

2009

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

WORK SAFETY REGULATION 2009

SL2009-45

EXPLANATORY STATEMENT

Circulated with the authority of
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OVERVIEW

The *Work Safety Act 2008* (the Act) will commence operation in the Territory on 1 October 2009. The Act provides the legal framework for an up to date, modern work safety regime that caters for working and doing business in the Territory today and into the future. It sets out duties which apply to each person involved in work safety in a clear, concise and comprehensive way. The regulatory framework established by this Act is supported by the Work Safety Regulation 2009 (the Regulation).

The Regulation brings together the regulations under the previous *Occupational Health and Safety Act 1989* and will eventually include all regulations made under the Work Safety Act in a single, accessible document. This Regulation includes:

- provisions of the OHS (General) Regulation 2007 remade in line with the terminology and concepts in the Act;
- further detailed provisions for workplace consultation arrangements contained in Part IV of the Act;
- implementation of the National Standard for Licensing Persons Performing High Risk Work, and retaining those provisions in the OHS (Certification of Plant Users and Operators) Regulation 2000, which cover additional load shifting machinery;
- adoption of the *National Code of Practice for induction for construction work*, which requires people who regularly need access to a construction site undertake basic Occupational Health and Safety training before doing so;
- the OHS (Manual Handling) Regulation 1997 remade in line with the terminology and concepts in the Act and a new National Standard; and
- a schedule of reviewable decisions for the Act and this Regulation.

Provisions for facilities and particular safety measures

The Regulation has updated the previous Occupational Health and Safety (General) Regulation 2007, which provided for general facilities and particular safety measures. If a duty holder has been complying with the previous provisions then they will most likely be compliant with these parts of the Regulation.

The principal change is that most of the provisions have been redrafted as specific offences and require each relevant duty holder in the Act to comply with each provision to the extent of their control. Some of these offences are now strict liability offences, highlighting the importance of compliance with the provisions and facilitating a broader range of compliance measures.

Provisions for workplace consultation arrangements

Part 4 of the Regulation provides further detail on the workplace arrangements duties set out in Part 4 of the Act. Further requirements are provided in relation to work safety representatives and work safety committees on issues such as eligibility, elections, powers and duties, required training, disqualification, provisional improvement notices and emergency procedures. The Regulation also provides further guidance on prescribed training for authorised representatives.

Provisions for performing high risk work

The Regulation updates the former OHS (Certification of Plant Users and Operators) Regulation 2000, which provided for certificates of competency for scheduled work and adopts new arrangements for the licensing of persons who undertake high risk work in the Territory. These new arrangements will come into effect from 1 October 2009, but will allow for existing certificate holders to convert their certificates to licences over a number of years, depending on the issue date of their certificate.

The main principle behind the Standard, and the Regulation, is to ensure that only people who are suitably competent are able to use high risk equipment and plant. The Regulation places a range of obligations on persons conducting a business or undertaking and on persons carrying out high risk work.

The Standard introduces a nationally consistent competency assessment process by which people seeking to work with high risk plant or equipment will be trained and have their competency assessed through a Registered Training Organisation (RTO) under the Australian Qualification Training Framework (AQTF).

In line with the Standard, the Regulation introduces a national license that will include a photograph and signature of the holder, replacing the national certificate that has no such provision. A licence will be valid for five (5) years and will require the holder to apply for a renewal of the licence on expiry. This approach provides the opportunity to ensure a person's continuing competency.

Under the Regulation only the previous load-shifting classes of forklifts and order picking forklifts will be defined as high risk work and require a high risk work licence. The other load-shifting classes will not require a national licence, **BUT** will still require a ACT certificate of competency as they do now. The arrangements for the training and assessment of the following classes of work remain the same as exists now:

- Dragline
- Excavator
- Front-end loader
- Front-end loader / backhoe
- Front-end loader of the skid-steer type

The Regulation provides transitional arrangements that allow the present certificate of competency regime to continue until the 30 June 2011.

All other jurisdictions in Australia have either implemented the new Standard or are in the process of doing so. Adoption of the Standard by the ACT will ensure consistency throughout Australia, and will assist with the portability of qualifications of persons moving across jurisdictions.

Provisions for construction induction training

The Regulation adopts new arrangements to ensure that people who regularly access construction sites undertake basic Occupational Health and Safety training before doing so. The provisions adopt the *National Code of Practice for induction for construction work*.

The Code introduces a nationally consistent competency assessment process where people seeking to regularly be on a construction site, will undergo OH&S training with a Registered Training Organisation (RTO) under the Australian Qualification Training Framework (AQTF). This will ensure that all persons on a construction site have a basic knowledge of the occupational health and safety requirements, the common hazards and risks likely to be encountered on a construction site and how those risks should be controlled.

All other jurisdictions in Australia have either implemented the Code or are in the process of doing so. Adoption of the Code by the ACT will ensure consistency throughout Australia, and will ensure that construction induction training delivered in the ACT is recognised throughout Australia.

Provisions for carrying out manual tasks

Provisions on the performance of manual tasks formerly covered by the OHS (Manual Handling) Regulation 1997 have been updated to reflect the National Standard for Manual Tasks within the scheme of the Act.

Strict Liability Offences

The Regulation has strict liability offences in clauses 8, 11, 12, 13,14,15,17, 18, 19, 20, 21, 22, 24, 27, 42, 43, 48, 49, 50, 56, 60, 68(3), 68(4), 69, 72, 75, 76(2), 77(1), 78, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 94, 96, 97, 98, 99, 100, 101, 102,103, 104, 105, 106, 107, 108, 109, 112, 113, 115, 116, 117, 118, 120, 121, 125, 131, 132, 133, 141, 143, 144, 151,152,156, 159, 163, 164, 165, 167, 168, 169, 174,175, 183 and 184. The offences incorporating strict liability elements have been carefully considered during the Regulation's development. The strict liability offences arise in a regulatory context where for reasons such as public safety, the public interest in ensuring that regulatory schemes are observed, requires the sanction of criminal penalties.

In particular, where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. The rationale is that people who owe work safety duties such as employers, persons in control of aspects of work and designers and manufacturers of work structures and products, as opposed to members of the general public, can be expected to be aware of their duties and obligations to workers and the wider public.

Unless some knowledge or intention ought to be required to commit a particular offence (in which case a specific defence is provided), the defendant's frame of mind at the time of committing the strict liability offences is irrelevant. The penalties for offences cast in these terms are lower than for those requiring proof of fault.

NOTES ON PARTS

Part 1 Preliminary

This part sets out the preliminary matters for this regulation and contains provisions which are standard across all ACT legislation.

Clause 1 Name of regulation

This clause provides that the name of this regulation is the Work Safety Regulation 2009.

Clause 2 Commencement

This clause provides that this regulation commences on the commencement of the *Work Safety Act 2008* ('the Act').

Clause 3 Dictionary

This clause establishes that the dictionary at the end of this regulation is part of this regulation.

Clause 4 Notes

This clause establishes that a note included this regulation is explanatory and is not part of the regulation.

Clause 5 Offences against regulation – application of Criminal Code etc

This clause establishes that other legislation applies to offences against this regulation. This includes, but is not limited to, the Criminal Code and section 133 of the Legislation Act 2001, which deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Injury and dangerous occurrence reporting and records

This part provides further important details for the purposes of records and reports which must be made in relation to serious events under Division 3.3 of the Act.

Clause 6 Period of incapacity for work – Act, s 36(b)

This clause establishes that the period of incapacity for work prescribed by regulation for the purposes of defining a serious event in s 36(b) of the Act is 7 days.

Clause 7 Requirements for notice – Act, s 38(2)

This clause establishes when notice must be given in relation to a serious event under section 38(2) of the Act and how such a notice may be given. Where a serious event involves the death of a worker or another person, notice must be given under section 38(2)(a) as soon after the event as is reasonably practicable but no later than 2 hours after the event, and, also, in writing not later than 48 hours after the event. For any other serious event, this notice must be given not later than 8 days after the day the event happened.

This clause also establishes that notice for section 38(2)(b) can be given in writing, by telephone, by facsimile or by other electronic means. It also prescribes that, if the chief executive receives a notice that has not been given in writing, they must give the employer details of the information received, or, an acknowledgement of receiving the notice.

Clause 8 Keeping information given by chief executive

This clause provides that, where a person conducting a business or undertaking receives a copy of information received, or, an acknowledgement of the receipt of a notice, from the chief executive under clause 7 (after giving notice of a serious event other than in writing), they commit a strict liability offence if they do not keep that copy or acknowledgement for five years after the day it is given. The maximum penalty for this offence is 10 penalty units.

Clause 9 Content of records

This clause provides that the chief executive may approve the content of a record (of a serious event) that is required to be maintained under section 39 of the Act, and, that any such approval is a notifiable instrument.

Part 3 Facilities

This part provides for specific duties and sets out certain offences, including strict liability offences on relevant duty holders to provide facilities for workers. These facilities include particular types of amenities as well as first aid equipment, trained personnel and arrangements for the treatment and care of sick and injured workers.

Division 3.1 Amenities

This division provides for specific duties and sets out offences which may apply to duty holders who do not provide and maintain safe and clean amenities for workers.

Clause 10 Person conducting a business or undertaking to provide amenities

This clause provides that a person conducting a business or undertaking at a workplace commits an offence if they do not provide adequate amenities for workers while they are at the workplace. The clause establishes that what is adequate for the purposes of this offence must be decided having regard to the circumstances. These circumstances include the nature of the work undertaken at the workplace, the size, nature and location of the workplace and the number of workers at the workplace and their characteristics (including gender, age and any special needs). The maximum penalty is 20 penalty units.

This clause also establishes that, for this clause, amenities means facilities for the welfare or personal hygiene needs of people. The clause also includes the following examples of amenities: toilets, seating, meal rooms, change rooms, drinking water, lockers for personal belongings, and, showers or washing facilities.

Clause 11 Amenities to be safe and clean

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if amenities at the workplace are not kept safe and clean. The maximum penalty for this offence is 20 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if amenities at the premises are not kept in a safe and clean condition. The maximum penalty for this offence is 20 penalty units.

This clause also establishes that, for the purposes of this clause, amenities means facilities for the welfare or personal hygiene needs of people. The clause also includes the following examples of amenities: toilets, seating, meal rooms, change rooms, drinking water, lockers for personal belongings, and, showers or washing facilities.

Clause 12 Facility for personal belongings

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if they do not provide workers at the workplace with access to a facility for keeping clothes and personal belongings. The maximum penalty for this offence is 10 penalty units. This clause, however, should be read in conjunction with clause 16 which allows for combined facilities in some circumstances.

Clause 13 Facility for changing clothes

This clause provides that, in particular circumstances, a person conducting a business or undertaking commits a strict liability offence if they do not provide either a separate changing facility for male and female workers that is at or near the workplace or, a single changing facility that is at or near the workplace if they ensure privacy and security between male and female workers. The maximum penalty is 10 penalty units.

The circumstances in which the above offence applies are where a worker needs to change clothes before, during or after work because of the nature of the work or the usual working conditions, and, this work is usually performed at the same place, and, the workplace is in or near a building where a changing facility can be provided. This clause, however, should be read in conjunction with clause 16 which allows for combined facilities in some circumstances.

This clause also establishes that, for the purposes of this clause, a changing facility means a place for changing clothes with enough space and seating for the maximum number of people that may be changing at a particular time, with a reasonable number of mirrors and shelves, that is hygienic, and, that gives reasonable privacy.

Clause 14 Facility for changing clothes – temporary workplaces

This clause provides that, in particular circumstances, a person conducting a business or undertaking at a workplace commits a strict liability offence if they do not provide either a separate temporary changing facility for male and female workers in the business or undertaking, or, a single temporary changing facility (if the person ensures privacy and security between male and female workers).

The circumstances in which the above offence applies are where a worker needs to change clothes before, during or after work because of the nature of the work or usual working conditions, and, either the work is not usually performed at the same place or the workplace is not in or near a building where a changing facility can be provided. The maximum penalty is 10 penalty units. This clause, however, should be read in conjunction with clause 16 which allows for combined facilities in some circumstances.

This clause also establishes that, for this clause, a temporary changing facility means a place for changing clothes that is accessible from the workplace, hygienic and that gives reasonable privacy.

Clause 15 Meal facility

This clause provides that a person conducting a business or undertaking commits a strict liability offence if they do not provide workers at the workplace with access to a meal facility in particular circumstances. The maximum penalty is 10 penalty units.

The particular circumstances for the purposes of the above offence exist only where 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.

This clause also establishes that, for the purposes of this clause, a meal facility means a facility where a meal can be eaten that is accessible from the workplace, hygienic and protected from the weather. This clause, however, should be read in conjunction with clause 16 which allows for combined facilities in some circumstances.

Clause 16 Combined facilities

This clause provides that a person conducting a business or undertaking can provide a facility (that is required under any of clauses 12-14 above) as part of a combined facility where the facility complies with the clause under which it is required, and, it is reasonable for combined facilities to be provided because of the nature of the work or usual working conditions.

This clause also provides that a person conducting a business or undertaking can provide a meal facility (that is required under clauses 15 above) as part of a combined facility where the meal facility complies with clause 15, and, the health or welfare of anyone eating in the combined facility will not be adversely affected because the facilities are combined.

Clause 17 Toilet Facility

This clause provides that, unless the exception below applies, a person conducting a business or undertaking at a workplace commits a strict liability offence if they do not provide access to a toilet facility for workers at the workplace. The maximum penalty is 20 penalty units.

This clause also provides that, unless the exception below applies, a person conducting a business or undertaking at a workplace commits a strict liability offence if they do not provide workers at the workplace with adequate and hygienic means for the disposal of sanitary items. The maximum penalty is 20 penalty units.

This clause also provides that, unless the exception below applies, a person conducting a business or undertaking at a workplace commits a strict liability offence if they do not provide either a separate toilet facility for male and female workers, or, privacy and security between male and female workers using a toilet facility at the workplace. The maximum penalty is 20 penalty units.

The exception states that none of the offences in this clause apply to a person conducting a business or undertaking in relation to a temporary workplace if not more than 5 people are working at the workplace, premises with a toilet facility are accessible from the workplace and the owner of the premises gives permission for those workers to use the toilet facility.

This clause also establishes that, for the purposes of this clause, a toilet facility means a toilet that is accessible from the workplace, is hygienic, is protected from the weather and is kept in a clean and hygienic working condition.

Clause 18 Washing Facility

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if they do not provide workers at the workplace with access to a washing facility. The maximum penalty is 20 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if they do not either ensure that each washing facility at the workplace has running water, or, if they do not ensure that workers have access to clean water near the facility (if it is not reasonably practicable for a washing facility to have running water). The maximum penalty is 20 penalty units.

This clause also establishes that a washing facility for the purposes of this clause means a facility set aside for use to wash and dry hands, arm, neck and face.

Clause 19 Shower Facility

This clause provides that, in particular circumstances, a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure that a worker for the business or undertaking has access to shower facilities. The maximum penalty is 20 penalty units.

This clause also provides that, in particular circumstances, a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure privacy and security between male and female workers using shower facilities. The maximum penalty is 20 penalty units.

The particular circumstances for the purposes of this clause exist only if a worker carrying out work in relation to the business or undertaking needs to shower before, during or after work because of the nature of the work or usual working conditions.

Clause 20 Drinking water

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if drinking water is not provided for workers at the workplace. The maximum penalty is 20 penalty units.

Clause 21 Seating

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if it is reasonable for a worker at the workplace to work while seated and they do not provide seating for that worker. The maximum penalty is 20 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if it is reasonable for a worker at the workplace to perform some tasks while seated and that person does not make seating available for that worker to use from time to time. The maximum penalty is 20 penalty units.

The clause also establishes that, for the purposes of each offence set out in this clause, what is reasonable must be decided having regard to the nature of the work undertaken by the worker. It also establishes that, for this clause, seating means a place for a person to sit that is ergonomically sound, provides suitable support and is adequate for the type of work.

Clause 22 Working space

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not provide sufficient working space at the workplace to allow workers to work safely. The maximum penalty is 20 penalty units.

Division 3.2 First aid and sickness

This division provides for specific duties and sets out offences which may apply to duty holders who do not provide first aid equipment, trained personnel and arrangements for the treatment and care of sick and injured workers.

Clause 23 First aid

This clause provides that 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 access to the equipment. The maximum penalty is 20 penalty units.

This clause provides that 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. The maximum penalty is 20 penalty units.

The clause also establishes that, for the purposes of each offence set out in this clause, what is adequate must be decided having regard to the nature of the work undertaken at the workplace, the size and location of the workplace and the number of workers at the workplace and their characteristics (including gender, age and any special needs).

It also establishes that, for the purposes of this clause, first aid means the immediate treatment or care of a person who is injured or who becomes sick.

Clause 24 Arrangements for sick workers

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not either provide a first aid room or health centre at the workplace, or, make adequate arrangements to ensure the wellbeing of a worker who is injured, or becomes sick, at the workplace. The maximum penalty is 20 penalty units.

Part 4 Work safety representatives

This part deals with who is eligible to be elected as a work safety representative and practical arrangements for their election. It sets out functions and powers of work safety representatives that complement those in the Act and also sets out relevant employer duties. It also provides for the conditions of office of a work safety representative and how a person may be disqualified from holding the position of a work safety representative. Finally, it sets out how provisional improvement notices and emergency procedures are to be used.

Division 4.1 Work safety representatives – election process

This division deals with who is eligible to be a work safety representative, who may be asked to conduct an election, how the election is to be conducted, and, who is responsible for notifying workers and other parties of the results of an election that has been held for a work safety representative for a worker consultation unit.

Clause 25 Work safety representative – eligibility

This clause provides that a person is eligible to be a work safety representative for a worker consultation unit if the person is either a represented worker, or, if a worker from the relevant worker consultation unit has not nominated for the position, a suitably qualified person. It also states that a person is suitably qualified, for the purposes of this clause, if they hold at least a certificate IV in occupational health and safety, have completed an approved training course, and, is approved by each employer for the worker consultation unit.

The meaning of approved training course is dealt with at section 40 of the Regulation.

Clause 26 Election process – number of work safety representatives

This clause provides that a worker consultation unit may elect more than one eligible person as a work safety representative for the unit.

Clause 27 Election process – worker consultation unit may ask others to conduct election

This clause provides that a worker consultation unit may ask an employer of a worker in that unit, a registered organisation (if a worker in the unit is, or is eligible to be, a member of that registered organisation), or, someone else to conduct the election of a work safety representative.

It also provides that it is a strict liability offence if a worker consultation unit asks an employer for that worker consultation unit to conduct the election of a work safety representative on their behalf and that employer fails to conduct the election of a work safety representative within 42 days of being asked. The maximum penalty for this offence is 10 penalty units.

Clause 28 Election process - notice of election of work safety representatives

This clause provides that, if a work safety representative has been elected for a worker consultation unit, the person who conducted the election must give notice of the result of the election to each represented worker's employer, and, any previous work safety representative for that worker consultation unit who is being replaced (because the worker consultation unit had a work safety representative before the election). The clause specifically states that such notice must include the name of the work safety representative who has been elected. This clause also provides that an employer who is given notice of the election of a work safety representative under this clause must tell the workers in the relevant worker consultation unit that the employer engages to carry out work for them, that the person elected is a work safety representative.

This clause includes examples of how to tell workers who their elected work safety representative is, such as by:

- Email;
- a notice posted at the worksite; and
- details included in a staff handbook

Clause 29 Election process – replacement work safety representatives

This clause provides that, if a worker consultation unit has a work safety representative, and, that worker consultation unit elects a new work safety representative to replace the existing work safety representative, the previous representative stops being a work safety representative when they are given notice of the result of the election under clause 28.

Clause 30 Work safety representative – deputy

This clause provides that a deputy work safety representative may be elected for each work safety representative in the same way that the representative is elected, in accordance with the Act and this Regulation.

The clause further provides for the exercise of functions if a deputy work safety representative has been elected and the work safety representative stops being a representative, or, is unable to exercise their functions. In these circumstances, the deputy work safety representative may exercise the representative's functions as set out under the Act and this Regulation.

It also provides that, where a deputy work safety representative is exercising the work safety representative's functions, the Act (other than this section) applies to the deputy work safety representative as if they were the work safety representative.

Division 4.2 Work safety representatives – general

This division provides for work safety representatives to investigate complaints made by a worker in their worker consultation unit about work safety. Work safety representatives are also permitted to be present at interviews of workers by an inspector or employer about work safety (if that worker consents) and to inspect any work safety committee records for that worker consultation unit.

This division also gives work safety representatives the power to obtain access to information under the employer's control about the work safety of a worker in their unit with a few, specific exceptions. This power to access information is limited in the case of personal health information that identifies a worker or allows them to be identified. For personal health information that does identify a worker, or, allows them to be identified, the prior written agreement of the worker/s involved is required.

In addition, a work safety representative is not entitled to access employment details about a represented worker, or former represented worker, unless the worker agrees in writing to that work safety representative having access to the information.

For a workplace where a worker in that work safety representative's worker consultation unit works, a work safety representative is also able to ask for an inspection, accompany an inspector and to personally inspect all or part of that workplace in those particular circumstances outlined in the Act and this Regulation.

These particular circumstances exist only if the work safety representative has given the relevant employer reasonable notice, there has, in the immediate past, been an accident or dangerous occurrence at the workplace, or, if the work safety representative believes on reasonable grounds there is an immediate threat of an accident or dangerous occurrence at the workplace.

Clause 31 Work safety representative – additional function -Act, s 58(2)

This clause provides for additional functions for work safety representatives as permitted by, and in addition to the functions set out in, section 58(2) of the Act.

The clause provides that a representative may investigate a complaint made to the work safety representative by that represented worker, and, the complaint is about the work safety of a represented worker at a workplace of that worker. Representatives may also be present at an interview that relates to work safety between a represented worker and, either, an inspector, or, the represented worker's employer, if the represented worker has consented to their presence at the interview. Finally, a representative may also inspect records of any work safety committee established for the worker consultation unit that the work safety representative represents.

The additional functions provided for in the clause must be exercised having regard to the provisions of the Act, and, to the clauses dealing with the exercise of functions in clause 32 of this Regulation and with access to information set out in clause 33 of this Regulation.

Clause 32 Work safety representative – exercising functions – Act, s 58(3)

This clause outlines how a work safety representative for a worker consultation unit may exercise their functions under section 58 of the Act.

A representative has the power to access any information under the employer's control in relation to the work safety of a represented worker, other than information that they are not entitled to under clause 33 (personal health information, and, the employment details about a represented worker without the consent of that worker in writing).

This clause also provides that a representative may inspect all or part of a workplace where a represented worker works in any or all of three particular circumstances. The first circumstance is if there has, in the immediate past, been an accident or dangerous occurrence at the workplace. The second circumstance is if a representative believes on reasonable grounds that there is an immediate threat of an accident or dangerous occurrence at the workplace. The third circumstance is if the representative gives the employer reasonable notice of the inspection.

A representative may also ask an inspector to carry out an inspection at the workplace and accompany that inspector during the inspection.

In relation to each of the above means of exercising their functions, a work safety representative may exercise each means for all or part of a workplace where a represented worker works. This clause also provides that a representative must not exercise any functions until each worker's employer is given notice under clause 28 (notice of election of a work safety representative).

Clause 33 Work safety representative – access to information

This clause provides that a representative is not entitled to access personal health information about a represented worker, or former represented worker, unless at least one of two conditions are fulfilled. The first condition is that the worker (this includes a former worker where relevant) agrees in writing to the work safety representative having access to the information. The second, alternative, condition is that the information does not identify the worker or allow the worker to be identified.

The clause also provides that a representative is not entitled to access employment details about a represented worker, or former represented worker, unless the worker agrees in writing to the work safety representative having access to the information.

Division 4.3 Work safety representatives – conditions of office

This division deals with the conditions of office of work safety representatives (and deputy work safety representatives), the maximum length of their term of office and how the term of a work safety representative may end. It also deals with how and why a person may be disqualified or suspended as a work safety representative.

Clause 34 Work safety representative – term of office

This clause provides that a person elected or re-elected as a work safety representative holds office for the period decided by the worker consultation unit so long as that period is not more than two years. However, the clause also provides that this term of office will end prior to the period decided by the worker consultation unit if any of three circumstances exist. The first circumstance is if the person resigns as a work safety representative for the worker consultation unit. A person resigns as a work safety representative for a worker consultation unit by giving written notice to the employer. The second circumstance is if the person stops being eligible to be a work safety representative for that worker consultation unit. The third and final circumstance is if a person is disqualified under section 38 of this Regulation.

Clause 35 Work safety representative – application for disqualification

This clause provides that an employer of a represented worker, a represented worker or a registered organisation (if a worker in the worker consultation unit is, or is eligible to be, a member of that registered organisation) may apply to the chief executive as per the ACT's Administrative Arrangements, for the disqualification of a work safety representative for a worker consultation unit.

This clause also provides that an application to the chief executive seeking the disqualification of a work safety representative must be made in writing, must set out the grounds on which the disqualification is sought and may ask for the work safety representative to be suspended (until a decision is reached on their proposed disqualification).

Clause 36 Work safety representative – grounds for disqualification

Clause 36 provides a conclusive list of the grounds upon which a person may be disqualified from being a work safety representative. The first ground provided is where the work safety representative did something, or is doing something, in the exercise, or purported exercise, of their functions as a work safety representative with the intention or causing harm to an employer or an undertaking of the employer, or, for a purpose not connected with the exercise of their functions.

The second ground provided is that the work safety representative intentionally used, or disclosed to someone else, information obtained from an employer for a purpose not connected with the exercise of their functions as a work safety representative. The final ground is that the representative failed to reasonably exercise their functions as a work safety representative.

In addition, this clause provides that a work safety representative must not be disqualified for seeking assistance or advice on a work safety issues, or, for reporting a suspected breach of the Act or this Regulation to an inspector or a person assisting an inspector.

Clause 37 Work safety representative – notice of intention to disqualify

This clause provides that, if the chief executive, as per the ACT's Administrative Arrangements, receives an application for the disqualification of a work safety representative and is satisfied that a ground may exist to disqualify a work safety representative, they must give written notice to the work safety representative involved. This written notice is referred to as a *show cause notice*. The clause also says that, in the same circumstances, the chief executive must, if he or she considers it appropriate, suspend the work safety representative until the chief executive decides the application for disqualification.

The clause also provides that a *show cause notice* issued by the chief executive under this clause must contain a statement to the effect that the work safety representative may give the chief executive written reasons explaining why the work safety representative should not be disqualified. These written reasons may be given not later than 14 days after the day the work safety representative is given the show cause notice. A notice must be accompanied by a summary of the reasons for the application and, if applicable, be accompanied by a notice of suspension.

This notice would be applicable if the chief executive considers it appropriate to suspend the work safety representative until he or she decides the application for disqualification.

Clause 38 Work safety representative – disqualification

This clause provides that the chief executive, as per the ACT's Administrative Arrangements, may disqualify a work safety representative if each of three conditions are fulfilled. The first condition is that the chief executive is satisfied that a ground for disqualification under clause 36 of this Regulation exists. The second condition is that a show cause notice has been given under clause 37 of this Regulation in relation to that ground.

The third and final ground is that the time for the work safety representative to respond to the show cause notice has ended.

This clause also provides a list of matters that the chief executive must consider in deciding whether to disqualify a work safety representative. The first two factors need only be considered where the ground for disqualification is that the work safety representative did something, or is doing something, in the exercise of, or purported exercise, of their functions as a work safety representative, with the intention of causing harm to an employer, or an undertaking of an employer.

This first factor (where applicable) is the harm caused or likely to be caused to the employer or undertaking because of the thing the work safety representative did or is doing. The second factor (where applicable) is the effect (if any) on the public interest of the thing the work safety representative did or is doing.

The remaining two factors must be considered in all instances where the disqualification of a work safety representative is being considered by the chief executive. In all instances, the chief executive must consider the work safety representative's past record in exercising their functions as a work safety representative, and, any response by the work safety representative given in accordance with the show cause notice issued to them under clause 37 of this Regulation. This clause also provides that, in considering whether to disqualify a work safety representative, the chief executive may consider anything else that he or she considers relevant.

This clause also provides that, if the chief executive disqualifies a person from being a work safety representative, the chief executive must tell a number of people in writing about the disqualification. The chief executive must tell the person being disqualified, the person who applied for the disqualification of the work safety representative under clause 35 of this Regulation, and, each employer of a worker in the worker consultation unit the disqualified person represented as a work safety representative.

This clause requires that, if an employer has been advised of the disqualification of a work safety representative under this clause, that employer must tell workers the employer engages to carry out work in the unit about the disqualification.

Clause 39 Work safety representative – revocation of disqualification

This clause provides that the chief executive, as per the ACT's Administrative Arrangements, may revoke a disqualification under section 38 if the chief executive believes on reasonable grounds that it is no longer appropriate for the disqualification to remain in force. The chief executive may revoke a disqualification on application, or, on the chief executive's own initiative.

Clause 40 Work safety representative – approved training

This clause provides that a work safety representative for a worker consultation unit must complete a training course approved in writing by the Work Safety Council. This course is referred to as an 'approved training course'. The approval of a training course by the Work Safety Council is a notifiable instrument.

This clause also provides that an employer must take all reasonable steps to ensure that a work safety representative completes an approved training course not later than three months after the day the representative was elected, or, not later than a day determined by the chief executive, as per the ACT's Administrative Arrangements. The chief executive can determine a day for the completion of an approved training course under this clause if an employer applies to the chief executive for an extension of time, and, the chief executive is satisfied that there are exceptional circumstances that justify the extension.

This clause also provides that 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) of this Regulation unless the representative has completed an approved training course.

Clause 41 Work safety representative – refresher training

This clause provides that, if a work safety representative is re-elected for a further term that work safety representative must complete a refresher training course approved in writing by the Work Safety Council. Refresher training courses for this purpose are approved in writing by the Work Safety Council by notifiable instrument.

The clause also provides that an employer must take all reasonable steps to ensure that the work safety representative completes an approved refresher training course not later than three months after the work safety representative has been re-elected, or, not later than a day determined by the chief executive, as per the ACT's Administrative Arrangements. The chief executive may determine a day for the completion of an approved refresher training course under this clause if the employer applies to the chief executive for an extension of time, and, the chief executive is satisfied that there are exceptional circumstances that justify the extension.

This clause also provides that a work safety representative may exercise any function under the Act even if an approved refresher training course has not been completed as required under this section.

Division 4.4 Work safety representatives – employer’s duties

This Division requires that Work safety representatives must complete approved training (including approved refresher training) and employers must take all reasonable steps to ensure this occurs.

This division also requires employers to allow a work safety representative that the employer engages to perform work for them time off work to exercise their functions or undertake the training as well as paying any course fees and reimbursing reasonable expenses incurred by that work safety representative in undertaking an approved training course or approved refresher training course.

Clause 42 Work safety representative – employer to allow for time to exercise functions and undertake training

This clause provides that an employer of a work safety representative commits a strict liability offence if that employer does not allow the work safety representative to take the time off work, without loss of pay or any other entitlements, that is reasonably necessary for the work safety representative to do certain specified things.

These are to exercise the functions of a work safety representative, and, to undertake an approved training course, or an approved refresher training course, within three months after the day that the work safety representative is elected. The maximum penalty for this offence is 30 penalty units.

This clause also provides that an employer commits a strict liability offence if a work safety representative (or deputy representative) engaged by that employer undertakes an approved training course or approved refresher training course and that employer does not pay the fees for that course, and, reimburse the reasonable expenses that the work safety representative incurred in undertaking the course. The maximum penalty for this offence is 20 penalty units.

The clause also provides that an employer is not required to pay for fees and reimburse the expenses of a work safety representative if the work safety representative is a suitably qualified person who is not a worker engaged by the employer.

Clause 43 Work safety representative – employer to provide facilities

The employer of a work safety representative commits a strict liability offence if they do not provide access to the facilities that are reasonably necessary for the representative to exercise the functions of a work safety representative. The maximum penalty for this offence is 20 penalty units.

Division 4.5 Work safety representatives – provisional improvement notices

This division deals with how provisional improvement notices may be issued, the circumstances in which they may be issued, compliance and with the revocation of provisional improvement notices after they have been issued.

Clause 44 **Provisional improvement notice – Act, dictionary, definition**
provisional improvement notice

This clause provides that a provisional improvement notice must be in accordance with section 46 of this Regulation.

Clause 45 **Provisional improvement notice – issue of notice**

This clause provides for when a provisional improvement notice may be issued. A work safety representative may give a responsible person a provisional improvement notice if he or she believes on reasonable grounds that two particular circumstances exist. The first circumstance is that the responsible person is contravening, or is likely to contravene, a provision of the Act. The second circumstance is that the relevant contravention affects, or is likely to affect, one or more represented workers.

This clause provides that a provisional improvement notice may be issued by a work safety representative requiring the responsible person to rectify the matters or activities causing the contravention, or likely contravention, of the Act which led to the issuing of the provisional improvement notice.

This clause also provides that a work safety representative must not give a provisional improvement notice to a responsible person unless the work safety representative believes on reasonable grounds that taking any further steps to consult the responsible 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.

This clause also provides that 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.

Clause 46 **Provisional improvement notice – content of notice**

This clause provides for the content which must be included as part of a provisional improvement notice issued under this Regulation. A provisional improvement notice must state the circumstance that is occurring, or is likely to occur, that the work safety representative believes is causing a contravention, or may cause a contravention, and the reasons for that belief. A provisional improvement notice must also state the period in which the responsible person must rectify the matter or activity that the notice relates to. Under this clause, the notice can 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 responsible person, 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. In the alternative, in any other case the notice must 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 to which the notice relates.

This clause also provides that a provisional improvement notice may state the action the responsible person may take to rectify the matter or activity to which the notice relates. It also provides that, where a period of not less than 7 days has been given for rectification in a provisional improvement notice, the work safety representative who issued that notice may extend the period for compliance by written notice given to the responsible person.

Clause 47 Provisional improvement notice – service of notice on chief executive etc

This clause provides that a work safety representative who gives a provisional improvement notice to a responsible person must also give a copy of that notice to the chief executive, as per the ACT's Administrative Arrangements. It also provides that the work safety representative must take all reasonably practicable steps to give a copy of the provisional improvement notice to the worker's employer if the responsible person is a worker and the notice is given to them in relation to work carried out by that worker for that employer.

Clause 48 Provisional improvement notice – service of notice on other employers etc

This clause provides that an employer or responsible person commits a strict liability offence if they do not give a copy of a provisional improvement notice to a range of persons. The maximum penalty for this offence is 20 penalty units.

This offence provision only applies to an employer where the responsible person receiving a provisional improvement notice is a worker and the notice is given to the person in relation to work carried out by the person for an employer – in any other case, it applies to the responsible person.

This clause provides that a copy of the provisional improvement notice must be given to each other employer of workers at each affected workplace if the notice relates to something that affects workplaces where workers not employed by the employer work. This clause also provides that a copy of the provisional improvement notice which relates to premises must be given to each owner of the premises, any lessor and lessee of the premises (if the premises are leased), and, anyone else with a right to immediate possession of the premises.

If a provisional improvement notice relates to plant or a substance or other thing it must be given to the person from whom the thing is hired (if the plant or thing is hired under a hire-purchase agreement or contract of hire). If it relates to plant or a substance or other thing it must also be given to anyone else with a right to immediate possession of the plant or thing (whether or not the thing is hired).

Clause 49 Provisional improvement notice – display

This clause provides for the circumstances in which an employer is required to notify workers of a provisional improvement notice and display a copy of such a notice.

This clause provides that an employer commits a strict liability offence if they do not take all reasonably practicable steps to notify each worker whose work is affected by the contravention to which the notice relates that the notice has been issued, and, display a copy of the provisional improvement notice in a prominent place at or near each workplace where the work which the notice relates is usually carried out, while the notice is in force. The maximum penalty for this offence is 20 penalty units.

Clause 50 Provisional improvement notice – compliance

This clause provides that a responsible person commits a strict liability offence if a work safety representative has given that responsible person a provisional improvement notice issued under this Regulation, and the responsible person fails to undertake either, or both, of two specific actions. The maximum penalty for this offence is 30 penalty units.

The first required action is to ensure that the provisional improvement notice is complied with in relation to each matter than the notice relates to and the responsible person has control over. The second required action is to take reasonable steps to inform the work safety representative of the action taken to comply with the notice.

Clause 51 Provisional improvement notice – revocation of notice

This clause provides that a work safety representative who has given a responsible person a provisional improvement notice must revoke that notice in particular circumstances. These circumstances exist where the work safety representative believes on reasonable grounds that the responsible person ensured that the provisional improvement notice was complied with in relation to each matter that the notice related to and that the person had control over, and, took reasonable steps to inform the work safety representative of the action taken to comply with the notice.

This clause also provides that, if a work safety representative revokes a provisional improvement notice under this clause, they must give the responsible person written notice of the revocation and also give the chief executive, as per the ACT's Administrative Arrangements, a copy of that notice.

Clause 52 Provisional improvement notice - review

This clause provides that certain specified people have the right to ask the chief executive, as per the ACT's Administrative Arrangements, to arrange an inspection to investigate the circumstances relating to the issue of the provisional improvement notice. Under the clause, this right is provided to a responsible person in relation to whom a provisional improvement notice is in force, and, if the notice is in force in relation to work carried out by the responsible person for an employer, the employer.

This clause also provides that a person with the right to ask for an inspection must do so by written notice to the chief executive not later than 7 days after the day that the responsible person receives the notice. It also provides that, where a request for an inspection has been made under this clause, the chief executive must arrange for an inspector to investigate the circumstances relating to the issue of the provisional improvement notice, and, that the operation of the provisional improvement notice is suspended until an inspector completes an investigation of the circumstances relating to the issue of the notice.

Where a request for an inspection has been made under this clause, and an inspector has conducted an investigation, the inspector must revoke the provisional improvement notice if any one of three conditions is fulfilled. The first condition is that the inspector believes on reasonable grounds that the notice should not have been given to the person.

The second condition is that the inspector believes on reasonable grounds that the person to whom the notice was given has ensured that the notice was complied with in relation to each matter that the notice related to and that that person had control over, and, that the responsible person took reasonable steps to inform the work safety representative of the action taken to comply with the notice. The third condition is that the inspector believes on reasonable grounds that, for any other reason, the notice should not remain in force.

This clause also provides that, if a provisional improvement notice is revoked under this clause, the inspector must give written notice of the revocation to the work safety representative, the responsible person, the employer (where the responsible person is a worker and the notice is in relation to work they have carried out for that employer), and, each person mentioned in section 48(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

Under this division work safety representatives are able to implement emergency procedures if they believe on reasonable grounds there is an immediate threat to the work safety of a represented worker unless the worker stops carrying out particular work in some circumstances. It also confirms that the employer of a worker that is subject to a direction under this division can still require the worker to carry out alternative work.

Clause 53 Emergency procedures

This clause provides that if a work safety representative 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, the work safety representative must initiate emergency procedures.

This clause also provides that, where emergency procedures have been initiated, the work safety representative must tell a supervisor supervising the worker's work about the threat to the worker's work safety or, 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.

This clause provides that, where a supervisor has been told about a threat to the work safety of a worker under this clause, the supervisor must do what that supervisor considers appropriate to remove the threat. The clause provides that this may include directing the worker to stop, in a safe way, carrying out the work.

This clause also provides that a work safety representative or the supervisor, under this clause, may ask the chief executive, as per the ACT's Administrative Arrangements, to arrange for an inspector to investigate the relevant worker's work if one of two particular circumstances exist. The first circumstance is if the supervisor is told about a threat to the worker's work safety under this clause and the representative and supervisor cannot agree that what the supervisor has done is sufficient to remove the threat.

The second circumstance is if the supervisor is told about a direction given by a work safety representative under this clause (ie to stop work) and the work safety representative and supervisor cannot agree that the direction is necessary.

This clause also provides that, if a request for an inspection is made to the chief executive under this clause, the chief executive must arrange an inspector to investigate the work and the inspector must exercise the inspector's powers under the Act that the inspector considers necessary in relation to the work.

Clause 54 Emergency procedure – alternative work

This clause provides that nothing in this division of this Regulation affects an employer's right to require a worker to carry out alternative work while a direction under section 53(2)(b) is in force in relation to the work the worker usually carries out.

Part 5 Work safety committees

This part deals with who is eligible to be elected as a member of a work safety committee, the composition of a work safety committee, who may conduct the election of a work safety committee member, and, when a new member takes office. It also sets out additional functions and powers of committee members and provides for the duty of employers to facilitate the role of committees by supporting their workers who are members.

Division 5.1 Work safety committees - establishment

This division deals with who is eligible to be a member of a work safety committee that has been established for a worker consultation unit under the Act, the conduct of elections for committee members and the duties of employers who engage a worker that is also a member of a work safety committee for a worker consultation unit.

Clause 55 Work safety committee – eligibility

This clause sets out who is eligible to be elected as a member of a work safety committee for a worker consultation unit. Under the clause, the only eligible people are workers in the relevant worker consultation unit, any current work safety representative elected by that worker consultation unit, and, a person nominated by an employer of a worker in that worker consultation unit to represent the employer on the work safety committee

This clause also provides that at least half the members of a work safety committee established under the Act must be workers in the relevant worker consultation unit, or, work safety representatives for the worker consultation unit.

Clause 56 Election process – worker consultation unit may ask others to conduct election

This clause provides that a worker consultation unit may ask an employer, registered organisation (if a worker in the worker consultation unit is, or is eligible to be, a member of that registered organisation), or, someone else to conduct the election of a member of the work safety committee for that worker consultation unit.

This clause also provides that an employer commits a strict liability if they are asked by a worker consultation unit to conduct the election of a work safety committee member and the employer does not conduct the election within 42 days of being asked to do so. The maximum penalty for this offence is 10 penalty units.

Clause 57 Election process – notice of election of work safety committee members

This clause provides that, if a person is elected to a work safety committee for a worker consultation unit, the person who conducted the election must give notice of the election to each represented worker's employer. The clause also provides that this notice must include the name of the committee member who has been elected.

This clause also provides that an employer must, if given notice of the election of a committee member, tell workers in the relevant worker consultation unit the employer engages to carry out work that the person elected is a work safety committee member.

This clause includes examples of how to tell workers who their elected work safety representative is, such as by:

- email
- a notice posted at the worksite
- details included in a staff handbook

Division 5.2 Work safety committees- general

This division allows work safety committees to perform the following functions:

- to give information, ideas and feedback to the employer and managers about how to implement work safety best practice;
- to provide a forum for the employer to raise work safety concerns for the work safety committee to consider;
- to encourage workers to take an interest in work safety issues in their workplace;
- to review the circumstances of injuries, diseases and serious incidents in the workplace, and make recommendations to the employer; and
- to undertake other activities agreed between the employer and the work safety committee that the committee members have suitable qualifications and training to deal with.

Under this division, each employer for the relevant worker consultation unit would be required to give the work safety committee any information they had about risks to work safety for the workers in that worker consultation unit, at a workplace under their control, or, caused by their conduct or the plant or substances used for their undertaking. This division also requires each member's employer to allow them time off that is reasonably necessary to attend work safety committee meetings and exercise approved work safety committee functions. This time must be granted without loss of pay or other entitlements.

Clause 58 Work safety committee – exercising functions

This clause provides that, in exercising a function, a work safety committee may undertake certain activities and exercise certain powers. Firstly, a committee has the power to give information, ideas and feedback to the employer and managers about how to implement work safety best practice. Secondly, a committee may provide a forum for the employer to raise work safety concerns for the work safety committee to consider. Thirdly, a committee may encourage workers to take an interest in work safety issues in their workplace.

A work safety committee may also review the circumstances of injuries, diseases and serious incidents in the workplace and make recommendations to the employer. Finally, a committee may undertake other activities agreed between the employer and the work safety committee that the members have suitable qualifications and training to deal with.

Clause 59 Work safety committee – governance

This clause provides that a work safety committee may conduct its proceedings (including its meetings) as it considers appropriate. However, the clause also provides that a meeting of a work safety committee may only be held if a quorum is present at the meeting, and, that a quorum exists if at least one member representing the interests of the employer is present at the meeting and more than half of the members present at the meeting are either workers in the worker consultation unit or work safety representatives for the worker consultation unit.

Clause 60 Work safety committee – employer’s duties

This clause provides that, where a work safety committee is established for a worker consultation unit, an employer commits a strict liability offence if they do not perform each duty listed in this clause. The maximum penalty is 20 penalty units.

Under this clause, the employer must give the work safety committee any information the employer has in relation to risks to work safety for a represented worker that is either at a workplace under the employer’s control, or, caused by the employer’s conduct in, or plant or substances used for, an undertaking of the employer.

Under this clause, an employer must also allow a worker who is a member of a work safety committee to take the time off work, without loss of pay or other entitlements, that is reasonably necessary for the worker to attend committee meetings, undertake a work safety course with the employer’s agreement, and, to exercise work safety committee functions (with the approval of the committee).

This clause also defines work safety course, for the purposes of the above offence, as a training course in relation to work safety that is necessary and reasonable for the worker to undertake to be able to undertake the duties of a work safety committee member that is also approved in writing by the work safety committee.

Part 6 Authorised representatives

This part sets out what training an authorised representative must have completed to be eligible for appointment as an authorised representative as well as the process by which a person might be disqualified after they have been appointed.

Clause 61 Authorised representative - training – Act, s 62(2)(b)

This clause provides that an authorised representative must hold at least a certificate IV in occupational health and safety for the purposes of section 62(2)(b) of the Act.

Clause 62 Authorised representative – application for disqualification

This clause provides who may apply to the chief executive, as per the ACT's Administrative Arrangements, for the disqualification of an authorised representative. Under the clause, such an application may be made by an employer of a represented worker that has been affected by an action of the authorised representative, a represented worker that has been affected by an action of the authorised representative, or, by a registered organisation (if a worker in the worker consultation unit is, or is eligible to be, a member of a registered organisation).

This clause also provides that an application to the chief executive for the disqualification of an authorised representative under this clause must be in writing, must set out the grounds on which the application is sought, and, may ask for the authorised representative to be suspended while the application is determined.

Clause 63 Authorised representative – grounds for disqualification

This clause provides a comprehensive list of the only grounds upon which an authorised representative can be disqualified by the chief executive, as per the ACT's Administrative Arrangements, under this Regulation.

Under this clause, an authorised representative can be disqualified if they have contravened division 4.4 of the Act (which concerns entry to workplaces), if the authorised representative has threatened to contravene division 4.4 of the Act, or, if the authorised representative has, in exercising a function under this part of the Regulation, intentionally hindered or obstructed an employer or worker or otherwise acted improperly.

Clause 64 Authorised representative – notice of intention to disqualify

Under this clause, the chief executive, as per the ACT's Administrative Arrangements, must give an authorised representative a written notice, referred to as a 'show cause notice', if the chief executive is satisfied that a ground for disqualifying that authorised representative may exist.

This clause provides that a show cause notice issued under this clause must tell the authorised representative to whom it is given that the chief executive intends to disqualify them, why the chief executive intends to disqualify them, and, that the authorised 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 authorised representative should not be disqualified.

This clause also provides that the chief executive may, at the same time or immediately after giving the authorised representative the show cause notice, suspend that authorised representative if the chief executive is satisfied on reasonable grounds that, if not immediately suspended, the authorised representative may either injure a worker, or, cause significant damage to premises or a business or undertaking.

Clause 65 Authorised representative – disqualification

This clause provides that the chief executive, as per the ACT’s Administrative Arrangements, may disqualify an authorised representative if he or she is satisfied that a ground for disqualification exists under section 60, a show cause notice has been given under clause 64 of this Regulation, and, the time for the authorised representative to respond to the show cause notice has ended.

This clause also provides that, in deciding to disqualify an authorised representative, the chief executive must consider that representative’s past record in exercising their functions as an authorised representative, and, any response by that authorised representative given in accordance with the show cause notice. Further, the clause provides that the chief executive may consider anything else the chief executive considers relevant.

This clause also provides that, if the chief executive disqualifies a person as an authorised representative under this clause, the chief executive must tell a number of specific people in writing about the disqualification. Under this clause, the chief executive must tell the authorised representative, the person who applied under clause 62 of this Regulation for the person to be disqualified, and, a registered organisation if the chief executive knows, or believes, that the person is an employee of, or holds an office in, that registered organisation.

Clause 66 Authorised representative – revocation of disqualification

This clause provides that a chief executive, as per the ACT’s Administrative Arrangements, may revoke a disqualification under section 65 if the chief executive believes on reasonable grounds that it is no longer appropriate for the disqualification to remain in force. The chief executive may revoke disqualification on application or on the chief executive’s own initiative.

Part 7 Particular safety measures

This part sets out particular safety measures that apply generally to most workplaces.

Division 7.1 Entry and Exit

The provisions in this division provide for safe entry to and exit from workplaces, safe access to and movement within workplaces, and, the ability to leave workplaces in an emergency.

Clause 67 Entry to and exit from workplaces

This clause provides that 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 enter, exit and move safely about the workplace, and, leave the workplace in an emergency. The maximum penalty is 20 penalty units.

This clause also provides that a person in control of premises commits an offence if anyone coming into or leaving the premises is not able to enter, exit and move safely about the premises, and, leave the premises in an emergency. The maximum penalty is 20 penalty units.

Clause 68 Movement within workplaces

This clause provides that 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 each place at the workplace where the person is allowed, and, safe access to any amenities at the workplace where the person is allowed. The maximum penalty is 20 penalty units.

This clause also provides that a person in control of premises commits an offence if anyone allowed at the workplace does not have safe access to each place at the workplace where the person is allowed, and, safe access to any amenities at the workplace where the person is allowed. The maximum penalty is 20 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability 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. The maximum penalty is 20 penalty units.

This clause also provides that a person in control of premises commits a strict liability 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. The maximum penalty is 20 penalty units.

Division 7.2 Personal protective and safety equipment

This division deals with the use of personal protective and safety equipment.

Clause 69 Person conducting business or undertaking to provide personal protective and safety equipment

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if measures taken at the workplace to minimise a risk include the use of personal protective and safety equipment, and, at least one of a number of circumstances apply.

The first circumstance is where the equipment provided is not adequate for the person. The second circumstance is where the equipment provided does not minimise the risk for the person. The third circumstance is where the person is not told of any limitation of the equipment. The fourth circumstance is where the person is not given the instruction and training necessary to ensure that the equipment minimises the risk for the person. The fifth circumstance is that the equipment is not properly maintained and repaired or replaced as frequently as is necessary to minimise the risk for the person. The final circumstance is where the equipment is not kept in a clean and hygienic condition. The maximum penalty for this offence is 20 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if personal protective and safety equipment used to minimise risk at the workplace is not stored in an accessible place at the workplace. The maximum penalty is 20 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if there are areas in the workplace where personal protective and safety equipment must be used and the areas are not clearly identified. The maximum penalty is 20 penalty units.

Clause 70 Responsibilities of users of personal protective and safety equipment

This clause provides that a worker commits an offence if they are provided with personal protective and safety equipment for use at their workplace, and are given the instruction and training necessary to ensure that the equipment minimises the risk for the worker, and, they intentionally do not use the equipment at the worker's workplace or the worker does not use the equipment in accordance with the instructions given. The maximum penalty is 20 penalty units.

This clause also provides that a worker commits an offence if the worker intentionally misuses or damages personal protective and safety equipment at the worker's workplace. The maximum penalty is 20 penalty units.

This clause also provides that a worker commits an offence if they become 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, the worker intentionally does not tell the person conducting the business or undertaking at the workplace about the damage, defect or need in relation to the equipment. The maximum penalty is 20 penalty units.

Clause 71 Certain personal protective and safety equipment to be provided

This clause provides that, in certain circumstances a number of strict liability offences (below) are committed that relate to personal protective and safety equipment where a person should be highly visible because of the nature of the workplace, and, it is reasonably foreseeable that a person could, while at that workplace, either:

- be struck by an object or other material capable of causing injury;
- be injured by coming into contact with a sharp object;
- be subject to a risk to health or safety because of exposure to a substance; agent, contaminant, radiation or extreme of temperature; or
- be exposed to a risk of injury to eyesight or to hearing capacity.

In the above circumstances only, this clause provides that a person conducting a business or undertaking commits a strict liability offence if adequate personal protective and safety equipment is not provided to anyone at the workplace. The maximum penalty is 30 penalty units.

In the above circumstances only, this clause also provides that a person conducting a business or undertaking commits a strict liability offence if the use of personal protective equipment at the workplace may affect a person's ability to communicate with other people, and, 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. The maximum penalty is 30 penalty units.

In the above circumstances only, this clause provides that a person in control of premises commits a strict liability offence if adequate personal protective and safety equipment is not provided to anyone at the premises. The maximum penalty is 30 penalty units.

In the above circumstances only, this clause provides that a person in control of premises commits a strict liability offence if the use of personal protective equipment at the premises may affect a person's ability to communicate with other people and 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. The maximum penalty is 30 penalty units.

Clause 72 Air supplied respiratory equipment

This clause provides for several offences connected with the provision and use of air supplied respiratory equipment at a workplace. Each of the offences in this clause apply only if air supplied respiratory equipment is used, or provided for use, at a workplace.

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the air supplied respiratory equipment provided supplies air at less than 170L/minute and contains less than 19.5% or more than 22% oxygen. The maximum penalty is 30 penalty units.

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence unless the air supplied to a person using the air supplied respiratory equipment provided at the workplace meets certain standards.

The air must pass through an efficient purifying device that ensures that the air does not have an objectionable or nauseous odour and, if measured at 15°C and 100kPa, the air would contain not more than 11mg/m³ of carbon monoxide, not more than 900mg/m³ of carbon dioxide, and, not more than 1mg/m³ of oil. The air must also pass through an efficient conditioner that ensures that the air is supplied at a temperature not colder than 15°C and not warmer than 25°C and the humidity is not less than 20% and not more than 85%. The air must also pass through an efficient condensate trap that is fitted with a drain cock to remove any condensed liquid. The air must also pass through an efficient ring circuit or controlled leak-off system that eliminates stale air. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking commits a strict liability offence if the air supplied respiratory equipment provided at the workplace is not kept in efficient working order, in a place where it cannot be contaminated, maintained in a way that ensures the air supply does not overheat, and, provided with fittings that cannot be connected to any other compressed air equipment at the workplace. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking commits a strict liability offence if the air supplied respiratory equipment provided at the workplace does not include an automatic warning device and is used in circumstances in which inadequate air supply might represent an immediate hazard to the user of the equipment and an auxiliary air supply is not provided. The maximum penalty is 30 penalty units.

Division 7.3 Prevention of falls

This division sets out measures which must be taken to prevent falls at work.

Clause 73 Meaning of *anchorage*- div 7.3

This clause defines ‘anchorage’ as a secure point for attaching a safety line or other component of a travel restraint system or fall arrest system.

Clause 74 Protection against falls

This clause establishes an offence which applies only if, because of the nature of the work, a worker must work in a workplace from which the worker could fall and, if the worker did fall, it is likely that the worker would be injured.

This clause provides that, in the above circumstances, 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. The maximum penalty is 30 penalty units.

For the purposes of this offence, adequate protection is provided if the duty holder provides a safe means of entry and exit from the workplace, and, either provides a protective barrier for the workplace, or, if this is not reasonably practicable, provides and maintains a safe system of work for the workplace. This clause further provides

that, for the purposes of this offence, to provide and maintain a safe system of work a person must:

- provide training in relation to risks associated with working in the workplace;
- provide supervision or assistance for people working in the workplace;
- use a fall-arresting device in the workplace if practicable; and
- provide a safe working platform if this can reasonably be provided in the workplace, or, if it can not be reasonably provided in the workplace, use a safety harness or pole safety static-line system if practicable.

Clause 75 Protection against falls – maintenance work

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if a worker is carrying out maintenance work on a structure at the workplace and the duty holder does not ensure that the worker uses a properly installed building maintenance unit, scaffolding or a working platform. If it is not reasonably practicable to use a building maintenance unit, scaffolding or a working platform, it is sufficient to ensure that the worker uses 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. The maximum penalty is 30 penalty units.

This clause also establishes that a building maintenance unit means a power-operated suspended platform and related equipment that is designed to provide access to a face of a building for maintenance purposes, and, is permanently installed on the building.

Clause 76 Use of safety harness, safety line and anchorage

The offences set out in this clause apply only in circumstances where a safety harness, a safety line or an anchorage is used, or provided for use, at a workplace.

This clause provides that a person conducting a business or undertaking at the workplace commits a strict liability offence if the person does not ensure that the safety harness, safety line or anchorage used at the workplace is regularly inspected, and, is kept in efficient working order. An anchorage point that is permanently fixed to a structure must be inspected at least every 6 months to be considered to be kept in efficient working order. The maximum penalty is 30 penalty units.

Under this clause a person also commits an offence if they intentionally use a safety harness or safety line at a workplace that is not suitable for the use, undamaged, effective and maintained in a suitable condition for the use. The maximum penalty is 30 penalty units.

Under this clause a person also commits an offence if he or she intentionally uses an anchorage at a workplace and the load-bearing capacity of the anchorage is impaired. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at the workplace commits an offence if the person is aware that the load-bearing capacity of the anchorage at the workplace is impaired, and, allows the anchorage to be used before it is repaired or replaced. The maximum penalty is 30 penalty units.

Clause 77 Use of ladders

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if a ladder used or provided for use at the workplace is not of sound construction, and, kept in a safe condition. The maximum penalty is 20 penalty units.

A person also commits an offence under this clause if he or she intentionally uses a ladder at a workplace in a way that creates a risk to the safety of anyone. The maximum penalty is 20 penalty units.

Clause 78 Use of particular types of ladders

This clause provides that a person commits a strict liability offence if they use a portable single ladder or extension ladder at a workplace in any of three specific circumstances. The first circumstance is where the horizontal distance between the ladder's top support point and its foot is more than $\frac{1}{4}$ of its supported length. The second circumstance is where the ladder is not placed on a firm footing. The third circumstance is where the ladder is not secured to prevent slipping and sideways movement. The maximum penalty is 30 penalty units.

A person also commits a strict liability offence under this clause if he or she uses a ladder at a workplace to support planks for a working platform and the ladder used is not a trestle ladder. The maximum penalty is 30 penalty units.

A person also commits a strict liability offence under this clause if he or she uses a working platform supported by trestle ladders at a workplace, and, the working platform is used for work other than light duty work. For this purpose, 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). The maximum penalty is 30 penalty units.

Division 7.4 Atmosphere and ventilation

Clause 79 Definitions - div 7.4

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

This clause also establishes that *safe oxygen level* in this division 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.

This clause also establishes that *safe unclassified inhalable dust level* in this division means a level of unclassified inhalable dust of 10mg/m³ (TWA) or less.

This clause also establishes that *TWA* (or '*time-weighted average*') in this division, for workers working standard hours, means the average airborne concentration of a particular substance when calculated over an 8 hour working day for a 5 day working week. This clause also establishes that *TWA* or *time-weighted average* in this division, for workers working non-standard hours, means 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.

This clause also establishes that *unclassified inhalable dust*, in this division, means inhalable dust of a type that is not classified in the national exposure standards. This clause also establishes that *unsafe oxygen level*, in this division, an oxygen level other than a safe oxygen level

Finally, this clause establishes that *unsafe unclassified inhalable dust level* means a level of unclassified inhalable dust other than a safe unclassified inhalable dust level.

Clause 80 Ventilation

This clause provides that a person conducting a business or undertaking commits a strict liability offence if their workplace is not adequately ventilated. The maximum penalty is 30 penalty units.

This clause provides that a person in control of premises commits a strict liability offence if the person's premises are not adequately ventilated. The maximum penalty is 30 penalty units.

For the purposes of both strict liability offences in this clause, what is adequate must be decided having regard to the nature of the work undertaken at the workplace, the size and location of the workplace, and, the number of workers at the workplace and their characteristics including gender, age and special needs.

Clause 81 Unsafe oxygen levels - particular measures

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if atmospheres in the workplace contain unsafe oxygen levels, or are reasonably likely to develop unsafe oxygen levels, and the person does not manage the risk associated with unsafe oxygen levels. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if atmospheres in the premises contain unsafe oxygen levels, or are reasonably likely to develop unsafe oxygen levels, and the person does not manage the risk associated with unsafe oxygen levels. The maximum penalty is 30 penalty units.

Clause 82 Unsafe levels of unclassified inhalable dust – particular measures

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if atmospheres in that workplace contain, or are reasonably likely to develop, unsafe unclassified inhalable dust, the duty holder does not display warning signs about the unsafe unclassified inhalable dust levels, and, does not otherwise manage the risk associated with unsafe unclassified inhalable dust levels. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if atmospheres in that workplace contain, or are reasonably likely to develop, unsafe unclassified inhalable dust levels, the duty holder does not display warning

signs about the unsafe unclassified inhalable dust levels, and, does not otherwise manage the risk associated with unsafe unclassified inhalable dust levels. The maximum penalty is 30 penalty units.

Clause 83 Unsafe levels of oxygen and unclassified inhalable dust – entry

This clause provides that 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 a strict liability offence if that person does not ensure that the unsafe place in the person’s workplace is isolated, and, appropriate warning signs are displayed at entry points to the unsafe place. The maximum penalty is 30 penalty units.

This clause also says that a person in control of premises where there is a risk of unsafe oxygen levels or unsafe levels of unclassified inhalable dust commits a strict liability offence if that person does not ensure that the unsafe place in the person’s workplace is isolated, and, that appropriate warning signs are displayed at entry points to the place. The maximum penalty is 30 penalty units.

Clause 84 Monitoring levels of oxygen and unclassified inhalable dust

This clause provides that 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 a strict liability offence if the person does not ensure that a number of actions are undertaken. The first is that appropriate monitoring is undertaken at the workplace in accordance with a suitable procedure. The second is that the results of the monitoring are recorded. The third is that 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. The final action is that safe oxygen levels and safe unclassified inhalable dust levels are maintained at the workplace. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises where there is a risk of unsafe oxygen levels or unsafe levels of unclassified inhalable dust commits a strict liability offence if the person does not ensure that a number of actions are undertaken. The first is that appropriate monitoring is undertaken at the premises in accordance with a suitable procedure. The second is that the results of the monitoring are recorded. The third is that 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.

The final action is that safe oxygen levels and safe unclassified inhalable dust levels are maintained at the premises. The maximum penalty is 30 penalty units.

Division 7.5 Heat and cold

This division deals with measures to ensure the work safety of workers working in a hot or cold environment at the workplace.

Clause 85 Air temperature

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if work practices at the workplace do not

protect workers from extremes of heat and cold. The maximum penalty is 30 penalty units.

Clause 86 Heat – particular measures

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the workplace environment becomes, or could reasonably be expected to become, hot and the person does not ensure that certain measures are taken at the workplace. The duty holder must ensure that adequate ventilation and air movement is provided, adequate personal protective and safety equipment is provided to each worker exposed to heat, and, that appropriate work and rest regimes are provided at the workplace for each worker exposed to heat. The maximum penalty is 10 penalty units.

The clause also provides that what is adequate for the purposes of this clause must be decided having regard to the nature of the work undertaken at the workplace, the size and location of the workplace, and, the number of workers at the workplace and their characteristics including gender, age and special needs.

Clause 87 Cold – particular measures

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the workplace environment becomes, or could reasonably be expected to become, cold and the person does not ensure that certain measures are taken at the workplace. The duty holder must ensure that workers exposed to cold at the workplace have adequate access to heated or sheltered work areas and to warm clothing or other personal protective and safety equipment. The duty holder must also ensure that appropriate work and rest regimes are provided at the workplace for each worker exposed to cold. The maximum penalty is 10 penalty units.

Division 7.6 Surfaces and floors

This division deals with measures to ensure work safety in relation to surfaces and floors.

Clause 88 Floors-general

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability 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. The maximum penalty is 20 penalty units.

This clause also provides that a person in control of premises commits a strict liability 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. The maximum penalty is 20 penalty units.

This clause also provides that 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 a strict liability 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. The maximum penalty is 20 penalty units.

Clause 89 Floors that become slippery

This clause provides for two offences which apply if a floor at a workplace becomes slippery, whether because of something on the surface of the floor, or for any other reason.

This clause provides that where the above circumstance exists, a person conducting a business or undertaking at that workplace commits a strict liability offence if he or she does not take all reasonably practicable steps at the workplace to warn people of the risk, remove the hazard, and, take other appropriate steps at the workplace to minimise the risk. The maximum penalty is 20 penalty units.

This clause also provides that, in the above circumstances, a person in control of premises commits a strict liability offence if he or she does not take all reasonably practicable steps at the premises to warn people of the risk, to remove the hazard, and, take other appropriate steps at the premises to minimise the risk. The maximum penalty is 20 penalty units.

Clause 90 Floors –hard surfaces

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if 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, the covering for the hard surface does not have low thermal conductivity, and/or if, the floor or work platform is not designed to give reasonable relief from the hard surface. The maximum penalty is 20 penalty units.

Division 7.7 Electricity

This division sets out measures which must be taken to ensure work safety which relate to working with or near electricity at a workplace.

Clause 91 Definitions-div 7.7

This clause establishes that, for this division, electrical inspector means an inspector appointed under section 41 of the *Electricity Safety Act 1971*. It also establishes that, for this division, electrical installation has the same meaning as that established in the dictionary of the *Electrical Safety Act 1971*.

Clause 92 Electricity - measures for electrical installations

This clause provides that a person conducting a business or undertaking at a workplace must ensure that each electrical installation at that workplace is safe, or, if an electrical installation is not safe:

- the installation or unsafe part of the installation is disconnected from the electricity supply; and
- if the installation, or part of the installation, has been found unsafe by an electrical inspector, the part or installation that is unsafe is danger labelled and secured to prevent inadvertent reconnection.

This clause also provides that person in control of premises must ensure that each

electrical installation at a workplace is safe, or, if an electrical installation is not safe:

- the installation or unsafe part of the installation is disconnected from the electricity supply; and
- if the installation, or part of the installation, has been found unsafe by an electrical inspector, the part or installation that is unsafe is danger labelled and secured to prevent inadvertent reconnection.

This clause also provides that a person conducting a business or undertaking at a workplace where there is an electrical installation commits a strict liability offence if an electrical installation at the workplace is not suitably enclosed, and, someone can make inadvertent contact with a live part at the electrical installation. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if an electrical installation at a workplace where there is an electrical installation is not suitably enclosed, or, if someone can make inadvertent contact with a live part at the electrical installation. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if someone enters an electrical installation at that workplace that has an electrical hazard and the person entering the installation is not appropriately trained in safe entry, emergency procedures and the safe use of electrical plant and equipment. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if someone enters an electrical installation at the premises that has an electrical hazard and the person entering the installation is not appropriately trained in safe entry, emergency procedures and the safe use of electrical plant and equipment. The maximum penalty is 30 penalty units.

This clause also establishes that *live part*, for the purposes of this clause, means a live part as defined in AS/NZS 3000.

Clause 93 Electricity – measures for articles of electrical equipment

This clause provides that the offences in this clause apply if an article of electrical equipment is provided for use at, or in connection with, an electrical installation at the workplace.

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure that the article of electrical equipment is safe, or, if the article of electrical equipment is not safe, if the duty holder does not ensure that the article is disconnected from the electricity supply, and, if found unsafe by an electrical inspector, the article, or part of the article that is unsafe, is danger labelled and secured to prevent inadvertent reconnection. The maximum penalty for this offence is 30 penalty units.

This clause provides that a person in control of premises commits a strict liability offence if the person does not ensure that the article of electrical equipment is safe, or, if the article of electrical equipment is not safe, if the duty holder does not ensure that

the article is disconnected from the electricity supply, and, if found unsafe by an electrical inspector, the article, or part of the article that is unsafe, is danger labelled and secured to prevent inadvertent reconnection. The maximum penalty for this offence is 30 penalty units.

This clause provides that, for the purposes of this clause, an article of electrical equipment has same meaning as in the dictionary to the *Electricity Safety Act 1971*.

Clause 94 Electricity – measures for preventing contact

The duties set out in this clause are expressed to **not** apply where the relevant person undertaking electrical work is licensed to undertake that work under the *Construction Occupations (Licensing) Act 2004*.

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if he or she does not 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. The maximum penalty for this offence is 30 penalty units.

This clause also provides that a person of premises commits a strict liability offence if he or she does not 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. The maximum penalty for this offence is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if he or she does not 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. However, this duty does not apply if a written risk assessment is given to the electricity network operator and that operator is satisfied that work to be done in accordance with the risk assessment will be safe. The maximum penalty for this offence is 30 penalty units

This clause also provides that a person of premises commits a strict liability offence if he or she does not 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. However, this duty does not apply if a written risk assessment is given to the electricity network operator and that operator is satisfied that work to be done in accordance with the risk assessment will be safe. The maximum penalty for this offence is 30 penalty units

This clause establishes that, for this clause, electricity distributor has the same meaning as in the dictionary to the *Utilities Act 2000*.

For this clause, *electricity network operator* means the person responsible for network operations for the relevant electricity distributor.

Finally, for this clause, *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

This division sets out a range of measures which ensure work safety in relation to working in confined spaces.

Clause 95 Definitions – div 7.8

This clause establishes that, for this division, *atmospheric contaminant* means either a dangerous substance in the form of a fume, mist, gas, dust or vapour, an asphyxiant, or, nuisance dust.

This clause also establishes that, for this division, *confined space*, for a workplace, means an enclosed, or partly enclosed, space in the workplace that is not designed as or intended to be a workplace, is at atmospheric pressure while people are in it, may have restricted entry and exit, and, may have either:

- an atmosphere with potentially harmful contaminants; or
- an unsafe oxygen level; or
- stored substances that may cause engulfment.

This clause also establishes that, for this division, *entry permit* means a written document that identifies the confined space, clearly describes the work to be carried out in the confined space, sets out the risk management steps to be taken, states the name of each person who may enter or work in the confined space, and, states the date and time when each person may enter or be in the confined space to carry out the work.

The clause also establishes that the meaning of *safe oxygen level* and of *unsafe oxygen level*, for the purposes of this division, is provided by section 79 of this regulation.

Clause 96 Design etc – confined spaces

This clause provides that a person in control of the design, manufacture or supply of a confined space commits a strict liability offence if they do not ensure that the space is designed so that there is ordinarily no need for anyone to enter it, and, if entry is needed, the space has a safe means of entry and exit. The maximum penalty is 30 penalty units.

This clause also provides that a person who modifies a confined space commits a strict liability offence if they do not ensure that the modification does not adversely affect the safe means of entry and exit. The maximum penalty is 30 penalty units.

Clause 97 Hazard identification and risk assessment – confined spaces

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not identify each confined space at the workplace, and, each reasonably foreseeable hazard associated with working in the space. The maximum penalty is 20 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability 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. The maximum penalty is 30 penalty units. A *suitably qualified person*, for this purpose, is someone who is suitably qualified by experience or training to carry out the risk assessment.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if there is evidence that the risk assessment undertaken under the previous offence does not address, or no longer addresses, the risks posed by the confined space for which the risk assessment is undertaken, and, the person does not ensure that the risk assessment is reviewed. The maximum penalty is 20 penalty units.

This clause establishes that, for this clause, *risk assessment* includes at least an assessment of the nature of the space and the work to be done, whether work can be done without entering the space, different ways that the work can be done, and, the risks associated with the method of work, the plant to be used and any potential hazard in the space.

Clause 98 Entry to and work in confined spaces

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if 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, the duty holder does not ensure that, either, no-one enters that confined space, or, that work is not performed in the confined space at the workplace. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure that a number of things have been done before anyone enters a confined space at the workplace. The duty holder must ensure that the space contains a safe oxygen level, that any atmospheric contaminant in the space is reduced to below the exposure standard for the contaminant under the national exposure standards, that the concentration of any flammable contaminant in the atmosphere of the space is below 5% of its LEL, the space is not extremely hot or cold, and, that steps are taken to minimise any risk associated with the presence of vermin in the space. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability 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 confined space is 10% or more of its LEL. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits an offence if 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, the duty holder does not ensure that, either, no-one enters that confined space, or, that work is not performed in the confined space at the premises. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if the person does not ensure that a number of things have been done before anyone enters a confined space at the premises. The duty holder must ensure that the space contains a safe oxygen level, that any atmospheric contaminant in the space is reduced to below the exposure standard for the contaminant under the national exposure standards, that the concentration of any flammable contaminant in the atmosphere of the space is below 5% of its LEL, the space is not extremely hot or cold, and, that steps are taken to minimise any risk associated with the presence of vermin in the space. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if they do 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 confined space is 10% or more of its LEL. The maximum penalty is 30 penalty units.

This clause establishes that, for this clause, 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.

Clause 99 Isolation and control of potentially hazardous services – particular measures

This clause sets out a number of offences, each of which only applies if a service that may be present in a confined space is normally connected to a confined space. This service is referred to as a *potentially hazardous service*. The clause provides that gas supply lines and electrical wiring or cabling are examples of potentially hazardous services for this clause.

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability 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 either of two circumstances occurring. The first circumstance is that the introduction of any material, contaminant, agent or the creation of a condition that may be harmful to someone in the space. The second circumstance is 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 confined space. The maximum penalty is 30 penalty units.

This clause provides that a person in control of premises commits a strict liability 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 either of two circumstances occurring. The first circumstance is that the introduction of any material, contaminant, agent or the creation of a condition that may be harmful to someone in the space.

The second circumstance is 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 confined space. The maximum penalty is 30 penalty units.

Clause 100 Clearing containment before entry – particular measures

This clause sets out a number of offences, each of which only applies if a confined space must be cleared of contaminants to comply with section 95 of this Regulation (entry to and work in confined spaces).

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability 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 confined space. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure that pure oxygen or a gas mixture in concentration of more than 21% of oxygen by volume is not used to purge or ventilate the confined space at the workplace. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability 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 confined space. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if the person does not ensure that pure oxygen or a gas mixture in concentration of more than 21% of oxygen by volume is not used to purge or ventilate the confined space at the premises. The maximum penalty is 30 penalty units.

Clause 101 Unsafe level of oxygen and atmospheric contaminants

This clause sets out a number of offences, each of which only applies if a safe oxygen level cannot be provided in a confined space at a workplace, or, an atmospheric contaminant in a confined space at a workplace cannot be reduced to below the exposure standard under the national exposure standards.

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person allows someone to enter a confined space at the workplace, and, the person entering is not equipped with suitable personal protective and safety equipment, including air supplied respiratory protective equipment. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if the person allows someone to enter a confined space at the workplace and the person entering is not equipped with suitable personal protective and safety equipment, including air supplied respiratory protective equipment. The maximum penalty is 30 penalty units.

Clause 102 Entry permits – particular measures

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability 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. The maximum penalty is 20 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not give each person who is required to do work in a confined space at the workplace a copy of the entry permit, and, reasonable time to read the entry permit before the person is required to enter the confined space. The maximum penalty is 20 penalty units.

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if someone enters or works in a confined space at the workplace, and, the entry or work does not comply with an entry permit under this section. The maximum penalty is 20 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if a confined space at the workplace is returned to normal use, and, the person does not have written confirmation from the person in direct control of the work in the confined space that the work has been completed and each person involved in the work has left the confined space. The maximum penalty is 20 penalty units.

This clause also provides that a person in control of premises commits a strict liability 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. The maximum penalty is 20 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if someone enters or works in a confined space at the premises, and, the entry or work does not comply with an entry permit under this section. The maximum penalty is 20 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if a confined space at the premises is returned to normal use, and, the person does not have written confirmation from the person in direct control of work in the confined space that the work has been completed and each person involved in the work has left the confined space. The maximum penalty is 20 penalty units.

Clause 103 Standby people – particular measures

This clause sets out a number of offences, each of which only applies if there is a confined space at a workplace and someone is in the confined space.

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if they do not appoint one or more people as standby people for the work in the confined space at the workplace. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability 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 has not undertaken training in accordance with section 104 (Training about confined spaces), cannot operate the monitoring equipment used to ensure safety

during entry to, and work in, the confined space, and, cannot initiate emergency procedures (including rescue procedures). The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure that a standby person remains outside and near the confined space at the workplace while anyone is in the confined space, is able to communicate continuously with anyone in the confined space, and, if practicable, is able to see anyone in the confined space. The maximum penalty is 30 penalty units.

Clause 104 Emergencies – particular measures

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure that appropriate emergency equipment is provided when someone is in a confined space at the workplace. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability 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. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if he or she does not ensure that the openings for entry and exit from a confined space at the workplace are large enough to allow the rescue of anyone in the space, and, if he or she does not ensure that the openings are not obstructed by anything that could impede the rescue, or, if this is not possible, another suitable means of rescued is provided. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if the person does not ensure that appropriate emergency equipment is provided when someone is in a confined space at the premises. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability 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. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if the person does not ensure that the openings for entry and exit from a confined space at the workplace are large enough to allow the rescue of anyone in the space, and, does not ensure that the openings are not obstructed by anything that could impede the rescue, or, if this is not possible, that another suitable means of rescued is provided. The maximum penalty is 30 penalty units.

Clause 105 Entry protection – particular measures

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability 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. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability 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. The maximum penalty is 30 penalty units.

Clause 106 Atmospheric testing and monitoring – particular measures

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability 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 confined space is or may be contaminated with an atmospheric contaminant, is or may be contaminated with a flammable contaminant, or has or may have an unsafe oxygen level. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability 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 confined space is or may be contaminated with an atmospheric contaminant, is or may be contaminated with a flammable contaminant, or, has or may have an unsafe oxygen level. The maximum penalty is 30 penalty units.

Clause 107 Training about confined spaces

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability 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. The maximum penalty is 30 penalty units.

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability 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. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace may also provide the training to anyone who could be involved in rescue and first aid procedures involving a confined space, and, anyone who does one or more of the following:

- assesses the safety of confined spaces;
- issues entry permits for confined spaces;
- designs and fixes the layout of workplaces;
- supervises people working in or near confined spaces;
- maintains equipment used in confined spaces; and
- purchases, distributes, fits, wears or maintains personal protective equipment used for work in confined spaces.

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not make a written

record of training given under this clause, and, of the people to whom the training is given. The maximum penalty is 20 penalty units.

This clause establishes that, for this clause, *standby person* means a person appointed as a standby person under section 101 of this regulation.

It also establishes that, for this clause, *training* must include instruction in the hazards of confined spaces, risk assessment procedures, risk management steps, emergency procedures and the selection, use, fitting and maintenance of safety equipment.

Clause 108 Record keeping

This clause provides that a person conducting a business or undertaking at a workplace must keep entry permits for a confined space at the workplace for one month after the day the space is returned to normal use, risk assessment reports for work in a confined space at the workplace for five years after the last entry in the report, and, 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.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if an inspector requests access to a record made under this clause in relation to the workplace and the person does not give access to the record. The maximum penalty is 20 penalty units.

This clause also provides that, if a record made under this clause contains information personal to a worker, a person conducting a business or undertaking must give the worker access to the record on request.

Division 7.9 Lighting

This division contains two offences which require adequate lighting to be provided.

Clause 109 Person conducting business or undertaking to provide lighting

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not provide adequate lighting at the workplace. The maximum penalty is 30 penalty units.

What is adequate for the purposes of this clause, must be decided having regard to the nature of the tasks performed by each worker at the workplace.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure that the lighting provided at the workplace allows workers to work safely, does not create excessive glare or reflection, allows people who are not workers to move safely within the workplace and facilitates safe entry to, and exit from, the workplace. The maximum penalty is 20 penalty units.

Division 7.10 Noise management

This division contains measures necessary to ensure work safety by managing risks that relate to noise in the workplace.

Clause 110 Definitions – div 7.10

This clause establishes that, for this division, exposure standard means an 8 hour equivalent continuous A-weighted sound pressure level, L_{Aeq} , 8h of 85dB (A) referenced to 20 μ Pa, and, a C-weighted peak sound pressure level, $L_{C, peak}$ of 140 dB (C) referenced to 20 μ Pa.

This clause also establishes that, for this division, *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/NZS 1269.1, without taking into account any protection that may be given by a personal hearing protector.

Clause 111 Working out $L_{C, peak}$ value – div 7.10

This clause establishes that, 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/NZS 1269.1.

Clause 112 Noise management – duties of designers etc

This clause provides that 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.

This clause also provides that a person in control of the design, manufacture, import or supply of plant commits a strict liability offence if plant that may emit an unsafe level of noise is supplied to a person, and, the duty holders fails to provide that person with information about the noise emitted by the plant and ways to keep the noise to the lowest level that it is reasonably practicable to achieve. The maximum penalty is 20 penalty units.

This clause also provides that an *unsafe level of noise* means an A-weighted sound pressure level of 70dB (A), or, an $L_{C, peak}$ of 130dB (C).

Clause 113 Noise management – duties of person conducting business or undertaking

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not undertake a number of specific actions in relation to noise management. The duty holder must properly maintain noise control measures at the workplace, give workers at the workplace information and training about noise control measures in accordance with AS/NZS 1269, and, ensure that any personal hearing protectors given to a worker are used and maintained in accordance with AS/NZS 1269. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace must implement certain measures if action is required to reduce the noise level to which a worker is exposed. In such a circumstance, the duty holder must, as far as is reasonably practicable, implement engineering noise controls to reduce the noise level. If this does not reduce the noise level to the exposure standard or less the person must also, as far as is reasonably practicable, implement administrative noise controls to reduce the noise to which the worker is exposed. If both of these measures

do not reduce the noise level to the exposure standard or less, the person must give the worker personal hearing protectors that meet the requirements of AS/NZS 1270 and have been selected according to the procedures stated in AS/NZS 1269.3.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if noise levels at the workplace exceed the exposure standards for a worker, and, the duty holder does not either take the action mentioned in the above sub-clause to reduce the noise level to which the worker is exposed, or, give the worker the personal hearing protectors required under that sub-clause. The maximum penalty is 20 penalty units.

Clause 114 Noise management – duties of workers

This clause provides that a worker commits an offence if noise control measures are taken at a workplace under this regulation and the worker intentionally does not comply with the measures at the workplace, as far as reasonably practicable. The maximum penalty is 20 penalty units.

This clause also provides that a worker commits an offence if the worker is given personal hearing protection as a noise control measure for use at work, is given information and training about the protectors in accordance with AS/NZS 1269, and, they do not use the protection, as far as reasonably practicable. The maximum penalty is 20 penalty units.

Division 7.11 Isolated work

This division sets out measures to be taken where work is performed in isolation.

Clause 115 Isolated workers

This clause provides that a person conducting a business or undertaking commits a strict liability offence if particular circumstances apply and they fail to ensure that a worker in the business or undertaking is able to call for help, there is a procedure for regular contact with the worker and the worker is trained in the procedure.

This offence only applies in the particular circumstances where the person with the duty allows a worker in their business or undertaking to work alone in 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, a situation that involves the operation or maintenance of hazardous plant or the handling of a dangerous substance, or, work that is dangerous to perform alone. The maximum penalty is 30 penalty units.

Division 7.12 Fire and explosion

This division sets out measures which must be taken to ensure work safety by managing risks of fire and explosion at the workplace.

Clause 116 Fire and explosion – risk control

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if they do not ensure that risks of fire or explosion at the workplace are managed. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not eliminate potential ignition sources from proximity to flammable substances, combustible dusts or waste

materials at the workplace and regularly remove waste materials and accumulated dust at the workplace. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if there are flammable substances, combustible dusts or waste materials at the workplace and they do not monitor the workplace regularly to ensure the continued effectiveness of control measures for fire or explosion at the workplace. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if the person does not ensure that risks of fire or explosion at the workplace are managed. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if the person does not eliminate potential ignition sources from proximity to flammable substances, combustible dusts or waste materials at the workplace and regularly remove waste materials and accumulated dust at the workplace. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if there are flammable substances, combustible dusts or waste materials at the workplace and the person does not monitor the workplace regularly to ensure the continued effectiveness of control measures for fire or explosion at the workplace. The maximum penalty is 30 penalty units.

Clause 117 Fire and explosion - facilities

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure that appropriate fire appliances are available at the workplace and maintained to a reasonable standard by a suitably qualified person. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure that portable fire extinguishers are installed at the workplace in accordance with AS 2444. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if the person does not ensure that appropriate fire appliances are available at the workplace and maintained to a reasonable standard by a suitably qualified person. The maximum penalty is 30 penalty units.

This clause also provides that a person in control of premises commits a strict liability offence if the person does not ensure that portable fire extinguishers are installed at the workplace in accordance with AS 2444. The maximum penalty is 30 penalty units.

This clause establishes that, for this clause, fire appliance includes a fire alarm and:

- a vehicle, equipment, implement or thing used to prevent, extinguish or contain fire or smoke; and
- an apparatus for alerting the occupants of a building to a fire or facilitating the evacuation of the building; and
- equipment used to control smoke in, or remove smoke from, a building.

This clause establishes that, for this clause, suitably qualified, for maintaining an appliance, means someone who is suitably qualified by experience or training to maintain the appliance.

Division 7.13 Emergency procedures

This division sets out measures which must be taken in relation to emergencies.

Clause 118 Person conducting business or undertaking to provide for emergencies

This clause provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure that, in an emergency at the workplace, appropriate steps are in place for the safe and rapid evacuation of people from the workplace, emergency communications and the medical treatment of injured people. The maximum penalty is 30 penalty units.

This clause also provides that a person conducting a business or undertaking at a workplace commits a strict liability offence if the person does not ensure that arrangements are made for shutting down and evacuating the workplace in an emergency, details of the arrangements are displayed in appropriate places at the workplace and an appropriate number of people are properly trained to oversee any evacuation and use any on-site fire appliances. The clause states that, for this offence, what is appropriate in each case must be decided having regard to the nature of the hazards at the workplace, the size and location of the workplace and the number, mobility and capability of people at the workplace. The maximum penalty is 30 penalty units.

Part 8 Licensing high risk work

The provisions in this part adopt new arrangements for the licensing of persons who undertake high risk work. The provisions place a range of obligations on persons conducting a business or undertaking and on persons carrying out high risk work.

Division 8.1 Important concepts

Clause 119 Definitions – pt 8

This clause sets out the various definitions used throughout this regulation

Division 8.2 High risk work licence

Clause 120 Carrying out high risk work without licence

This clause places an obligation on workers who are undertaking high risk work to ensure that they hold the appropriate licence to do so.

The clause provides that a person commits a strict liability offence if the person performs high risk work without holding a licence. The maximum penalty is 20 penalty units.

The clause provides an exception for persons who are being trained in high risk work, providing the trainee is supervised by a person who holds a high risk licence, and provides for persons who have been specifically exempted from holding a licence by the chief executive.

The clause also provides an exemption for persons who are not actually performing high risk work but who are operating high risk plant for the purpose of testing, trialling, installing, commissioning, maintaining, servicing, repairing, altering or disposing of that plant.

There are specific provisions for trainees and for exemptions in later parts of the regulation.

Clause 121 Allowing unlicensed person to carry out work

This clause places an obligation on persons conducting a business or undertaking to ensure that only competent persons undertake high risk work. The clause provides that a person commits a strict liability offence if they direct or allow a worker to perform high risk work when the worker does not hold a high-risk work licence. The maximum penalty is 30 penalty units.

As with the previous clause it provides an exception for persons who are being trained in high risk work, providing the trainee is supervised by a person who holds a high risk licence, and provides for exemptions in limited circumstances.

It also provides an exemption for persons who are not actually performing high risk work but who are operating high risk plant for the purpose of testing, trialling, installing, commissioning, maintaining, servicing, repairing, altering or disposing of that plant.

Clause 122 Licence application

This clause sets out the requirements for making a valid application for a licence, and the documentation that must be lodged with an application, including:

- a completed application form;
- evidence of the person's identity and age;
- a photograph of the applicant;
- evidence that the person has been assessed by a Registered Training Organisation as being competent to operate high risk plant; and
- a statement by the applicant that they have not had a high risk licence cancelled or suspended or been convicted of an offence under OH&S laws.

The clause also allows for additional relevant documentation or information to be requested, if deemed necessary and that documentation or information is relevant to the application.

The clause requires that an application for a licence must be lodged within 60 days of the person receiving their Statement of Attainment.

Clause 123 Licence issue

This clause requires that a licence must be issued to an applicant where they meet the requirements of this regulation.

Clause 124 Licence conditions

This clause provides that the Chief Executive, as per the ACT's Administrative Arrangements, may issue a licence on conditions.

Clause 125 Failing to comply with condition of licence

This clause provides for a strict liability offence where a person does not comply with any conditions that are attached to a high risk licence. The maximum penalty is 10 penalty units.

Clause 126 Form of licence

This clause details the form a high risk licence will take. The licence will be consistent with licences being issued by other jurisdictions and will consist of:

- the licence holders full name, date of birth, signature and photograph;
- the date of issue and date of expiry of the licence;
- each class of work for which the licence is issued; and
- a unique identifying number for the licence.

Clause 127 Term of licence

In line with the National Standard for licensing persons performing high risk work, this clause stipulates that High Risk Licences are valid for 5 years. This is consistent with all other States and Territories.

Clause 128 Renewal of licence

As high risk licences are limited in time, 5 years, this clause provides for licences to be renewed. The clause requires that an application be lodged and accompanied by:

- proof of the applicant's identity;
- evidence of the applicant's continued competency in the high risk work for which the renewal is sought; and
- a statement from the applicant that they have not had a high risk licence cancelled or suspended, nor have they been convicted of an offence under OH&S laws.

Clause 129 Issue of renewed licence

This clause requires that a licence must be renewed if the requirements of this Regulation are met.

Clause 130 Application to vary licence

As this regulation covers a wide range of high risk licences, this clause provides for a person to apply to have classes of work added to their licence, or have classes removed if they are no longer required. The clause requires that an application be lodged and accompanied by:

- proof of the applicant's identity;
- evidence that the applicant has been assessed by a Registered Training Organisation as being competent to undertake the high risk work for the class of work being sought to be added; and
- a statement from the applicant that they have not had a high risk licence cancelled or suspended.

The clause also provides for a licence to be varied if a person formally changes their name.

Clause 131 Variation of licence

This clause requires that a licence must be varied if the requirements of this Regulation are met.

Clause 132 Licensee not to hold other licence

As the Regulation adopts the National Standard for licensing person performing high risk work, the licence issued will be recognised across all States and Territories in Australia. The licence will have provision for a number of classes of high risk to be endorsed. There is no requirement, or need, to hold more than one licence. Where a licence is issued in another State or Territory, this clause provides that a licence issued in the ACT is cancelled.

The clause also requires that where a licence is cancelled under this provision that the licence be surrendered within 14 days. Maximum penalty is 5 penalty units.

Clause 133 Replacement of lost etc licence

As it is a requirement that a licence holder have their licence in their possession whilst undertaking high risk work, this clause provides for the replacement of a lost, stolen or damaged licence.

The clause requires that an application be lodged and accompanied by a statutory declaration setting out the circumstances in which the licence was lost, stolen or damaged. The clause also provides that a replacement licence must be issued where the chief executive, as per the ACT's Administrative Arrangements, is satisfied that the licence has been actually lost, stolen or damaged.

The clause provides for a strict liability offence if, a licence has been replaced on the basis of the licence being lost, and at a later time the lost licence is found, found licence is not surrendered to the chief executive within 14 days of being found. Maximum penalty is 5 penalty units.

The clause also provides for a strict liability offence if a licence has been replaced on the basis of the licence being damaged that the damaged licence is not surrendered to the chief executive within 14 days of the new licence being issued. Maximum penalty is 5 penalty points.

Division 8.3 Suspension or cancellation of licence

Given the nature of high risk work, and the possible impacts on other workers and the public at construction sites, there are a range of measures available to suspend or cancel licences where there is the possibility that not doing so may endanger the health and safety of the licence holder or someone else.

Clause 134 Grounds for compulsory cancellation of licence

This clause provides for the compulsory cancellation of a licence where it is established that the information in the application for a licence was false or misleading in a material particular, or, where it is established that despite a person holding a licence that person is not competent to carry out the high risk work.

Clause 135 Compulsory cancellation of licence

This clause sets out the process for considering and deciding if a licence should be cancelled. The clause provides that a high risk licence must be cancelled where:

- notice has been given to the licence holder that it is intended to cancel the licence;
- consideration has been given to any reasons provided by the licence holder;
- grounds exist for the compulsory cancellation; and
- it is not considered appropriate to suspend the licence.

The clause also provides that a notice of intention to cancel a licence must:

- set out the grounds for cancellation;
- provide the licence holder with 14 days to respond to the notice setting out reasons why the licence should not be cancelled; and
- a statement to the effect that a decision may be made to suspend the licence.

The clause provides that the cancellation takes effect from the day after the day the licence holder is given notice of the cancellation.

Clause 136 Grounds for discretionary cancellation of licence

This clause provides for the discretionary cancellation of a licence where it is established that:

- the licence holder has contravened a condition of the licence or contravened the regulation;
- the statement of attainment issued to the licence holder is not valid;
- the assessor who assessed the licence holder for the statement of attainment provided false or misleading information when seeking to be approved as an assessor, or failed to provide relevant information when applying;
- the assessor has been found guilty of an offence under the Act in respect of the assessment; or
- the assessment was not conducted in accordance with the requirements of the regulation.

Clause 137 Discretionary cancellation of licence

This clause sets out the process for considering and deciding if a licence should be cancelled. The clause provides that a high risk licence may be cancelled where:

- notice has been given to the licence holder that it is intended to cancel the licence; and
- consideration has been given to any reasons provided by the licence holder; and
- grounds exist for the cancellation; and
- it is not considered appropriate to suspend the licence.

The clause also sets out that a notice of intention to cancel a licence must:

- set out the grounds for cancellation;
- provide the licence holder with 14 days to respond to the notice setting out reasons why the licence should not be cancelled; and
- include a statement to the effect that a decision may be made to suspend the licence.

The clause provides that the cancellation takes effect from the day after the day the licence holder is given notice of the cancellation.

Clause 138 Suspension of licence after notice

This clause provides for the discretion to suspend a licence, rather than cancel, after considering any matters provided by the licence holder in response to the notice of intention to cancel the licence.

If a licence is suspended, the suspension continues for a period of 28 days, or until the suspension is revoked, whichever is the earlier. The clause also provides that the suspension takes effect from the day after the day the licence holder is given notice of the suspension.

Clause 139 Immediate suspension of licence

This clause allows that where there is an immediate risk to the health and safety of the licence holder or another person, the licence held may be suspended with immediate effect. The suspension continues for a period of 28 days, or until the suspension is revoked, or until the licence is cancelled.

Clause 140 Review of licence suspension or cancellation

Following the decision to cancel or suspend a licence, this clause provides for a review of the decision and for information that was not available at the time of the original decision to be considered. The clause requires that where that new information was not provided by the license holder that the licence holder must be advised of the detail of that information and give the licence holder not less than 14 days to respond to the information.

The clause provides that after considering the information and any response from the licence holder, and if the licence has been suspended, the suspension can be revoked, confirmed or extended, or the licence can be cancelled. If the licence has been cancelled, the cancellation can be revoked, or confirmed.

The clause also provides that a suspension or cancellation must be revoked if, after considering the new information, it is established that the licence should not have been cancelled or suspended, or if the new information was known at the time of the original decision, the licence would not have been cancelled or suspended.

Clause 141 Surrender of suspended or cancelled licence

This provides for a strict liability offence where a licence has been suspended or cancelled and the licence is not surrendered within 14 days of the decision to suspend or cancel. The maximum penalty is 5 penalty units.

The clause also provides that where the licence contains more than one class of work and a class of work included on the licence is not cancelled or suspended, a new license for the class of work not suspended must be issued to the licence holder.

Clause 142 Cooperation with other jurisdictions

It is not possible for the regulatory authority to cancel or suspend a licence that has been issued in another jurisdiction. There will be occasions where information comes to notice where it is likely that a suspension or cancellation is warranted.

This clause requires that where information comes to notice where there is a reasonable belief that the licence should be suspended or cancelled that the information must be passed to the licence issuing authority in the relevant jurisdiction.

The clause also provides that where information is received from another jurisdiction about a licence issued in the ACT, that information must be investigated to determine if there are grounds for suspension or cancellation should be cancelled.

This clause is consistent with section 211 of the Act.

Division 8.4 Trainees under supervision

In the construction industry, a deal of training including training leading to Statement of Attainment is conducted on-site. In these situations it is imperative that trainees are properly supervised at all times. This approach creates a range of obligations on supervisors and trainees alike.

Clause 143 Supervisor's Obligations

This clause sets out the obligations of supervisors in respect of trainees, and requires that they directly supervise a trainee at all times. This involves overseeing the work of the trainee for the purpose of directing, demonstrating, monitoring and checking the trainee's competency level and their capacity to respond to emergency situations.

The clause provides for strict liability offences where a supervisor fails to sign a daily record of any high risk work carried out by a trainee, or fails to ensure that the trainee receives directions, demonstrations and training appropriate to the trainees' level of competency for the high risk work being carried out. The maximum penalty is 10 penalty units.

Clause 144 Trainee's obligations

This clause provides for a strict liability offence where a trainee fails to keep a detailed daily record of the work that they undertake. The maximum penalty is 5 penalty points.

Division 8.5 Training and assessment

The new Regulation requires that for the purpose of applying for a High Risk Licence, all training and assessment leading to the issue of a Statement of Attainment must be delivered under the control of a Registered Training Organisation operating within the Australian Quality Training Framework (AQTF).

Clause 145 Training and assessment

This clause sets out a range of requirements that must be met:

- prior to applying for a Statement of Attainment, a person must undertake training by completing either a unit of competency in a training package, or a course accredited by the registered training organisation. A training package is an integrated set of nationally endorsed competency standards, assessment guidelines and Australia Qualifications Framework qualifications for a specific industry, industry sector or enterprise;
- the unit of competency or course must be delivered by either, a registered training organisation, a person working under the supervision of a registered training organisation, or a person working in partnership with a registered training organisation; and
- the training must consist of structured training and practical training and experience. In terms of practical training, the clause allows for the training to be undertaken in the workplace as part of the person's work, or in a training facility that includes a simulated workplace, or a combination of both methods.

The clause requires that a person who has completed the training must be assessed for competency by an assessor on behalf of the registered training organisation that provided the unit of competency or the training course.

Clause 146 Chief executive may issue directions

This clause allows the chief executive, as per the ACT's Administrative Arrangements, to issue directions where a particular class of high risk work does not have a nationally endorsed unit of competency or any course accredited for a statement of attainment.

The clause provides that the chief executive may direct that in these circumstances a particular unit of competency be completed, prior to the issue of a Statement of Attainment.

Clause 147 Exemption from training

This clause recognises that some persons will have experience or prior learning that is sufficient to not require further training in a particular aspect of a competency unit or course. The clause allows a registered training organisation to exempt a person from that training.

This clause does not allow for an exemption from any aspect of the assessment process. A person's competency must be assessed against all elements of the competency unit or course.

Clause 148 Assessor qualifications

This clause stipulates the qualifications a person must have to be eligible to undertake assessments of persons who are applying for a Statement of Attainment.

Whilst assessors will be either a registered training organisation in their own right, employed by a registered training organisation, or working in conjunction with a registered training organisation, this clause requires that an assessor is either approved in writing by the chief executive to be an assessor, or meet a criteria that may be reached between the chief executive, as per the ACT's Administrative Arrangements, and the registered training organisation which is providing the course or competency unit.

The clause also provides that the chief executive may issue guidelines on the approval of assessors.

Clause 149 Statement of attainment

Persons seeking a high risk licence must obtain a Statement of Attainment from a registered training organisation before lodging an application for a licence.

This clause sets out the requirements before a Statement of Attainment can be issued. In particular, the clause requires that the person seeking the Statement of Attainment has undertaken the training in, has been assessed against, and meets the competency standard for the class of work, has the necessary knowledge to carry out the class of high risk work safely under workplace conditions, and has sufficient knowledge of English to carry out the work to the standard required.

The clause stipulates that the Statement of Attainment issued by a registered training organisation must state that the person to whom the statement is issued has met these competency requirements.

Clause 150 Registered training organisation – agreement with chief executive to provide training and assessment

This clause requires that where a Registered Training Organisation intends to provide training and assessment leading to an application for a High Risk Licence that the Registered Training Organisation to notify the chief executive, as per the ACT's Administrative Arrangements, of the organisations intention to do so, and to enter into an agreement about the training and assessment.

The agreement is intended to establish the administrative protocols between the Registered Training Organisation and the Office of Regulatory Services, including the arrangements for auditing, and the management of trainers and assessors.

Clause 151 Improperly issuing statement of attainment

This clause creates an offence where a person issues a Statement of Attainment knowing that the statement has not be issued in accordance with the requirements of the Regulation or is reckless about whether the statement is issued in accordance with the Regulation. The maximum penalty is 30 penalty units.

Clause 152 Improperly obtaining statement of attainment

This clause creates an offence where a person has been complicit in obtaining a Statement of Attainment knowing that the statement has not be issued in accordance with the requirements of the Regulation or that the person issuing the statement of attainment has been reckless about whether the statement has been issued in accordance with the Regulation. The maximum penalty is 30 penalty units.

Division 8.6 Administration

A key element of the new regulations is that the training, competency assessment and issuing of Statements of Attainment will now be managed by registered training organisations. The chief executive, as per the ACT's Administrative Arrangements, will remain responsible for the issuing of licences. This division sets out the framework for managing this process to ensure its ongoing integrity.

Clause 153 Keeping and providing records of training and assessment

This clause requires registered training organisations to keep a record of the training and assessment of all persons to whom a Statement of Attainment is issued. The clause also requires that the registered training organisations provide those records to the chief executive when requested to do so.

Clause 154 Cooperation with licensing authorities

This clause requires that the chief executive, as per the ACT's Administrative Arrangements, to cooperate with licensing authorities in other jurisdictions and allows for the exchange of information relevant to the issue of, or failure to issue, a licence. It allows the provision of information relating to applicants for high risk licences, licence holders, assessors and registered training organisations.

Clause 155 Cooperation with registered training organisations

This clause requires that the chief executive, as per the ACT's Administrative Arrangements, to cooperate with licensing authorities in other jurisdictions and allows for the exchange of information relevant to the issue of, or failure to issue, a licence. It allows the provision of information relating to applicants for high risk licences, licence holders, assessors and registered training organisations.

Division 8.7 Exemptions

The expectations expressed in the National Standard are that exemptions to the requirement to hold a licence will only be granted in the most exceptional circumstances. This is consistent with the approach that high risk work can only be carried out by persons who have been formally trained in, and assessed as meeting the competency requirements for, the relevant classes of high risk work.

Clause 156 Application for exemption

This clause requires that an application for an exemption must be made by the person conducting the business or undertaking. This approach has been taken as the person who is conducting the business or undertaking has ultimate safety responsibility for all activities on the site where high risk work is being undertaken.

The clause requires that an exemption can only be sought for a particular class of work, at a particular location for a particular period of time. The application must set out the reasons why the exemption is required and set out the steps that will be taken to ensure the high risk work is carried out safely.

As an exemption may impact on the work safety of others at the workplace, the clause also requires that the person undertaking the business or undertaking consult with others at the workplace before an application for exemption is made. It is an offence if this consultation does not occur. The maximum penalty is 30 penalty units.

Clause 157 Grant of exemption

This clause allows the chief executive, as per the ACT's Administrative Arrangements, to issue an exemption from holding a high risk licence, but only where the chief executive is satisfied that the reasons for the exemption are reasonable, that the person who will undertake the high risk work is competent to do so, and the steps outlined in the application will be sufficient to ensure the work is carried out safely.

Clause 158 Exemption conditions

As an exemption would only be granted in the most extraordinary circumstances, this clause allows that where an exemption is granted, that a range of enforceable conditions can be imposed to ensure the safety of the work to be carried out, including that the person making the application provide a notice of the exemption to anyone affected.

Clause 159 Failing to comply with condition of exemption

This clause provides for a strict liability offence for a person who has been granted an exemption that has conditions imposed, and where that person directs or allows that work to be carried out in breach of the conditions. The maximum penalty is 30 penalty units.

Clause 160 Notice of exemption

This clause requires that where an exemption has been granted, that written notice of the exemption be issued to the applicant, that notice of the exemption be published in a daily newspaper in the ACT, and a copy of the notice be provided to the licensing authority in each other State.

Division 8.8 Miscellaneous**Clause 161 Chief executive may make inquiries**

This clause allows for the chief executive, as per the ACT's Administrative Arrangements, inquiries to be made about the authenticity of any documents lodged with any application lodged under this part of the Regulation.

Clause 162 Guidelines

This clause provides that guidelines may be issued by or approved by the chief executive, as per the ACT's Administrative Arrangements, in relation to the any matters under this part of the Regulation relating to the issue of a high risk licence. Examples of guidelines that might be issued include:

- the procedure to apply for a licence;
- the assessment of a person undertaking training;
- the issue of a statement of attainment; and/or
- the issuing of a licence.

Clause 163 Production of licence etc on request

Given the nature of high risk work and the requirement that all persons undertaking this work hold a licence or be exempted from holding a licence, this clause provides for a strict liability offence if a licence holder fails to produce their licence when requested to do so by a person authorised to make that request. The maximum penalty is 5 penalty units.

Similarly where a person has been exempted from holding a licence, this clause provides for a strict liability offence if the the exempted person fails to produce the notice of exemption when requested to do so by a person authorised to make that request. The maximum penalty is 5 penalty units.

This clause also provides for a strict liability offence if a trainee fails to provide the trainee's record of training when requested to do so by a person authorised to make that request. The maximum penalty is 5 penalty units.

The clause also allows a person authorised to make a request to see a licence, or exemption notice, or record of training, to ask for additional forms of identification to confirm the identity of the licence holder or exemption notice holder.

Clause 164 Production of information etc on request

This clause provide that a person who holds a licence may be requested to provide a document or other information that is relevant to the person undertaking high risk work. The clause provides for a strict liability offence if the person refuses to comply with that request. The maximum penalty is 5 penalty units.

Clause 165 Licensee’s change of address

A licensee is required to keep the chief executive, as per the ACT’s Administrative Arrangements, with current details of their address. This clause creates a strict liability offence if a person does not notify their change of address, within 14 days of the change occurring. The maximum penalty is 5 penalty units.

Part 9 Construction induction training

The provisions in this part adopt new arrangements that introduce mandatory occupational health and safety induction training for persons who are required to be present on a construction site. The provisions place a range of obligations on persons conducting a business or undertaking and on persons carrying attending a construction site.

Division 9.1 Definitions – pt 9

Clause 166 Definitions – pt 9

This clause sets out the various definitions used throughout this Part of the Regulation

Division 9.2 Requirement to hold a construction induction training card

Clause 167 Person on construction site without construction induction training card.

This clause provides for a strict liability offence if a person is present on a construction site and that person does not hold a construction induction card. The maximum penalty is 20 penalty units.

The clause provides an exemption from this requirement where the person holds a statement of attainment after completing the necessary training, and who has made an application for a construction induction card and is waiting for the outcome of that application. Exemptions are also provided where a person is a visitor to the construction site and is accompanied by a person who holds a construction induction card, or where a person is temporarily on the construction site to deliver plant, supplies, or materials.

Clause 168 Allowing worker to be on construction site without construction induction training card.

This clause creates a strict liability offence if an employee directs or allows a worker to be on a construction site when the worker does not hold a construction induction card. The maximum penalty is 20 penalty units.

The clause provides an exemption from this requirement where the person holds a statement of attainment after completing the necessary training, and who has made an application for a construction induction card and is waiting for the outcome of that application. Exemptions are also provided where a person is a visitor to the construction site and is accompanied by a person who holds a construction induction card, or where a person is temporarily on the construction site to deliver plant, supplies, or materials.

Clause 169 Allowing person to be on construction site without construction induction training card.

This creates a strict liability offence if a person in control of a construction site allows any other person to be on the site where the person does not hold a construction induction card. The maximum penalty is 20 penalty units.

The clause provides an exemption from this requirement where the person holds a statement of attainment after completing the necessary training, and who has made an application for a construction induction card and is waiting for the outcome of that application. Exemptions are also provided where a person is a visitor to the construction site and is accompanied by a person who holds a construction induction card, or where a person is temporarily on the construction site to deliver plant, supplies, or materials.

Division 9.3 Construction induction training

Clause 170 Construction Induction training and assessment

This clause requires that Construction Induction Training must consist of the nationally agreed competency unit – ‘work safely in the construction industry’ or other training determined by the chief executive, as per the ACT’s Administrative Arrangements, and that the training must be provided by a registered training organisation.

Clause 171 Construction Induction Training - registered training organisation agreement with chief executive.

This clause requires that where a Registered Training Organisation intends to provide training and assessment leading to an application for a construction induction card that the Registered Training Organisation notify the chief executive, as per the ACT’s Administrative Arrangements, of the organisations intention to do so, and to enter into an agreement about the training and the issue of Statements of Attainment.

The agreement is intended to establish the administrative protocols between the Registered Training Organisation and the chief executive, including the arrangements for auditing, and the management of trainers.

Clause 172 Construction induction training – trainer qualifications

This clause stipulates the qualifications a person must have to be eligible to deliver training to persons who wish to apply for a Construction Induction card.

Whilst trainers will be employed by a registered training organisation, this clause requires that the trainer have certain qualifications and vocational competencies relevant to the construction industry.

Clause 173 Construction induction training – statement of attainment

Persons seeking a construction induction card must obtain a Statement of Attainment from a registered training organisation before lodging an application for a card.

This clause sets out the requirements before a Statement of Attainment can be issued. In particular, the clause requires that the person seeking the Statement of Attainment has undertaken the training in, has been assessed against, and meets the competency standard for construction induction.

Clause 174 Improperly issuing statement of attainment

This clause creates an offence where a person issues a Statement of Attainment knowing that the statement has not be issued in accordance with the requirements of the Regulation or is reckless about whether the statement is issued in accordance with the Regulation. The maximum penalty is 30 penalty units.

Clause 175 Improperly obtaining statement of attainment

This clause creates an offence where a person has been complicit in obtaining a Statement of Attainment knowing that the statement has not be issued in accordance with the requirements of the Regulation or that the person issuing the statement of attainment has been reckless about whether the statement has been issued in accordance with the Regulation. The maximum penalty is 30 penalty units.

Division 9.4 Construction induction training card**Clause 176 Construction induction training card - application**

This clause sets out the requirements for making a valid application for a construction induction card, including the documentation that must be lodged with an application, including:

- completion of an application form;
- evidence of the person's identity and date of birth;
- a sample of the person's usual signature;
- the statement of attainment for construction induction training issued by a Registered Training Organisation; and
- any other document or further information considered relevant to the application.

The clause also allows for additional information or documentation to be requested, if deemed reasonably necessary to decide the application.

The clause requires that an application for a licence must be lodged within 60 days of the person receiving their Statement of Attainment.

Clause 177 Construction induction card - issue

This clause requires that a construction induction card must be issued to an applicant where they meet the requirements of this Regulation.

Clause 178 Construction induction card – form

This clause details the form a construction induction card will take. The card will be consistent with licences being issued by other jurisdictions and will consist of:

- the applicants full name, date of birth;
- the applicant's signature;
- the date of issue of the card; and
- a unique identifying number for the card.

Clause 179 Production of Construction Induction card to inspector on request

Given the high risk environment of a construction site and the requirement that all persons on a construction site hold a construction induction card, this clause provides for a strict liability offence if a person on a construction site fails to produce their construction induction card when requested to do so by a person authorised to make that request. The maximum penalty is 5 penalty units.

The clause also allows for a person authorised to request the production of a construction induction card to ask for other forms of evidence to confirm the identity of the worker.

Clause 180 Replacement of lost etc licence

As it is a requirement that a card holder to have their card in their possession whilst on a construction site, this clause provides for the replacement of a lost, stolen or damaged card. The clause requires that an application be lodged and accompanied by a statutory declaration setting out the circumstances in which the licence was lost, stolen or damaged. The clause also provides that a replacement card must be issued where the chief executive, as per the ACT's Administrative Arrangements, is satisfied that the card has been actually lost, stolen or damaged.

Division 9.5 Cancellation of construction induction card

Clause 181 Grounds for cancellation of a construction induction card

Given the nature of high risk work environment of a construction site, and the possible impacts on other workers and the public, measures available to cancel construction induction cards where information provided in the application for a card was false or misleading in a material particular.

Clause 182 Cancellation of construction induction card

This clause sets out the process for considering and deciding if a construction induction card should be cancelled. The clause provides that a construction induction card must be cancelled if:

- notice has been given to the licence holder that it is intended to cancel the licence;
- consideration has been given to any reasons provided by the licence holder; and
- grounds exist for the compulsory cancellation.

The clause also provides that a notice of intention to cancel a licence must:

- set out the grounds for cancellation; and
- provide the licence holder with 14 days to respond to the notice setting out reasons why the licence should not be cancelled.

The clause provides that the cancellation takes effect from the day after the day the licence holder is given notice of the cancellation.

Clause 183 Surrender of cancelled construction induction card

This clause provides for a strict liability offence where a card has been cancelled and the card is not surrendered within 14 days of the decision to cancel. The maximum penalty is 5 penalty units.

Division 9.6 Miscellaneous

Clause 184 Employer to keep training records

This clause provides for a strict liability offence where an employer who engages workers to carry out work on a construction site fails to keep a record of the workers' construction induction cards. The maximum penalty is 5 penalty units.

This clause also provides for a strict liability offence where these records are not kept by the employer for a period of 5 years. The maximum penalty is 5 penalty units.

Clause 185 Chief Executive to cooperate with other jurisdictions

This clause requires that the chief executive, as per the ACT's Administrative Arrangements, to cooperate with licensing authorities in other jurisdictions and allows for the exchange of information relevant to the possible cancellation of a construction induction card issued in that jurisdiction, and to receive and consider information provided by another jurisdiction relevant to a construction induction card issued in the Territory.

Part 10 Carrying out manual tasks

This part deals with measures which must be taken to ensure work safety in relation to the performance of manual tasks at the workplace.

Clause 186 Meaning of manual task – pt 10

This clause defines that the term manual task means an activity that requires a person to use his or her musculoskeletal system to perform the activity

Clause 187 Person conducting business or undertaking must give information etc

This clause provides that a person conducting a business or undertaking commits an offence if they do not give appropriate information, instruction and training on a number of things to a worker who carries out a manual task at the business or undertaking. These things include safe methods of carrying out the task, using safe systems of work and any new information affecting the task in relation to a workplace, plant, substance, structure or system of work used in carrying out the task as it becomes available.

The clause states that this must be given in a way that takes into account the worker's communication needs. In this regard, the clause provides the circumstance that the worker's first language is not English or that the worker works in an isolated location as examples of communication needs. Maximum penalty is 20 penalty units.

This clause also provides that, in relation to the above offence, the duty holder must give the required information, instruction, training and supervision before the manual task is carried out, if any part of the work changes as well as while the worker carries out the manual task as necessary to ensure work safety.

Clause 188 Person in control of premises, plant or system must give information etc

This clause provides that certain duty holders under the Act commit an offence if they do not each give appropriate information, instruction and training to a worker who carries out a manual task to allow the worker to carry out the task safely and to participate in managing risk in relation to the task. These duty holders are a person in control of premises, a person in control of a plant or system. The maximum penalty is 20 penalty units.

In relation to the above offence, a person must give the information, instruction and training on safe methods of carrying out the task, using safe systems of work and any new information affecting the task in relation to a workplace, plant, substance, structure or system of work used in carrying out the task as it becomes available. It must also be given in a way that takes into account the worker's communication needs.

The clause also provides that each duty holder must give the required information, instruction and training before each manual task is carried out, if any part of the work changes, and, while the worker carries out the manual task as necessary to ensure work safety.

Clause 189 Person in control of design, manufacture, import or supply must give information etc

This clause provides that a person in control of design, manufacture, import or supply must give information to a worker using the plant or structure to carry out a manual task about the intended use of the plant or structure, the risk of using the plant or structure and ways that the worker may eliminate or minimise the risk of musculoskeletal disorders. The maximum penalty is 20 penalty units.

In relation to the above offence, a person must give information that describes the risk of using the plant or structure sufficiently to allow the plant or structure to be used safely. The information must also be updated if new information is available about the plant or structure or a manual task that is carried out using the plant or structure. All of the information given must be capable of being readily understood by a worker using the plant or structure to carry out a manual task or a person in control of the worker. A person must keep the given information for 5 years unless another law states another period or the period for which the plant or structure is likely to be used as intended where that is likely to be more than 5 years.

Part 11 Incorporated documents

This Part provides for the incorporation of documents into the Act and this regulation by notifiable instrument as well as other ancillary matters.

Clause 190 Meaning of *incorporated document*

This clause provides that, in this Regulation, a number of specific listed documents (only) are incorporated documents. This list includes, but is not limited to, several specific Australian Standards, the national exposure standards, a document approved in writing by the Minister to be an incorporated document and any other document incorporated, applied or adopted by one of these incorporated documents.

Clause 191 Inspection of incorporated documents

This clause provides that, in relation to an incorporated document, an amendment of or replacement for an incorporated document, the chief executive, as per the ACT's Administrative Arrangements, 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.

This clause also states that, in relation to the amendment of an incorporated document, regard should be had to section 79(6). It also states that, in relation to the replacement of an incorporated document, regard should be had to section 79(6).

Clause 192 Notification of certain incorporated documents

This clause provides that, in relation to an incorporated document or an amendment of or replacement for an incorporated document, the chief executive, as per the ACT's Administrative Arrangements, may prepare a written notice for the incorporated document, amendment or replacement that contains certain information.

This notice, referred to as an incorporated document notice, for an incorporated document would include details of the document including its title, author and date of publication. For a replacement incorporated document, the notice would contain details of the replacement including its title, author and date of publication. For an amendment of an incorporated document, the notice would contain the date of publication of the amendment (or of the standard as amended) and a brief summary of the effect of the amendment.

In addition, this clause provides that all incorporated document notice should always contain a date of effect (not earlier than the day after the day of notification of the notice), details of how access to inspect the document, amendment or replacement may be obtained under section 191 of this Regulation and details of how copies may be obtained (including an indication of whether any cost is involved).

This clause establishes that an incorporated document notice is a notifiable instrument and that the incorporated document, amendment or replacement has no effect under the Act unless certain measures have been taken. These measures are the notification of an incorporated document notice in relation to the document, amendment or replacement, or, the notification of the document, amendment or replacement under section 47(6) of the *Legislation Act 2001*.

This clause establishes that section 47(7) of the *Legislation Act 2001*ct does not apply in relation to the incorporated document, amendment or replacement. It also establishes that, in this section, amendment of an incorporated document includes an amendment of a replacement for the incorporated document.

This clause also establishes that, in this section, replacement, for an incorporated document, means a standard that replaces the incorporated document, a document (the initial replacement) that replaces that document or a document (the further replacement) that replaces an initial replacement or any further replacement.

Part 12 Reviewable decisions

This Part establishes which decisions, made under the Act and this Regulation, are reviewable including by the ACT Civil and Administrative Tribunal.

From the perspective of duty holders, the Act also outlines where administrative review is available for decisions made under the Act and provides further administrative detail and mechanisms for regulatory review and input by industry stakeholders and the general public.

Clause 193 Reviewable decision – Act, s 174(b)

This clause provides that, for section 174(b) of the Act, a decision mentioned in schedule 3, table 3.1, column 3 under a provision of that Act mentioned in column 2 in relation to the decision, is prescribed.

Clause 194 Notice of reviewable decision – Act, s 175(1)

This clause provides that if a person makes a reviewable decision the person must give a reviewable decision notice to each entity mentioned in schedule 3, table 3.1, column 4 in relation to the decision.

Clause 195 Internal review of certain decisions – Act, s 176(1)

This clause provides that, for section 176(1) of the Act, a decision mentioned in schedule 3, table 3.2, column 3 under a provision of this Act mentioned in column 2 in relation to the decision, is prescribed.

Part 13 Transitional

This Part sets out transitional arrangements which apply in respect of certificates of competency and other documents held under the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000* (which has been repealed).

The transitional regulations set out what arrangements will continue for a period of time to ensure the smooth transition to the new regime. The National Standard for licensing persons performing high risk work recommends a two year transition period, and the Regulation adopts this approach.

The effect of the transitional provisions will be that all classes of work that now require a certificate of competency, including those classes not included in the National Standard, will continue to require a certificate before a person can operate that equipment.

The training and assessment requirements that exist at present will continue. This will be particularly relevant for a range of load-shifting plant that have been excluded from the Standard.

Clause 196 Definitions – pt 13

This clause provides that, for this part, a certificate of competency is a certificate of competency issued under section 12 of the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000* in force at any time.

This clause provides that, for this part, commencement day means the day section 122 of this Regulation commences.

This clause defines repealed instruments as previously notified exemption instruments made under the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000*.

This clause provides that, for this part, repealed regulation means the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000* in force immediately before the commencement day.

Clause 197 Transitional – continuing application of repealed regulation in relation to scheduled work etc

This clause provides that the repealed regulation continues to apply to a person who holds a certificate of competency to undertake scheduled work, a person supervising a trainee under the provisions of the repealed regulation, and an assessor accredited under the repealed regulation to conduct assessments of persons applying for a certificate of competency.

The impact of this clause is that people will continue to be able to apply for a certificate of competency under the present arrangements until 30 June 2011.

Clause 198 Transitional – application of regulation in relation to scheduled work etc

This clause provides that the requirement to hold a high risk licence does not apply to a person who is doing scheduled work under the repealed regulation providing the person has a certificate of competency to do that scheduled work, or has a notice of satisfactory assessment to do the scheduled work and has applied for a certificate of competency.

This clause also provides that the requirement to hold a high risk licence does not apply to a person supervising a trainee under the provisions of the repealed regulation, and an assessor accredited under the repealed regulation to conduct assessments of persons applying for a certificate of competency.

The impact of this clause is that people will continue to be able to apply for a certificate of competency under the present arrangements until 30 June 2011.

Clause 199 Transitional – certificates of competency

This clause provides that a certificate of competency issued on a date mentioned in an item in table 199, column 2 continues in force until the date mentioned in the item, column 3. Table 199 of this clause establishes that certificates of competency dated:

- before 1 January 2001 are in force until 30 June 2010;
- between 1 January 2001 and 31 December 2004 are in force until 30 June 2011;
- between 1 January 2005 and 30 June 2009 are in force until 30 June 2012; and
- between 1 July 2009 and 30 June 2011 are in force until 30 June 2014.

The clause also provides the certificates of competency cannot be issued after 30 June 2011.

The clause also provides that after 30 June 2011, a certificate of competency to operate a tower crane does not authorise a person to operate a self erecting tower crane.

Clause 200 Transitional – converting certificate of competency to licence

This clause provides that a person who holds a certificate of competency may apply to convert that certificate to a high risk licence.

The clause requires that an application to convert a certificate of competency to a licence must be accompanied by:

- the certificate of competency to be converted;
- evidence that the holder has current competency in the class of work for which the application is being made;
- a statutory declaration stating that the certificate of competency has not been suspended or cancelled, and that the applicant 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* or a corresponding

- offence against a law of a State; and
- any other document or information that is considered relevant to the application.

The clause also provides that the application must be approved if the applicant meets the requirements of this clause.

Clause 201 Expiry – pt 13

This clause provides that the transitional arrangements expire on 1 October 2014.

This clause also establishes that this part of a law to which section 88 (Repeal does not end effect of transitional laws etc) of the *Legislation Act 2001*, applies.