



AUSTRALIAN CAPITAL TERRITORY

OCCUPATIONAL HEALTH AND SAFETY ACT 1989

OCCUPATIONAL HEALTH AND SAFETY (CERTIFICATION OF PLANT USERS AND OPERATORS) REGULATIONS 2000

Subordinate Law No. 48 of 2000

EXPLANATORY STATEMENT

The objectives of the *Occupational Health and Safety Act 1989* (the Act) are to secure the health, safety and welfare of employees at work; to protect persons at or near workplaces from risks to health or safety arising out of the activities of employees at work; to promote an occupational environment for employees that is adapted to their health and safety needs; and to foster a co-operative consultative relationship between employers and employees on the health, safety and welfare of employees at work.

Section 97 of the Act allows the Executive to make regulations, not inconsistent with the Act, prescribing matters required or permitted in the Act to be prescribed; or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

These regulations apply in the Territory under the provisions of the *Occupational Health and Safety Act 1989* and are the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulations 2000*.

The objective of these regulations is to establish a requirement for the users and operators of potentially hazardous plant to hold certificates as a means of ensuring, as far as possible, that there is a minimum standard for its safe use and operation.

These regulations establish a system for the licensing of persons using and operating plant, a requirement to meet competency standards in order to gain certification and a system of accreditation for assessors of competency.

These regulations are consistent with the framework outlined in the *National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment* developed by the National Occupational Health and Safety Commission. The Standard aims to achieve national uniformity in the certification for use and operation of industrial equipment (plant).

Consequential amendments to the *Machinery Act 1949*, *Scaffolding and Lifts Act 1912* and *Scaffolding and Lifts Act 1957* are required to give effect to these regulations.

The determination of the making of these regulations is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

The regulations are made as follows:

PART 1 - PRELIMINARY

Name of regulations

Clause 1 A machinery provision that specifies the name of the regulations.

Commencement

Clause 2 A machinery provision that sets the date of commencement of the regulations. The new regulations will commence on the date they are notified in the *Gazette*.

Dictionary

Clause 3 Establishes a dictionary for the regulations.

PART 2- CERTIFICATES OF COMPETENCY

Division 2.1 – Assessment of competency

Application for assessment to do scheduled work

Clause 4 Provides that an application for assessment to do scheduled work must be given to an assessor, accompanied by the determined fee.

Assessment of competency

Clause 5 Provides that an assessment of an applicant's competency to do the kind of scheduled work applied for must be conducted in accordance with the guidelines established under the regulations.

Competency

Clause 6 Establishes the standard of competency that an applicant is expected to demonstrate and the issues that an assessor may have regard to when assessing competency. Sub-regulation (3) provides that a person's competency to do a kind of scheduled work may only be assessed once in each 21-day period.

Issue of notice of satisfactory assessment

- Clause 7 Provides that an assessor must issue an applicant with a notice of satisfactory assessment if satisfied that an applicant is competent to do scheduled work or scheduled work of a particular kind.

Assessor not a public employee

- Clause 8 Provides that if an assessor, who is not a public employee, refuses to issue a notice of satisfactory assessment to a person, the assessor must give written notice of the decision and inform the person that he or she may apply to an assessor, who is a public employee, for another assessment.

Duration of assessment notice

- Clause 9 Provides that a notice of satisfactory assessment is current for 60 days after issue or until the applicant receives notice of a decision to issue or vary the certificate.

Guidelines

- Clause 10 Provides that the Commissioner for Occupational Health and Safety may issue or approve guidelines for the conduct of assessments and the issues that may be included in such guidelines.

Division 2.2 – Certificates of Competency

Applications for certificates of competency or variations

- Clause 11 Provides that a person who has a notice of satisfactory assessment may apply for a certificate of competency or the variation of an existing certificate by endorsement with the kind of work applied for. Sub-regulation (2) provides that an application must be accompanied by the determined fee and the notice of satisfactory assessment.

Issue of certificates of competency

- Clause 12 Provides that the on receiving an application, the Commissioner for Occupational Health and Safety must issue, vary or refuse to issue a certificate of competency. Sub-regulation (2) provides the reasons why the Commissioner may refuse to issue or vary a certificate. Sub-regulation (3) provides that the holder of a varied certificate must surrender the previous certificate within 14 days and establishes an offence if this does not occur.

Certificate of competency - conditions

- Clause 13 Provides that a certificate of competency is subject to any conditions stated in the certificate.

Endorsements on certificates of competency

- Clause 14 Provides that a certificate must contain an endorsement for each kind of scheduled work the holder is authorised to do. Sub-regulation (2) provides that the meaning of codes or symbols used to indicate such endorsement continues as at the date of issue, even if subsequently changed.

Duration of certificate of competency

- Clause 15 Provides that a certificate remains in force until surrendered or cancelled, but is not in force when suspended.

Division 2.3 - Trainees

Definition for div 2.3

- Clause 16 Provides the definition of 'supervisor' for this Division.

Supervisors' obligations

- Clause 17 Sub-regulations (1) and (2) provide that a supervisor must supervise a trainee doing scheduled work and must sign the trainee's record of doing such work. Offences are established for each of these sub-regulations. Sub-regulation (3) provides that a supervisor must try to ensure that the trainee receives appropriate directions, demonstrations, training and supervision and that the trainee does scheduled work safely.

Trainees' obligations

- Clause 18 Sub-regulation (1) provides that a trainee must keep a written record of each day they do scheduled work and establishes an offence for failure to do so. Sub-regulation (2) sets out the particulars of such a record.

PART 3 – ACCREDITATION OF ASSESSORS

Assessors

- Clause 19 Provides that the Commissioner for Occupational Health and Safety may accredit persons as assessors.

Accreditation of assessors

- Clause 20 Provides that a person may apply for accreditation or variation of an existing accreditation. Sub-regulation (2) provides that the determined fee must accompany such an application. Sub-regulation (3) provides that an application to vary a certificate of accreditation must be accompanied by the certificate.

Issue of certificates of accreditation

- Clause 21 Provides that the Commissioner for Occupational Health and Safety must issue, vary or refuse to issue a certificate of accreditation, on receiving an application. Sub-regulation (2) provides that the Commissioner may refuse to issue or vary a certificate if satisfied that the applicant is not competent to be an assessor or to do the kind of assessments applied for. Sub-regulation (3) provides that the holder of a varied certificate must surrender the previous certificate within 14 days and establishes an offence if this does not occur.

Certificate of accreditation - conditions

- Clause 22 Provides that a certificate of accreditation is subject to any conditions stated in the certificate.

Endorsements on certificates of accreditation

- Clause 23 Provides that a certificate must be endorsed with a statement of the kinds of assessments the assessor is authorised to do.

Duration of certificate of competency

- Clause 24 Provides that a certificate remains in force for a maximum of 3 years unless surrendered or cancelled sooner, but is not in force when suspended.

PART 4 – ENFORCEMENT

Division 4.1 - Offences

Doing work without a certificate of competency

- Clause 25 Provides that a person must not do scheduled work unless they hold a certificate of competency for the work and establishes an offence for contravention of this requirement. Sub-regulation (2) establishes exceptions to this requirement.

Breach of conditions of certificate of competency

- Clause 26 Provides that a person must comply with conditions to which a certificate of competency is subject.

Division 4.2 – Suspension and cancellation of certificates of competency and endorsement

Suspension and cancellation

- Clause 27 Sub-regulation (1) provides reasons why the Commissioner for Occupational Health and Safety may suspend or cancel a certificate of competency or an

endorsement. Sub-regulation (2) provides reasons why the Commissioner for Occupational Health and Safety may suspend or cancel a certificate of accreditation or accreditation to perform a kind of assessment. Sub-regulation (3) provides that such a notice must be in writing and that the holder may give reasons as to why such action should not be taken. Sub-regulation (4) provides that a certificate or endorsement may be suspended or cancelled after the Commissioner has had regard to any representations made by the holder. Sub-regulation (5) provides that the suspension or cancellation takes effect on the later of the date received by the holder or the date mentioned in the notice. Sub-regulation (6) provides that the Commissioner may require the holder to surrender a certificate where it, or an endorsement on it, has been suspended. Sub-regulation (7) provides that the Commissioner must return a certificate at the end of the period of suspension unless it has been further suspended or cancelled. Sub-regulation (8) provides that the Commissioner must issue a new certificate if an endorsement on a certificate is cancelled. Sub-regulation (9) establishes an offence if a certificate or endorsement on a certificate is cancelled and the certificate is not returned within 14 days of the holder receiving notification of the cancellation.

Immediate suspension

- Clause 28 Sub-regulation (1) provides for the immediate suspension of a certificate or endorsement by the Commissioner for Occupational Health and Safety. Sub-regulation (2) provides that the suspension must be notified in writing, takes effect immediately and continues until there has been an opportunity for the holder to make representations and for those representations to be considered. Sub-regulation (3) provides that the maximum period of suspension is 28 days. Sub-regulation (4) provides that the notice must state the term of the suspension and advise the holder that they may make representations to the Commissioner as to why the suspension should be cancelled. Sub-regulation (5) provides that the Commissioner must cancel the suspension if satisfied that this should occur after consideration of representations made by the holder.

PART 5 – REVIEW OF DECISIONS

Notice of decisions

- Clause 29 Provides that the Commissioner for Occupational Health and Safety must give written notice of certain decisions and the reasons for a particular decision to the person affected by it.

Review of decisions

- Clause 30 Provides that decisions mentioned in clause 29 may be appealed to the administrative appeals tribunal. It should be noted that decisions to immediately suspend certificates are not included in clause 29 and therefore,

are not reviewable by the administrative appeals tribunal. The process for review of an immediate suspension decision is established in clause 29.

PART 6 - MISCELLANEOUS

Further information - applications

- Clause 31 Provides for the Commissioner for Occupational Health and Safety to request further information from an applicant.

Exemptions

- Clause 32 Provides for the Commissioner for Occupational Health and Safety to exempt a person or class of persons from the operation of any provisions of the regulations.

Production of certificates etc on request

- Clause 33 Provides for the Commissioner for Occupational Health and Safety or an inspector to request production of a certificate of competency, exemption or a trainee's record of training.

Lost, stolen etc certificates

- Clause 34 Provides for the Commissioner for Occupational Health and Safety to issue a replacement certificate of competency or accreditation if the original is lost, stolen, damaged or destroyed.

Applications – false or misleading information

- Clause 35 Establishes that it is an offence to provide false or misleading information in relation to an application under the regulations.

Approved forms

- Clause 36 Provides for the Commissioner for Occupational Health and Safety to approve forms under the regulations.

PART 7 – TRANSITIONAL

Existing certificates

- Clause 37 Provides for recognition of existing certificates issued under regulation 159 of the regulations under the *Scaffolding and Lifts Act 1912-1948* and under Part 4 of the *Boilers and Pressure Vessels Regulations*.

Certain work may be done without a certificate

Clause 38 Provides that certain work may be done without a certificate for the first 12 months of operation of the regulations.

Expiry of pt 7

Clause 39 A machinery provision that provides for the expiry of part 7 one year after commencement of the regulations.

SCHEDULE 1 – SCHEDULED WORK

PART 1 – DEFINITIONS FOR SCHEDULE

Establishes the definitions of certain plant referred to in Part 2 of Schedule 1.

PART 2 – WORK FOR WHICH QUALIFICATIONS REQUIRED

Establishes the types of work for which certification is required.

SCHEDULE 2 – CORRESPONDING LAWS

Lists corresponding laws relevant to the regulations.

DICTIONARY

The dictionary for the regulations.