record of the following for each day the trainee carries out high risk work:

- (a) the trainee's name and address;
- (b) the name of the registered training organisation that is training the trainee;
- (c) the date and times the work was carried out;

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- (d) if the trainee carried out the work for an employer—the name and address of the employer;
- (e) the signature, full name and licence number of the trainee’s supervisor for the work;
- (f) a description of the work carried out including the type of equipment used for the work and the result of the work.

Maximum penalty: 5 penalty units.

## **Division 8.5 Training and assessment**

### **142 Training and assessment**

- (1) Before applying for a statement of attainment for a class of high risk work, a person must undertake training by completing 1 or more of the following in relation to the work:
  - (a) a unit of competency in a training package;
  - (b) a course accredited by the registered training organisation for a statement of attainment.
- (2) A unit of competency or course mentioned in subsection (1) must be provided, in accordance with the Australian quality training framework, by—
  - (a) a registered training organisation; or
  - (b) a person under the supervision of a registered training organisation; or
  - (c) a person in partnership with a registered training organisation.
- (3) Training of a person in a unit of competency or course mentioned in subsection (1) must consist of—
  - (a) structured training; and

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- (b) practical training and experience.
- (4) Practical training may be provided—
  - (a) in the workplace as part of the person's work; or
  - (b) in a training facility that includes a simulated workplace; or
  - (c) by a combination of training mentioned in paragraphs (a) and (b).
- (5) A person who undertakes training in a unit of competency or course under this section must be assessed for competency—
  - (a) by an assessor on behalf of the registered training organisation that provides, or is involved in providing, the unit of competency or course; and
  - (b) in accordance with the requirements of the unit or course.

**143 Chief executive may issue directions**

- (1) This section applies if a class of high risk work does not have—
  - (a) any nationally endorsed unit of competency; or
  - (b) any course accredited for a statement of attainment.
- (2) The chief executive may direct that a particular unit of competency be completed for a statement of attainment for the class of work.
- (3) A direction under this section is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

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**144 Exemption from training**

A registered training organisation may exempt a person from all or part of training under section 142 if satisfied that the person has qualifications or previous training that satisfies the requirements for the exempted training.

**145 Assessor qualifications**

- (1) A person (an *assessor*) may assess a person undertaking a unit of competency or accredited course only if the assessor—
  - (a) has the following requirements under the Australian quality training framework standards for registered training organisations:
    - (i) workplace assessor competencies;
    - (ii) relevant current industry experience;
    - (iii) vocational competencies; and
  - (b) either—
    - (i) is a licensee for the class of high risk work to be assessed and has been a licensee or held a certificate of competency under the repealed regulation or a corresponding law for a total of at least 2 years; or
    - (ii) holds a certificate of competency issued under the repealed regulation or a corresponding law, and has held the certificate for at least 2 years; and
  - (c) either—
    - (i) is approved in writing by the chief executive; or

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- (ii) satisfies the criteria agreed in writing by the chief executive and the registered training organisation that provides the unit or course.
- (2) The chief executive may issue guidelines about the approval of an assessor.
- (3) A guideline is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (4) In this section:

*repealed regulation* means the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000* in force at any time before the commencement of this section.

#### **146 Statement of attainment**

- (1) A person may apply to a registered training organisation for a statement of attainment for a class of high risk work.
- (2) The registered training organisation may issue the statement of attainment to the person if satisfied that the person—
  - (a) has completed the training mentioned in section 142 for which the person is not exempt; and
  - (b) has been assessed and meets the competency standard for the class of high risk work; and
  - (c) has the necessary knowledge to carry out the class of high risk work; and
  - (d) can safely carry out the class of high risk work under workplace conditions; and

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- (e) has sufficient knowledge of the English language to carry out the high risk work in accordance with the competency standard for the work.
- (3) A statement of attainment issued by the registered training organisation to a person must state that the person has met the competency standard for the class of high risk work for which the statement is issued.

**147 Statement of attainment—period of validity**

A statement of attainment is valid for 60 days after the day the statement is issued.

**148 Improperly issuing statement of attainment**

A person commits an offence if the person—

- (a) issues a statement of attainment; and
- (b) either—
  - (i) knows the statement is not issued in accordance with this part; or
  - (ii) is reckless about whether the statement is issued in accordance with this part.

Maximum penalty: 30 penalty units.

**149 Improperly obtaining statement of attainment**

A person (the *first person*) commits an offence if—

- (a) the first person does something with the intention of dishonestly influencing another person to issue a statement of attainment; and

- (b) the other person issues a statement of attainment to the first person; and
- (c) either—
  - (i) the first person knows the statement is not issued in accordance with this part; or
  - (ii) the first person is reckless about whether the statement is issued in accordance with this part.

Maximum penalty: 30 penalty units.

## **Division 8.6 Administration**

### **150 Keeping and providing records of training and assessment**

- (1) A registered training organisation that is responsible for training and assessing a person for a statement of attainment under division 8.5 (Training and assessment) must keep a record of the person's training and assessment.
- (2) If the chief executive asks a registered training organisation in writing to give the chief executive the following records, the organisation must give the records to the chief executive within 14 days after the day the request is made:
  - (a) records relating to the training and assessment of a person who has applied to the organisation for a statement of attainment;
  - (b) records relating to a person to whom the organisation has issued a statement of attainment;
  - (c) records relating to an assessor or assessments by an assessor.

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## **151 Cooperation with other agencies**

- (1) The chief executive must cooperate with registered training organisations in the Territory and the States in the exchange of information.
- (2) The chief executive may provide information relevant to the issue of, or failure to issue, a licence to carry out high risk work in relation to the following:
  - (a) people who apply for licences for classes of high risk work; and
  - (b) licensees; and
  - (c) assessors; and
  - (d) registered training organisations.

## **Division 8.7 Exemptions**

### **152 Application for exemption**

- (1) A person conducting a business or undertaking may apply to the chief executive to exempt a class of high risk work at a workplace from this part.

*Note 1* If a form is approved under the Act, s 229 for this provision, the form must be used.

*Note 2* A fee may be determined under the Act, s 228 for this provision.

- (2) The application must state the following:
  - (a) the class of high risk work to be exempt;
  - (b) the workplace for which the exemption is sought;
  - (c) the person nominated to carry out the high risk work;
  - (d) the time for which the exemption is sought;

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- (e) the reasons the exemption is sought;
  - (f) the steps the applicant will take to ensure the high risk work is carried out safely.
- (3) The application must be accompanied by any further document or information required by the chief executive that is relevant to the application.
- (4) A person conducting a business or undertaking at a workplace commits an offence if the person—
- (a) applies for an exemption in relation to the workplace; and
  - (b) does not consult people at the workplace about the application before the application is made.

Maximum penalty: 30 penalty units.

### **153 Grant of exemption**

- (1) If a person conducting a business or undertaking at a workplace applies for an exemption, the chief executive must—
- (a) grant the exemption; or
  - (b) refuse to grant the exemption.
- (2) The chief executive must not grant an exemption unless satisfied that—
- (a) the reasons for the exemption are reasonable; and
  - (b) the person nominated to carry out the high risk work is competent; and
  - (c) the applicant will take the steps stated in the application to ensure the high risk work is carried out safely; and
  - (d) the high risk work will be carried out safely.

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- (3) If the chief executive refuses to grant an exemption, the chief executive must give the applicant written reasons for the refusal.

*Note* Power to make a statutory instrument includes power to amend or repeal the instrument. The power to amend or repeal the instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument (see Legislation Act, s 46).

## **154 Exemption conditions**

- (1) The chief executive may grant an exemption on conditions.
- (2) The conditions may include the following:
- (a) that the applicant take particular steps to manage risk;
  - (b) that the applicant monitor the high risk work;
  - (c) that the applicant monitor the health of anyone at the workplace affected by the exemption;
  - (d) that the applicant keep records about the high risk work;
  - (e) that the applicant provide information, instruction and training to stated people at the workplace;
  - (f) that the applicant use a stated system of work;
  - (g) that the applicant report to the chief executive on any of the matters set out in paragraphs (a) to (f);
  - (h) that the exemption be granted for a stated time;
  - (i) that the high risk work be carried out by a stated person;
  - (j) limiting the high risk work that may be carried out at the workplace;
  - (k) that the applicant give notice of the exemption to anyone affected by the exemption.

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**155 Failing to comply with condition of exemption**

A person commits an offence if—

- (a) the person is granted an exemption for a class of high risk work at a workplace on conditions; and
- (b) the person directs or allows someone else to carry out the work at the workplace in breach of the conditions.

Maximum penalty: 30 penalty units.

**156 Notice of exemption**

(1) The chief executive must—

- (a) give written notice of an exemption to the applicant; and
- (b) publish the notice in a daily newspaper; and
- (c) give a copy of the notice to the licensing authority in each other State.

*Note* *State* includes the Northern Territory (see Legislation Act, dict, pt 1, def *State*).

(2) A notice is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

**Division 8.8 Miscellaneous**

**157 Chief executive may make inquiries**

The chief executive may make inquiries about the authenticity of documents accompanying an application under this part.

**158 Guidelines**

(1) The chief executive may issue or approve guidelines for this part.

- (2) A guideline may provide for any matter relating to the issue of a licence to carry out high risk work.

**Examples**

- 1 guidelines for the procedure to apply for a licence
- 2 guidelines for the assessment of a person undertaking training
- 3 guidelines for the issue of a statement of attainment
- 4 guidelines for the issue of a licence to carry out high risk work

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A guideline is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

## **159 Production of licence on request**

A person carrying out high risk work must produce the person's licence to carry out the work if asked to do so by—

- (a) the chief executive; or
- (b) an inspector; or
- (c) the Commonwealth regulatory authority; or
- (d) someone else authorised to ask for the production of a licence or a recognised qualification to carry out high risk work under a corresponding law.

Maximum penalty: 5 penalty units.

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**160 Production of information etc on request**

- (1) This section applies if, under this part, the chief executive asks a person who is licensed to carry out high risk work to give the chief executive a document or information the chief executive considers relevant.

*Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.

- (2) The person must give the document or information to the chief executive within—
- (a) 14 days after the day the chief executive asks for the document or information; or
  - (b) if the chief executive states another time to provide the document or information—that time.

Maximum penalty: 5 penalty units.

**161 Licensee's change of address**

If a person who is licensed to carry out high risk work changes address, the person must tell the chief executive in writing the new address within 14 days after the day the person's address changes.

Maximum penalty: 5 penalty units.

## Part 9 Carrying out manual tasks

### 162 Person conducting business or undertaking must give information etc

- (1) A person conducting a business or undertaking at a workplace must give appropriate information, instruction, training and supervision to a worker who carries out a manual task at the workplace—
- (a) on the following in relation to the manual task:
    - (i) safe methods of carrying out the task;
    - (ii) use of safe systems of work; and
  - (b) including new information affecting the task in relation to the workplace, or any plant, substance, structure or system of work used in carrying out the task as it becomes available; and
  - (c) in a way that takes into account the worker's communication needs.

#### Examples of communication needs

- 1 the worker's first language is not English
- 2 the worker works in an isolated location

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Maximum penalty: 20 penalty units.

- (2) The person must give the information, instruction and training mentioned in subsection (1) in each of the following circumstances:
- (a) before the manual task is carried out;
  - (b) if any part of the work changes;

- (c) while the worker carries out the manual task if giving the information, instruction or training is reasonably necessary to ensure work safety.
- (3) The person must give the supervision mentioned in subsection (1) in each of the following circumstances if the supervision is reasonably necessary to ensure work safety:
- (a) before the manual task is carried out;
  - (b) if any part of the work changes;
  - (c) while the worker carries out the manual task.

**163 Person in control of premises, plant or system must give information etc**

- (1) This section applies to a person in control of any of the following:
- (a) premises;
  - (b) plant or a system, or the operation of the plant or system.
- Note* The Act, s 22 (Duty—person in control of premises) and s 23 (Duty—person in control of plant or system etc) set out duties that apply to particular people in control.
- (2) The person must give appropriate information, instruction, training and supervision to a worker who carries out a manual task at the premises or in relation to the plant or system to allow the worker—
- (a) to carry out the task safely; and
  - (b) to participate in managing risk in relation to the task.

Maximum penalty: 20 penalty units.

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- (3) In particular, the person must give the information, instruction, training and supervision—
- (a) on the following in relation to the manual task:
    - (i) safe methods of carrying out the task;
    - (ii) use of safe systems of work; and
  - (b) including new information affecting the task in relation to the premises, or any plant, substance, structure or system of work used in carrying out the task as it becomes available; and
  - (c) in a way that takes into account the worker's communication needs.

**Examples of communication needs**

- 1 the worker's first language is not English
- 2 the worker works in an isolated location

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) The person must give the information, instruction and training mentioned in subsection (2) in each of the following circumstances:
- (a) before the manual task is carried out;
  - (b) if any part of the work changes;
  - (c) while the worker carries out the manual task if giving the information, instruction or training is reasonably necessary to ensure work safety.
- (5) The person must give the supervision mentioned in subsection (2) in each of the following circumstances if the supervision is reasonably necessary to ensure work safety:
- (a) before the manual task is carried out;

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- (b) if any part of the work changes;
- (c) while the worker carries out the manual task.

**164 Person in control of design, manufacture, import or supply must give information etc**

- (1) This section applies to a person in control of any of the following:
  - (a) the design of plant or a structure that is used, is to be used or could reasonably be expected to be used, at work or at a workplace;
  - (b) the design of a structure that is, is to be or could reasonably be expected to be, a workplace;
  - (c) the manufacture of plant or a structure that is used, is to be used or could reasonably be expected to be used, at work or at a workplace;
  - (d) the manufacture of a structure that is, is to be or could reasonably be expected to be, a workplace;
  - (e) the import or supply of plant, or a structure, that is used, is to be used or could reasonably be expected to be used, at work or at a workplace;
  - (f) the import or supply of a structure that is, is to be or could reasonably be expected to be, a workplace.

*Note 1* **Person in control**—see the Act, s 13.

*Note 2* The Act, s 24 (Duty—person in control of design), s 25 (Duties—person in control of manufacture) and s 26 (Duties—person in control of import and supply) set out duties that apply to particular people in control.

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- (2) The person in control must give information about the following to a worker using the plant or structure to carry out a manual task:
- (a) the intended use of the plant or structure;
  - (b) the risk of using the plant or structure;
  - (c) ways that the worker may eliminate or minimise the risk of musculoskeletal disorders.

Maximum penalty: 20 penalty units.

- (3) The information mentioned in subsection (2) must—
- (a) describe the risk of using the plant or structure sufficiently to allow the plant or structure to be used safely; and
  - (b) be updated if new information is available about—
    - (i) the plant or structure; or
    - (ii) a manual task that is carried out using the plant or structure; and
  - (c) be able to be readily understood by a worker using the plant or structure to carry out a manual task or a person in control of the worker; and
  - (d) be kept for—
    - (i) 7 years after the information is given; or
    - (ii) if the plant or structure is likely to be used as intended for more than 7 years—the period the plant or structure is used as intended; or
    - (iii) if another territory law states another period—the other period.

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## Part 10 Incorporated documents

### 165 Meaning of *incorporated document*

In this regulation:

*incorporated document* means any of the following:

- (a) AS 1259 (Acoustics—Sound level meters—Non-integrating);
- (b) AS 1269 (Occupational noise management—Measurement and assessment of noise emission and exposure);
- (c) AS 1270 (Acoustics—Hearing protectors);
- (d) AS/NZS 1891 (Industrial fall-arrest systems and devices—safety belts and harnesses);
- (e) AS 2444 (Portable fire extinguishers and fire blankets—Selection and location);
- (f) the national exposure standards;
- (g) a document approved in writing by the Minister to be an incorporated document;
- (h) any other document incorporated, applied or adopted by a document mentioned in paragraphs (a) to (g).

*Note 1* The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

*Note 3* This standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

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**166 Inspection of incorporated documents**

- (1) This section applies to an incorporated document, or an amendment of, or replacement for, an incorporated document.
- (2) The chief executive must ensure that the document, amendment or replacement is made available for inspection free of charge to the public on business days at reasonable times.
- (3) In this section:

*amendment*, of an incorporated document—see section 167 (6).

*replacement*, for an incorporated document—see section 167 (6).

**167 Notification of certain incorporated documents**

- (1) This section applies to—
  - (a) an incorporated document; or
  - (b) an amendment of, or replacement for, an incorporated document.

**Example—replacement document**

a new edition of the incorporated document

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The chief executive may prepare a written notice (an *incorporated document notice*) for the incorporated document, amendment or replacement that contains the following information:
  - (a) for an incorporated document—details of the document, including its title, author and date of publication;
  - (b) for a replacement of an incorporated document—details of the replacement, including its title, author and date of publication;

- (c) for an amendment of an incorporated document—the date of publication of the amendment (or of the standard as amended) and a brief summary of the effect of the amendment;
  - (d) for an incorporated document or any amendment or replacement—
    - (i) a date of effect (not earlier than the day after the day of notification of the notice); and
    - (ii) details of how access to inspect the document, amendment or replacement may be obtained under section 166 (Inspection of incorporated documents); and
    - (iii) details of how copies may be obtained, including an indication of whether there is a cost involved.
- (3) An incorporated document notice is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (4) The incorporated document, amendment or replacement has no effect under the Act unless—
- (a) an incorporated document notice is notified in relation to the document, amendment or replacement; or
  - (b) the document, amendment or replacement is notified under the Legislation Act, section 47 (6).
- (5) The Legislation Act, section 47 (7) does not apply in relation to the incorporated document, amendment or replacement.
- (6) In this section:

***amendment***, of an incorporated document, includes an amendment of a replacement for the incorporated document.

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*replacement*, for an incorporated document, means—

- (a) a standard that replaces the incorporated document; or
- (b) a document (an *initial replacement*) that replaces a document mentioned in paragraph (a); or
- (c) a document (a *further replacement*) that replaces an initial replacement or any further replacement.

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## Part 11 Reviewable decisions

### 168 Reviewable decision—Act, s 174 (b)

A decision mentioned in schedule 3, part 3.1, column 3, under a provision mentioned in column 2 in relation to the decision, is a reviewable decision.

### 169 Notice of reviewable decision—Act, s 175 (1)

If a person makes a reviewable decision, the person must give a reviewable decision notice to each entity mentioned in schedule 3, part 3.1, column 4 in relation to the decision.

*Note 1* The person must also take reasonable steps to give a reviewable decision notice to any other person whose interests are affected by the decision (see *ACT Civil and Administrative Tribunal Act 2008*, s 67A).

*Note 2* The requirements for reviewable decision notices are prescribed under the *ACT Civil and Administrative Tribunal Act 2008*.

### 170 Internal review of certain decisions—Act, s 176 (1)

A decision mentioned in schedule 3, part 3.2, column 3 under a provision mentioned in column 2 in relation to the decision, is an internally reviewable decision.

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## Part 12 Transitional

### 171 Definitions—pt 12

In this part:

**certificate of competency** means a certificate of competency issued under the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000*, section 12 in force at any time.

*Note* Under the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000*, the following certificates are taken to be issued under the repealed regulation, s 12:

- (a) a certificate of competency issued under the *Scaffolding and Lifts Regulation 1950*, section 159;
- (b) a boiler attendant's certificate issued under the *Boilers and Pressure Vessels Regulation 1954*, part 4.

**commencement day** means the day this regulation, section 119 (Licence application) commences.

**repealed regulation** means the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000*.

### 172 Transitional—application for assessment

- (1) Before 30 June 2011, a person may apply for assessment to do scheduled work under the repealed regulation, section 4, despite the repeal of the repealed regulation.
- (2) The repealed regulation, division 2.1 (Assessment of competency) applies to the application, and any notice of satisfactory assessment issued in relation to it.
- (3) This section expires on 30 June 2011.

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**173 Transitional—application for certificate of competency**

- (1) Before 30 June 2011, a person may apply to the chief executive for a certificate of competency under the repealed regulation, section 11, despite the repeal of the repealed regulation.
- (2) The repealed regulation, division 2.1 (Assessment of competency) and division 2.2 (Certificates of competency) (other than section 15) apply to the application, and to any certificate of competency issued in relation to it.
- (3) This section expires on 30 June 2011.

**174 Transitional—certificates of competency**

A certificate of competency issued on a date mentioned in an item in table 174, column 2 continues in force until the date mentioned in the item, column 3.

**Table 174**

<b>column 1 item</b>	<b>column 2 date on certificate</b>	<b>column 3 date certificate in force</b>
1	before 1 Jan 2001	30 June 2010
2	1 Jan 2001 to 31 Dec 2004	30 June 2011
3	1 Jan 2005 to 30 June 2009	30 June 2012
4	1 July 2009 to 30 June 2011	30 June 2014

**175 Transitional—continuing application of repealed regulation to certificate of competency etc**

- (1) The repealed regulation continues to apply to the following:
  - (a) the holder of a certificate of competency issued under the repealed regulation while the certificate is in force;

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- (b) a trainee under the repealed regulation;
- (c) an assessor accredited under the repealed regulation in relation to the assessment under the repealed regulation of a person's competency to do scheduled work.

(2) This section expires on 30 June 2014.

**176 Transitional—application of regulation to certificate of competency etc**

- (1) This regulation does not apply to the following:
  - (a) the holder of a certificate of competency issued under the repealed regulation while the certificate is in force;
  - (b) a trainee under the repealed regulation;
  - (c) an assessor accredited under the repealed regulation in relation to the assessment under the repealed regulation of a person's competency to do scheduled work.

(2) This section expires on 30 June 2014.

**177 Transitional—converting certificate of competency to licence**

- (1) The chief executive may, on application by the holder of a certificate of competency, convert the certificate to a licence to carry out a class of high risk work that corresponds with the work for which the certificate was issued.

*Note* If a form is approved under the Act, s 229 for this provision, the form must be used.

- (2) The application must be accompanied by the following:
  - (a) the certificate of competency to be converted, or proof that the applicant holds the certificate;



- (b) evidence of current competency in the class of high risk work for which the application is made;
- (c) a statutory declaration stating whether the applicant, in the 5 years before the day the application is made—
  - (i) has held a certificate of competency, a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law that has been suspended or cancelled; and
  - (ii) has been convicted or found guilty of a serious offence under the *Occupational Health and Safety Act 1989*, the *Work Safety Act 2008*, the *Crimes Act 1900*, part 2A (Industrial manslaughter) or a corresponding offence against the law of a State ; and

*Note* *State* includes the Northern Territory (see Legislation Act, dict, pt 1, def *State*).

- (d) any other document or further information required by the chief executive that is relevant to the application.

*Note* A fee may be determined under the Act, s 228 for this provision.

- (3) If the holder of a certificate of competency applies to convert the certificate to a licence to carry out a class of high risk work, the chief executive must—
  - (a) issue the licence; or
  - (b) refuse to issue the licence.
- (4) The chief executive must issue the licence to the person if satisfied that the person—
  - (a) has a valid certificate of competency for work that corresponds with the class of high risk work; and

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- (b) has the necessary competency to carry out the class of high risk work; and
- (c) does not hold a licence to carry out high risk work; and
- (d) does not hold a certificate of competency, a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that is or has been suspended in the 5 years before the day the application was made; and
- (e) has not held a certificate of competency, a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that has been cancelled in the 5 years before the day the application was made; and
- (f) has not been convicted or found guilty of a serious offence under the *Occupational Health and Safety Act 1989*, the *Work Safety Act 2008*, the *Crimes Act 1900*, part 2A (Industrial manslaughter) or a corresponding offence against the law of a State in the 5 years before the day the application was made.

*Note* *State* includes the Northern Territory (see Legislation Act, dict, pt 1, def *State*).

- (5) However, the chief executive must not issue a licence to convert a certificate of competency for a tower crane to a licence to carry out self-erecting tower crane work.

## **178 Expiry—pt 12**

- (1) This part, other than the following sections, expires 5 years after the day it commences:
  - section 173
  - section 174
  - section 176

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- section 177.
- (2) This part is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

## **EXPOSURE DRAFT**

## Schedule 1 High risk work

(see s 116, def *high risk work*)

### Part 1.1 Definitions—sch 1

To be inserted.

### Part 1.2 Classes of high risk work

column 1 item	column 2 classes	column 3 description of work
1	basic scaffolding	scaffolding work connected with the operation or use of 1 or more of the following: <ul style="list-style-type: none"><li>(a) a modular or prefabricated scaffold;</li><li>(b) a cantilevered materials hoist with a maximum working load of up to 500kg;</li><li>(c) ropes and gin wheels;</li><li>(d) safety nets and static lines;</li><li>(e) a bracket scaffold (tank and formwork)</li></ul>

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<b>column 1 item</b>	<b>column 2 classes</b>	<b>column 3 description of work</b>
2	intermediate scaffolding	<p>all basic scaffolding work together with scaffolding work connected with the operation or use of 1 or more of the following:</p> <ul style="list-style-type: none"><li>(a) a cantilevered crane-loading platform;</li><li>(b) a cantilevered and spurred scaffold;</li><li>(c) a barrow ramp and sloping platform;</li><li>(d) perimeter safety screens and shutters;</li><li>(e) a mast-climber;</li><li>(f) tube and coupler scaffolds (including tube and coupler covered ways and gantries)</li></ul>
3	advanced scaffolding	<p>all intermediate scaffolding work together with all other scaffolding work associated with the operation or use of—</p> <ul style="list-style-type: none"><li>(a) a hung scaffold, including a scaffold hanging from tubes, wire ropes or chains; or</li><li>(b) a suspended scaffold</li></ul>
4	dogging	<p>applying slinging techniques to move a load (including the selection and inspection of lifting gear) and directing a crane or hoist operator in the movement of a load when the load is out of the view of the operator</p>

## **EXPOSURE DRAFT**

**Schedule 1**  
**Part 1.2**

High risk work  
Classes of high risk work

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<b>column 1 item</b>	<b>column 2 classes</b>	<b>column 3 description of work</b>
5	basic rigging	dogging and rigging work involving 1 or more of the following: <ul style="list-style-type: none"><li>(a) movement of plant or equipment;</li><li>(b) steel erection;</li><li>(c) hoists (including mast-climbing hoists);</li><li>(d) safety nets and static lines;</li><li>(e) perimeter safety screens and shutters;</li><li>(f) cantilevered crane-loading platforms</li></ul>
6	intermediate rigging	all basic rigging work together with rigging work involving 1 or more of the following: <ul style="list-style-type: none"><li>(a) cranes, conveyors, dredges and excavators;</li><li>(b) tilt slabs;</li><li>(c) hoists with jibs and self-climbing hoists;</li><li>(d) demolition;</li><li>(e) dual lifts</li></ul>
7	advanced rigging	all intermediate rigging work together with rigging work involving 1 or more of the following: <ul style="list-style-type: none"><li>(a) gin poles and shearlegs;</li><li>(b) flying foxes and cableways;</li><li>(c) guyed derricks and structures;</li><li>(d) suspended and fabricated hung scaffolds</li></ul>
8	tower crane	operating a jib or boom crane mounted on a tower structure (whether demountable or permanent) including both horizontal and luffing jib types

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 classes</b>	<b>column 3 description of work</b>
9	self-erecting tower crane	operating a crane if—  (a) the tower structure and boom or jib elements are not disassembled into component sections, which can be transported between sites as a complete unit; or  (b) the erection and dismantling processes are an inherent part of the crane's function
10	derrick crane	operating a slewing strut-boom crane with its boom pivoted at the base of a mast which is either guyed (guy-derrick) or held by back stays (stiff-legged derrick) and which can luff under load
11	portal boom crane	operating a boom crane or jib crane mounted on a portal frame, that is supported on runways along which the crane travels
12	bridge and gantry crane	operating a bridge and gantry crane controlled from a permanent cabin or control station on the crane, or remote controlled, and having more than 3 powered operations (hoist, raise and lower equals 1 operation) including the application of load estimation and slinging techniques to move a load
13	vehicle-loading crane	operating a crane with capacity of 10 tonne or more, mounted on a vehicle to move a load onto or from the vehicle, including applying load estimation and slinging techniques to move the load
14	non-slewing mobile crane	operating a mobile crane with capacity of more than 3 tonne that incorporates a boom or jib, that includes an articulated type mobile crane or locomotive crane, but does not include a vehicle tow truck
15	slewing mobile crane with a capacity of up to 20 tonne	

## **EXPOSURE DRAFT**

**Schedule 1**  
**Part 1.2**

High risk work  
Classes of high risk work

---

<b>column 1 item</b>	<b>column 2 classes</b>	<b>column 3 description of work</b>
16	slewing mobile crane with a capacity up to 60 tonne	
17	slewing mobile crane with a capacity up to 100 tonne	
18	slewing mobile crane with a capacity over 100 tonne	
19	materials hoist	operating a builder's hoist by which only goods or materials and not people may be hoisted and where the car, bucket or platform is cantilevered from, and travels up and down externally to, a face of the support structure
20	personal and materials hoist	operating a builder's hoist in which people, goods or materials may be hoisted, and which comprises a car, structure, machinery or other equipment associated with the hoist, and which may be a cantilever hoist, a tower hoist or a multiple winch operation
21	boom-type elevating work platform	operating a telescoping device, hinged device, or articulated device or any combination of these, to support a platform on which people, equipment and materials may be elevated to perform work, if the boom length is 11m or more  11m boom length means the greater of the following:  (a) the vertical distance from the floor of the platform to the ground supporting the elevating work platform with the platform at its maximum height;  (b) the nominal reach measured from the centre point of rotation to the outer edge of the platform in its most extended position

## **EXPOSURE DRAFT**



<b>column 1 item</b>	<b>column 2 classes</b>	<b>column 3 description of work</b>
22	vehicle-mounted concrete-placing boom	operating a vehicle-mounted concrete boom pumping system, with 2 or more boom stages, and using and monitoring the boom distribution system
23	forklift truck	operating a powered industrial truck equipped with a mast and an elevating load carriage to which is attached a pair of fork arms or other attachment
24	order-picking forklift truck	operating a powered industrial truck if the operator's control arrangement is incorporated with the load carriage or lifting media, and elevates with it
25	basic boiler operation	operating a boiler with the following features: <ul style="list-style-type: none"> <li>(a) a single fixed combustion air supply;</li> <li>(b) a non-modulating single heat source;</li> <li>(c) a fixed firing rate</li> </ul>
26	intermediate boiler operation	operating a boiler with the following features: <ul style="list-style-type: none"> <li>(a) a modulating combustion air supply;</li> <li>(b) a modulating heat source;</li> <li>(c) a superheater;</li> <li>(d) an economiser</li> </ul>
27	advanced boiler operation	operating a boiler with: <ul style="list-style-type: none"> <li>(a) the same features as intermediate boiler operation; and</li> <li>(b) multiple fuel type boilers which may be fired simultaneously but do not change fuel types during start sequences</li> </ul>

## **EXPOSURE DRAFT**

**Schedule 1**  
**Part 1.2**

High risk work  
Classes of high risk work

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<b>column 1 item</b>	<b>column 2 classes</b>	<b>column 3 description of work</b>
28	turbine operation	operating a turbine (except a turbine that produces a power output of less than 500kW) that—  (a) is multi-wheeled; or  (b) is capable of a speed greater than 3 600rpm; or  (c) uses attached condensers or a multi-staged heat exchange extraction process
29	reciprocating steam engine	operating steam equipment if the steam acts on a piston under pressure forcing the piston to move, including expanding (steam) reciprocating engines, with a piston diameter of more than 250mm

## **EXPOSURE DRAFT**

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## Schedule 2 Corresponding laws

(see s 116, def *corresponding law*)

*Occupational Health and Safety Act 2000* (NSW)

*Occupational Health and Safety Regulation 2001* (NSW)

*Occupational Health and Safety Act 2004* (Vic)

*Occupational Health and Safety Regulations 2007* (Vic)

*Workplace Health and Safety Act 1995* (Qld)

*Workplace Health and Safety Regulation 2008* (Qld)

*Occupational Health, Safety and Welfare Act 1986* (SA)

*Occupational Health, Safety and Welfare Regulations 1995* (SA)

*Occupational Safety and Health Act 1984* (WA)

*Occupational Safety and Health Regulations 1996* (WA)

*Workplace Health and Safety Act 1995* (Tas)

*Workplace Health and Safety Regulations 1998* (Tas)

*Workplace Health and Safety Act 2007* (NT)

*Workplace Health and Safety Regulations* (NT)

## EXPOSURE DRAFT

## Schedule 3 Reviewable decisions

(see pt 11)

### Part 3.1 Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
1	Act, 55	direct employer to arrange election of work safety committee	employer directed to arrange election of work safety committee	chief executive
2	Act, 55A	direct employers in an industry to arrange election of work safety committee	employers directed to arrange election of work safety committee	chief executive
3	Act, 57	decision made in arbitration of dispute	person adversely affected by decision made in arbitration of dispute	chief executive
4	Act, 85	seize anything at premises	<ul style="list-style-type: none"><li>• person with a property interest in seized thing</li><li>• person conducting business or undertaking adversely affected by the seizure</li></ul>	inspector

## EXPOSURE DRAFT

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>	<b>column 5 decision- maker</b>
5	Act, 86	remove or restrict access to seized things	<ul style="list-style-type: none"> <li>• person with a property interest in seized thing</li> <li>• person conducting business or undertaking adversely affected by the removal or restriction</li> </ul>	inspector
6	Act, 87	destroy or dispose of seized thing or require destruction or disposal	<ul style="list-style-type: none"> <li>• person with a property interest in seized thing</li> <li>• person conducting business or undertaking adversely affected by the destruction or disposal</li> </ul>	inspector
7	Act, 96	seize data, electronic equipment or storage device	<ul style="list-style-type: none"> <li>• person with a property interest in seized thing</li> <li>• person conducting business or undertaking adversely affected by the seizure</li> </ul>	inspector
8	Act, 106	direct to dispose of seized thing that has been forfeited to the Territory	<ul style="list-style-type: none"> <li>• person with a property interest in seized thing</li> <li>• person conducting business or undertaking adversely affected by the disposal</li> </ul>	chief executive

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>	<b>column 5 decision- maker</b>
9	Act, 107	return seized thing	<ul style="list-style-type: none"> <li>• person with a property interest in seized thing</li> <li>• person conducting business or undertaking adversely affected by the return</li> </ul>	chief executive
10	Act, 126	end compliance agreement	<ul style="list-style-type: none"> <li>• relevant responsible person for the compliance agreement</li> <li>• person conducting business or undertaking adversely affected by the decision</li> </ul>	inspector
11	Act, 131	give an improvement notice	<ul style="list-style-type: none"> <li>• relevant responsible person for the improvement notice</li> <li>• person conducting business or undertaking adversely affected by the decision</li> </ul>	inspector
12	Act, 134	extend compliance period for improvement notice	<ul style="list-style-type: none"> <li>• relevant responsible person for the improvement notice</li> <li>• person conducting business or undertaking adversely affected by the decision</li> </ul>	inspector

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>	<b>column 5 decision- maker</b>
13	Act, 137	revoke improvement notice	<ul style="list-style-type: none"> <li>• if there is a work safety representative for a worker adversely affected by the decision—the work safety representative</li> <li>• if there is a work safety committee for a worker adversely affected by the decision—the work safety committee</li> <li>• if there is no work safety representative or work safety committee for a worker adversely affected by the decision—the workers adversely affected by the decision</li> <li>• relevant responsible person for the improvement notice</li> <li>• person conducting business or undertaking adversely affected by the decision</li> </ul>	inspector

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>	<b>column 5 decision- maker</b>
14	Act, 140	give prohibition notice	<ul style="list-style-type: none"> <li>• relevant responsible person for the prohibition notice</li> <li>• person conducting business or undertaking adversely affected by the decision</li> </ul>	inspector
15	Act, 143	extend stated period for prohibition notice	<ul style="list-style-type: none"> <li>• relevant responsible person for the prohibition notice</li> <li>• person conducting business or undertaking adversely affected by the decision</li> </ul>	inspector
16	Act, 147 (2)	reinspect situation or circumstances causing prohibition notice to be issued	relevant responsible person for the prohibition notice	chief executive
17	Act, 147 (3)	reinspect situation or circumstances causing prohibition notice to be issued if related to vehicle or equipment	<ul style="list-style-type: none"> <li>• person with a property interest in the vehicle or equipment</li> <li>• person conducting business or undertaking adversely affected by the decision</li> </ul>	inspector

## **EXPOSURE DRAFT**



column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
18	Act, 148	revoke prohibition notice	<ul style="list-style-type: none"> <li>• if there is a work safety representative for a worker adversely affected by the decision—the work safety representative</li> <li>• if there is a work safety committee for a worker adversely affected by the decision—the work safety committee</li> <li>• if there is no work safety representative or work safety committee for a worker adversely affected by the decision—the workers adversely affected by the decision</li> <li>• relevant responsible person for the prohibition notice</li> <li>• person conducting business or undertaking adversely affected by the decision</li> </ul>	inspector

## EXPOSURE DRAFT

**Schedule 3**  
**Part 3.1**

Reviewable decisions  
Reviewable decisions

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>	<b>column 5 decision- maker</b>
19	Act, 154	alleged contravention of provision of Act	person alleged to have contravened provision of Act	chief executive
20	Act, 155	accept safety undertaking	relevant person for enforceable undertaking	chief executive
21	Act, 156	agree to withdraw or amend enforceable undertaking	relevant person for enforceable undertaking	chief executive
22	Act, 157	end enforceable undertaking	relevant person for enforceable undertaking	chief executive
23	Act, 166	finding that person in control of public sector workplace has failed to comply with a compliance agreement, an enforceable undertaking, an improvement notice or a prohibition notice	person in control of public sector workplace	chief executive

## **EXPOSURE DRAFT**

<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>	<b>column 5 decision- maker</b>
24	Act, 168	finding that person in control of public sector workplace has not failed to comply with safety duty and no further action will be taken	<ul style="list-style-type: none"> <li>• if there is a work safety representative for a worker adversely affected by the decision—the work safety representative</li> <li>• if there is a work safety committee for a worker adversely affected by the decision—the work safety committee</li> <li>• if there is no work safety representative or work safety committee for a worker adversely affected by the decision—the workers adversely affected by the decision</li> </ul>	chief executive
25	Act, 169	finding that person in control of public sector workplace has failed to comply with safety duty and appropriate steps have been taken to address the failure	responsible chief executive	chief executive

## **EXPOSURE DRAFT**

**Schedule 3**  
**Part 3.1**

Reviewable decisions  
Reviewable decisions

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<b>column 1 item</b>	<b>column 2 section</b>	<b>column 3 decision</b>	<b>column 4 entity</b>	<b>column 5 decision- maker</b>
26	Act, 170	finding that person in control of public sector workplace has failed to comply with safety duty and appropriate steps have not been taken to address the failure	responsible chief executive	chief executive

## **EXPOSURE DRAFT**

## Part 3.2 Internal review of decisions

column 1 item	column 2 section	column 3 decision	column 4 decision-maker
1	Act, 85	seize anything at premises	inspector
2	Act, 86	remove or restrict access to seized thing	inspector
3	Act, 87	destroy or dispose of seized thing or require destruction or disposal	inspector
3	Act, 96	seize data, electronic equipment or storage device	inspector
4	Act, 126	end compliance agreement	inspector
5	Act, 134	extend compliance period for improvement notice	inspector
6	Act, 137	revoke improvement notice	inspector
7	Act, 143	extend stated period for prohibition notice	inspector
8	Act, 147 (3)	reinspect situation or circumstances causing prohibition notice to be issued if related to vehicle or equipment	inspector
9	Act, 148	revoke prohibition notice	inspector

## EXPOSURE DRAFT

## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this regulation.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- Act
- chief executive (see s 163)
- commencement (see s 11)
- exercise
- found guilty
- in relation to
- may (see s 146)
- must (see s 146)
- notifiable instrument (see s 10)
- penalty unit (see s 133)
- person
- State
- statutory declaration
- under
- working day
- year.

*Note 3* Terms used in this regulation have the same meaning that they have in the *Work Safety Act 2008* (see Legislation Act, s 148). For example, the following terms are defined in the *Work Safety Act 2008*, dictionary:

- authorised representative (see s 61)
- business or undertaking (see s 11)
- commissioner
- council
- dangerous occurrence (see s 37)
- employer (see s 10)

## EXPOSURE DRAFT

- hazard
- inspector
- manages risk (see s 14)
- person in control (see s 13)
- plant
- premises
- reasonably practicable steps (see s 15)
- registered organisation
- risk (see s 8)
- substance
- worker (see s 9)
- worker consultation unit (see s 46)
- workplace (see s 12)
- work safety (see s 7)
- work safety committee
- work safety representative.

***anchorage***, for division 7.3 (Prevention of falls)—see section 70 .

***approved refresher training course***—see section 39.

***approved training course***—see section 39.

***atmospheric contaminant***, for division 7.8 (Confined spaces)—see section 92.

***Australian qualifications framework (AQF)***, for part 8 (Licensing high risk work)—see section 116.

***Australian quality training framework (AQTF)***, for part 8 (Licensing high risk work)—see section 116.

***Commonwealth regulatory authority***, for part 8 (Licensing high risk work)—see section 116.

***competency***, for part 8 (Licensing high risk work)—see section 116.

## EXPOSURE DRAFT

**competency standard**, for part 8 (Licensing high risk work)—see section 116.

**confined space**, for division 7.8 (Confined spaces)—see section 92.

**corresponding law**, for part 8 (Licensing high risk work)—see section 116.

**dangerous substance**—see the *Dangerous Substances Act 2004*, section 10.

**direct supervision**, of a trainee, for part 8 (Licensing high risk work)—see section 116.

**electrical inspector**, for division 7.7 (Electricity)—see section 88.

**electrical installation**, for division 7.7 (Electricity)—see section 88 .

**entry permit**, for division 7.8 (Confined spaces)—see section 92.

**exposure standard**, for division 7.10 (Noise management)—see section 107.

**fixed workplace** means a workplace in a building or other permanent structure.

**high risk work**, for part 8 (Licensing high risk work)—see section 116.

**incorporated document**—see section 165.

**inhalable dust**, for division 7.4 (Atmosphere and ventilation)—see section 76.

**licensing authority**, for part 8 (Licensing high risk work)—see section 116.

**Ministerial Council**, for part 8 (Licensing high risk work)—see section 116.

## EXPOSURE DRAFT



***national exposure standards*** means the *Exposure Standards for Atmospheric Contaminants in the Occupational Environment* (NOHSC 1003 (1995) and Guidance Note NOHSC 3008 (1995)) published by the National Occupational Health and Safety Commission.

***national licence***, for part 8 (Licensing high risk work)—see section 116.

***nationally endorsed***, for a training package, for part 8 (Licensing high risk work)—see section 116.

***personal health information***—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

***personal protective and safety equipment*** includes anything used, or to be used, to protect a person's health, safety or welfare.

**Examples**

1 protective clothing

2 sunscreen

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***recognised qualification***, to carry out high risk work under a corresponding law, for part 8 (Licensing high risk work)—see section 116.

***registered training organisation***, for part 8 (Licensing high risk work)—see section 116.

***represented worker***, for a worker consultation unit, means a worker in the unit.

***responsible person***, for div 4.5 (Work safety representatives—provisional improvement notices)—see section 42 (1).

## EXPOSURE DRAFT

**safe oxygen level**, for division 7.4 (Atmosphere and ventilation) and division 7.8 (Confined spaces)—see section 76 .

**safety harness**—see AS/NZS 1891.

**safe unclassified inhalable dust level**, for division 7.4 (Atmosphere and ventilation)—see section 76.

**show cause notice**—

(a) for part 4 (Work safety representatives)—see section 37 (1); and

(b) for part 6 (Authorised representatives)—see section 61 (1).

**statement of attainment**, for part 8 (Licensing high risk work)—see section 116.

**state registering body**, for part 8 (Licensing high risk work)—see section 116.

**supervisor**, for a trainee carrying out a class of high risk work, for part 8 (Licensing high risk work)—see section 116.

**trainee**, for part 8 (Licensing high risk work)—see section 116.

**training package**, for part 8 (Licensing high risk work)—see section 116.

**TWA** or **time-weighted average**, for division 7.4 (Atmosphere and ventilation)—see section 76.

**unclassified inhalable dust**, for division 7.4 (Atmosphere and ventilation)—see section 76.

**unit of competency**, for part 8 (Licensing high risk work)—see section 116.

**unsafe oxygen level**, for division 7.4 (Atmosphere and ventilation) and division 7.8 (Confined spaces)—see section 76.

## EXPOSURE DRAFT

*unsafe unclassified inhalable dust level*, for division 7.4  
(Atmosphere and ventilation)—see section 76.

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## Endnotes

**1 Notification**

Notified under the Legislation Act on 2009.

**2 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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# EXPOSURE DRAFT