



Australian Capital Territory

Work Safety Regulation 2009

SL2009-45

made under the

Work Safety Act 2008

Republication No 1

Effective: 1 October 2009 – 28 February 2011

Republication date: 1 October 2009

Regulation not amended

Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Work Safety Regulation 2009*, made under the *Work Safety Act 2008* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 October 2009. It also includes any commencement, repeal or expiry affecting the republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at www.legislation.act.gov.au):

- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial amendments

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Part 1 Preliminary

1 Name of regulation

This regulation is the *Work Safety Regulation 2009*.

3 Dictionary

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

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

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

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

4 Notes

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

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

5 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note 1 Criminal Code

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

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

Note 2 Penalty units

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

Part 2 Injury and dangerous occurrence reporting and records

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

The period of incapacity for work is 7 days.

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

- (1) For the Act, section 38 (2) (a), the following are the times for giving notice:
 - (a) if the serious event involves the death of a worker or another person—
 - (i) as soon after the event as is reasonably practicable but not later than 2 hours after the event; and
 - (ii) in writing not later than 48 hours after the event;
 - (b) for any other serious event—not later than 8 days after the day the serious event happened.
- (2) For the Act, section 38 (2) (b), the following are the methods for giving notice:
 - (a) in writing;
 - (b) by telephone;
 - (c) by facsimile or other electronic means.
- (3) If the chief executive receives notice other than in writing, the chief executive must give the employer—
 - (a) details of the information received; or
 - (b) an acknowledgment of receiving the notice.

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

8 Keeping information given by chief executive

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

Maximum penalty: 10 penalty units.

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

9 Content of records

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

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

Part 3 Facilities

Division 3.1 Amenities

10 Person conducting a business or undertaking to provide amenities

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

Maximum penalty: 20 penalty units.

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

- (3) In this section:

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

Examples

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

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

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

11 Amenities to be safe and clean

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

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

- (4) In this section:

amenities—see section 10 (3).

12 Facility for personal belongings

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

Maximum penalty: 10 penalty units.

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

13 Facility for changing clothes

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

Maximum penalty: 10 penalty units.

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

changing facility means a place for changing clothes—

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

14 Facility for changing clothes—temporary workplaces

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

Maximum penalty: 10 penalty units.

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

temporary changing facility means a place for changing clothes that—

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

15 Meal facility

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

Maximum penalty: 10 penalty units.

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

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

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

16 Combined facilities

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

- (2) In this section:

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

- (a) section 12 (Facility for personal belongings);

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

17 Toilet facility

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

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

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

Maximum penalty: 20 penalty units.

- (4) This section does not apply to a person conducting a business or undertaking in relation to a temporary workplace if—

- (a) not more than 5 people are working at the workplace; and
- (b) premises with a toilet facility are accessible from the workplace; and

(c) the owner of the premises gives permission for workers to use the toilet facility.

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

(6) In this section:

toilet facility means a toilet that is—

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

18 Washing facility

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

Maximum penalty: 20 penalty units.

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

- (a) ensure that each washing facility at the workplace has running water; or
- (b) if it is not reasonably practicable for a washing facility to have running water—workers have access to clean water near the facility.

Maximum penalty: 20 penalty units.

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

(4) In this section:

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

19 Shower facility

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

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

20 Drinking water

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

Maximum penalty: 20 penalty units.

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

21 Seating

- (1) A person conducting a business or undertaking at a workplace commits an offence if—
 - (a) it is reasonable for a worker at the workplace to work while seated; and

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

Maximum penalty: 20 penalty units.

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

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

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

Maximum penalty: 20 penalty units.

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

(4) What is reasonable for subsection (1) or (2) must be decided having regard to the nature of the work undertaken by the worker.

(5) In this section:

seating means a place for a person to sit that—

(a) is ergonomically sound; and

(b) provides suitable support; and

(c) is adequate for the type of work.

22 Working space

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

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

Maximum penalty: 20 penalty units.

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

Division 3.2 First aid and sickness

23 First aid

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

- (3) What is adequate for subsections (1) and (2) must be decided having regard to—

- (a) the nature of the work undertaken at the workplace; and
- (b) the size and location of the workplace; and
- (c) the number of workers at the workplace and their characteristics including gender, age and special needs.

- (4) In this section:

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

24 Arrangements for sick workers

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

Maximum penalty: 20 penalty units.

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

Part 4 **Work safety representatives**

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

25 **Work safety representative—eligibility**

- (1) A person is eligible to be a work safety representative for a worker consultation unit if the person is—
 - (a) a represented worker; or
 - (b) if a worker from the relevant worker consultation unit has not nominated for the position—a suitably qualified person.

- (2) In this section:

suitably qualified person means a person who—

- (a) holds at least a certificate IV in occupational health and safety; and
- (b) has completed an approved training course; and
- (c) is approved by each employer for the worker consultation unit.

Note *Approved training course*—see s 40.

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

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

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

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

Maximum penalty: 10 penalty units.

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

28 Election process—notice of election of work safety representatives

- (1) This section applies if a work safety representative is elected for a worker consultation unit.
- (2) The person who conducted the election must give notice of the result of the election to—
 - (a) each represented worker’s employer; and
 - (b) if the worker consultation unit had a work safety representative before the election (a *previous work safety representative*) who is replaced by the elected work safety representative—the previous work safety representative.

- (3) The notice must include the work safety representative's name.
- (4) An employer must, if given notice of the election of a work safety representative for a worker consultation unit, tell workers in the unit the employer engages to carry out work that the person elected is a work safety representative.

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

- 1 email
- 2 notice posted
- 3 staff handbook

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

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

29 Election process—replacement work safety representatives

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

30 Work safety representative—deputy

- (1) A deputy work safety representative may be elected for each work safety representative in the same way that the work safety representative is elected.
- (2) If the work safety representative stops being the representative, or is unable to exercise the functions of a representative—
 - (a) the deputy work safety representative may exercise the work safety representative's functions; and
 - (b) the Act (other than this section) applies to the deputy work safety representative as if the deputy were the work safety representative.

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

Division 4.2 Work safety representatives—general

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

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

- (a) investigate a complaint if—
 - (i) the complaint is made to the representative by a represented worker; and
 - (ii) the complaint is about the work safety of a represented worker at a workplace of the worker; and
- (b) be present at an interview if—
 - (i) the interview is between a represented worker and—
 - (A) an inspector; or

- (B) the worker's employer; and
- (ii) the interview is in relation to work safety; and
- (iii) the worker consents to the work safety representative being present at the interview; and
- (c) inspect records of a work safety committee if a committee is established for the unit.

Note A work safety representative must not exercise a function unless the representative has completed an approved training course or, if required, an approved refresher training course—see s 40 (5).

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

- (1) In exercising a function, the work safety representative for a worker consultation unit may—
 - (a) access any information under the employer's control in relation to the work safety of a represented worker, other than information that the representative is not entitled to under section 33; and
- Note* The Legislation Act, s 170 and s 171 deal with the application of the privilege against selfincrimination and client legal privilege.
- (b) inspect all or part of a workplace where a represented worker works if—
 - (i) there has, in the immediate past, been an accident or dangerous occurrence at the workplace; or
 - (ii) the representative believes on reasonable grounds that there is an immediate threat of an accident or dangerous occurrence at the workplace; or
 - (iii) the representative gives the employer reasonable notice of the inspection; and

- (c) for all or part of a workplace where a represented worker works—
 - (i) ask an inspector to carry out an inspection at the workplace; and
 - (ii) accompany an inspector during an inspection of the workplace.
- (2) A work safety representative must not exercise the representative's functions until each represented worker's employer is given notice under section 28.

33 Work safety representative—access to information

- (1) A work safety representative is not entitled to access personal health information about a represented worker, or former represented worker, unless—
 - (a) the worker agrees in writing to the representative having access to the information; or
 - (b) the information does not identify the worker or allow the worker to be identified.

Note **Personal health information**—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

- (2) 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 the representative having access to the information.

- (2) The application—
 - (a) must be in writing; and
 - (b) must set out the grounds on which the disqualification is sought; and
 - (c) may ask for the work safety representative to be suspended.

36 Work safety representative—grounds for disqualification

- (1) Each of the following is a ground for disqualifying a work safety representative:
 - (a) the representative did something, or is doing something, in the exercise, or purported exercise, of the representative's functions—
 - (i) with the intention of causing harm to an employer or an undertaking of an employer; or
 - (ii) for a purpose not connected with the exercise of the function;
 - (b) the representative intentionally used, or disclosed to someone else, information obtained from an employer for a purpose not connected with the exercise of the representative's functions;
 - (c) the representative failed to reasonably exercise the representative's functions.
- (2) A work safety representative must not be disqualified on the following grounds:
 - (a) seeking assistance or advice on a work safety issue;
 - (b) reporting a suspected breach of the Act or this regulation to an inspector or a person assisting an inspector.

37 Work safety representative—notice of intention to disqualify

- (1) If, on application, the chief executive is satisfied that a ground may exist to disqualify a work safety representative, the chief executive must—
 - (a) give the representative written notice (a *show cause notice*); and
 - (b) if the chief executive considers it appropriate, suspend the representative until the chief executive decides the application for disqualification.
- (2) The show cause notice must—
 - (a) contain a statement to the effect that the work safety representative may, not later than 14 working days after the day the representative is given the notice, give the chief executive written reasons explaining why the representative should not be disqualified; and
 - (b) be accompanied by a summary of the reasons for the application; and
 - (c) if applicable—be accompanied by a notice of suspension.

38 Work safety representative—disqualification

- (1) The chief executive may disqualify a work safety representative if—
 - (a) satisfied that there is a ground for disqualification under section 36; and
 - (b) a show cause notice has been given under section 37 in relation to the ground; and
 - (c) the time for the representative to respond to the notice has ended.

- (2) In deciding whether to disqualify a work safety representative, the chief executive must consider the following:
 - (a) if a ground for disqualification is that the representative did something, or is doing something, in the exercise, or purported exercise, of the representative's functions, with the intention of causing harm to an employer, or undertaking of an employer—
 - (i) the harm caused or likely to be caused to the employer or undertaking because of the thing the representative did or is doing; and
 - (ii) the effect (if any) on the public interest of the thing the representative did or is doing;
 - (b) the representative's past record in exercising the representative's functions;
 - (c) any response by the representative given in accordance with the show cause notice.
- (3) The chief executive may consider anything else the chief executive considers relevant.
- (4) If the chief executive disqualifies a person from being a work safety representative, the chief executive must tell the following people in writing about the disqualification:
 - (a) the person;
 - (b) the person who applied under section 35 for the person to be disqualified;
 - (c) each employer of workers in the worker consultation unit the person represented.

- (5) If an employer is given written notice under subsection (4) the employer must tell workers the employer engages to carry out work in the unit about the disqualification.

Examples—how to tell workers about disqualification

- 1 email
- 2 notice posted
- 3 staff handbook

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

39 Work safety representative—revocation of disqualification

- (1) The chief executive 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.
- (2) The chief executive may revoke a disqualification on application or on the chief executive's own initiative.

40 Work safety representative—approved training

- (1) A work safety representative for a worker consultation unit must complete a training course approved in writing by the council (an *approved training course*).

- (2) An approval under subsection (1) is a notifiable instrument.

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

- (3) An employer must take all reasonable steps to ensure that the work safety representative completes an approved training course—
 - (a) not later than 3 months after the day the representative was elected; or
 - (b) not later than a day determined by the chief executive under subsection (4).

- (4) The chief executive may determine a day for the completion of an approved training course under subsection 3 (b) if—
 - (a) the employer applies to the chief executive for an extension of time; and
 - (b) the chief executive is satisfied that there are exceptional circumstances that justify the extension.
- (5) A work safety representative must not exercise a function under division 4.5 (Work safety representatives—provisional improvement notices) or division 4.6 (Work safety representatives—emergency procedures) unless the representative has completed an approved training course.

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

41 Work safety representative—refresher training

- (1) If a work safety representative is re-elected for a further term the representative must complete a refresher training course approved in writing by the council (an *approved refresher training course*).
- (2) An approval under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.
- (3) An employer must take all reasonable steps to ensure that the work safety representative completes an approved refresher training course—
 - (a) not later than 3 months after the day the representative was re-elected; or
 - (b) not later than a day determined by the chief executive under subsection (4).

- (b) the employer fails to do 1 or both of the following:
 - (i) pay the fees for the course;
 - (ii) reimburse the reasonable expenses incurred by the representative in undertaking the course.

Maximum penalty: 20 penalty units.

- (4) For the avoidance of doubt, the obligation to pay the fees for the course and reimburse reasonable expenses does not apply if the work safety representative is a suitably qualified person who is not a worker engaged by the employer.
- (5) An offence against this section is a strict liability offence.

43 Work safety representative—employer to provide facilities

- (1) The employer of a work safety representative has a duty to provide access to the facilities that are reasonably necessary for the representative to exercise the functions of a work safety representative.
- (2) An employer commits an offence if the employer fails to comply with the duty in subsection (1).

Maximum penalty: 20 penalty units.

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

46 Provisional improvement notice—content of notice

- (1) A provisional improvement notice must—
 - (a) state the circumstance that is occurring, or is likely to occur, that the work safety representative giving the notice believes is causing a contravention or may cause a contravention and the reasons for the belief; and
 - (b) either—
 - (i) if the rectification is necessary to prevent or minimise the risk of serious harm to the health or safety of a worker, or someone else, from a hazard—require the responsible person to rectify the matter or activity that the notice relates to within 24 hours starting when the notice is given personally to the person; or
 - (ii) in any other case—state a period of not less than 7 days starting on the day after the day the notice is issued within which the responsible person must rectify the matter or activity that the notice relates to.
- (2) A provisional improvement notice may state the action the responsible person may take to rectify the matter or activity that the notice relates to.
- (3) If subsection (1) (b) (ii) applies, before the end of the 7-day period stated in the notice, the work safety representative who issued the provisional improvement notice may, by written notice given to the responsible person, extend the period.

47 Provisional improvement notice—service of notice on chief executive etc

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

- (a) give a copy of the notice to the chief executive; and

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

48 Provisional improvement notice—service of notice on other employers etc

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

- (d) if the notice relates to plant or a substance or other thing, whether or not the thing is hired—anyone else with a right to immediate possession of the thing.

Maximum penalty: 20 penalty units.

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

49 Provisional improvement notice—display

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

Maximum penalty: 20 penalty units.

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

50 Provisional improvement notice—compliance

- (1) This section applies if a work safety representative gives a responsible person a provisional improvement notice.
- (2) The responsible person commits an offence if the person fails to—
 - (a) ensure that the notice is complied with in relation to each matter that—
 - (i) the notice relates to; and

- (ii) the person has control over; and
- (b) take reasonable steps to inform the representative of the action taken to comply with the notice.

Maximum penalty: 30 penalty units.

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

51 Provisional improvement notice—revocation of notice

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

52 Provisional improvement notice—review

- (1) This section applies to—
 - (a) a responsible person in relation to whom a provisional improvement notice is in force; and
 - (b) if the responsible person is a worker, and the notice is in force in relation to work carried out by the person for an employer—the employer.
- (2) A person to whom this section applies may ask the chief executive to arrange an inspection to investigate the circumstances relating to the issue of the provisional improvement notice—
 - (a) by written notice given to the chief executive; and
 - (b) not later than 7 days after the day the person receives the notice.
- (3) If a request is made under this section—
 - (a) the chief executive must arrange for an inspector to investigate the circumstances relating to the issue of the provisional improvement notice; and
 - (b) the operation of the notice is suspended until an inspector completes an investigation of the circumstances relating to the issue of the notice.
- (4) The inspector must revoke the provisional improvement notice if, after the investigation, the inspector believes on reasonable grounds that—
 - (a) the notice should not have been given to the person; or
 - (b) the person to whom the notice was given—
 - (i) ensured the notice was complied with in relation to each matter that—
 - (A) the notice related to; and

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

54 Emergency procedure—alternative work

Nothing in this division affects an employer’s right to require a worker to carry out alternative work while a direction under section 53 (2) (b) is in force in relation to the work the worker usually carries out.

Part 5 **Work safety committees**

Division 5.1 **Work safety committees— establishment**

55 **Work safety committee—eligibility**

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

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

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

- (1) A worker consultation unit may ask any of the following people to conduct the election of a work safety committee member on behalf of the unit:
 - (a) the employer;
 - (b) if a worker in the unit is, or is eligible to be, a member of a registered organisation—the registered organisation;
 - (c) someone else.

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

Maximum penalty: 10 penalty units.

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

57 Election process—notice of election of work safety committee members

- (1) This section applies if a work safety committee member is elected to the work safety committee for a worker consultation unit.
- (2) The person who conducted the election must give notice of the result of the election to each represented worker's employer.
- (3) The notice must include the work safety committee member's name.
- (4) An employer must, if given notice of the election of a work safety committee member for a worker consultation unit, tell workers in the unit the employer engages to carry out work that the person elected is a work safety committee member.

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

- 1 email
- 2 notice posted
- 3 staff handbook

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

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

Division 5.2 Work safety committees—general

58 Work safety committee—exercising functions

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

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

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

- (c) encourage workers to take an interest in work safety issues in their workplace; and
- (d) review the circumstances of injuries, diseases and serious incidents in the workplace, and make recommendations to the employer; and
- (e) undertake other activities agreed between the employer and the committee that the committee members have suitable qualifications and training to deal with.

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

59 Work safety committee—governance

- (1) A work safety committee may conduct its proceedings (including its meetings) as it considers appropriate.
- (2) However, a meeting of a work safety committee may only be held if a quorum is present at the meeting.

- (3) A quorum is present at a meeting if—
- (a) at least 1 member representing the interests of the employer is present at the meeting; and
 - (b) more than half the members of the work safety committee present at the meeting are—
 - (i) workers in the worker consultation unit; or
 - (ii) work safety representatives for the worker consultation unit.

60 Work safety committee—employer’s duties

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

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

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

Maximum penalty: 20 penalty units.

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

- (4) In this section:

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

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

Part 6 Authorised representatives

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

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

62 Authorised representative—application for disqualification

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

63 Authorised representative—grounds for disqualification

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

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

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

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

64 Authorised representative—notice of intention to disqualify

- (1) If, on application, the chief executive is satisfied that a ground may exist to disqualify an authorised representative, the chief executive must give the representative written notice (a *show cause notice*)—
 - (a) that the chief executive intends to disqualify the representative; and
 - (b) telling the representative why the chief executive intends to disqualify the representative; and
 - (c) telling the representative that the representative may, not later than 14 days after the day the representative is given the notice, give the chief executive written reasons explaining why the representative should not be disqualified.
- (2) However, the chief executive may, at the same time as or immediately after giving the authorised representative notice, suspend the authorised representative if satisfied on reasonable grounds that, if not immediately suspended, the representative may—
 - (a) injure a worker; or
 - (b) cause significant damage to premises or a business or undertaking.

65 Authorised representative—disqualification

- (1) The chief executive may disqualify an authorised representative if—
 - (a) satisfied that there is a ground for disqualification under section 63; and
 - (b) a show cause notice has been given under section 64; and
 - (c) the time for the representative to respond to the show cause notice has ended.
- (2) In deciding whether to disqualify an authorised representative, the chief executive must consider the following:
 - (a) the representative's past record in exercising the representative's function;
 - (b) any response by the representative given in accordance with the show cause notice.
- (3) The chief executive may consider anything else the chief executive considers relevant.
- (4) If the chief executive disqualifies a person under subsection (1), the chief executive must tell the following people in writing about the disqualification—
 - (a) the representative of the disqualification; and
 - (b) the person who applied under section 62 for the person to be disqualified; and
 - (c) a registered organisation if the chief executive knows, or believes, that the person is an employee of, or holds an office in, the organisation.

66 Authorised representative—revocation of disqualification

- (1) The chief executive 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.
- (2) The chief executive may revoke a disqualification on application or on the chief executive's own initiative.

Part 7 Particular safety measures

Division 7.1 Entry and exit

67 Entry to and exit from workplaces

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

68 Movement within workplaces

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Division 7.2 Personal protective and safety equipment

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

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

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

Maximum penalty: 20 penalty units.

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

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

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

70 Responsibilities of users of personal protective and safety equipment

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

71 Certain personal protective and safety equipment to be provided

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

Examples—par (b)

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

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

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

Maximum penalty: 30 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence if—
- (a) the use of personal protective equipment at the workplace may affect a person's ability to communicate with other people; and

- (b) appropriate steps are not taken to ensure that this does not create a risk to the health or safety of the person or anyone else.

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

72 Air supplied respiratory equipment

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

Maximum penalty: 30 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence unless the air supplied to a person using the air supplied respiratory equipment, provided at the workplace, passes through—
- (a) an efficient purifying device that ensures that—
 - (i) the air does not have an objectionable or nauseous odour; and
 - (ii) if measured at 15°C and 100kPa, the air would contain not more than 11mg/m³ of carbon monoxide, not more than 900mg/m³ of carbon dioxide and not more than 1mg/m³ of oil; and
 - (b) an efficient conditioner that ensures that—
 - (i) the air is supplied at a temperature not colder than 15°C and not warmer than 25°C; and
 - (ii) the humidity is not less than 20% and not more than 85%; and
 - (c) an efficient condensate trap that is fitted with a drain cock to remove any condensed liquid; and
 - (d) an efficient ring circuit or controlled leak-off system that eliminates stale air.

Maximum penalty: 30 penalty units.

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

- (d) provided with fittings that cannot be connected to any other compressed air equipment at the workplace.

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Division 7.3 Prevention of falls

73 Meaning of *anchorage*—div 7.3

In this division:

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

74 Protection against falls

- (1) This section applies if—
 - (a) because of the nature of the work, a worker must work in a workplace from which the worker could fall; and
 - (b) if the worker fell—it is likely that the worker would be injured.

- (2) A person conducting a business or undertaking at the workplace commits an offence if the person does not provide adequate protection against the worker falling from the workplace.

Maximum penalty: 30 penalty units.

- (3) For this section, a person provides *adequate protection* at the workplace if the person—

(a) provides a safe means of entry to and exit from the workplace;
and

(b) either—

(i) if it is reasonably practicable to provide a protective barrier for the workplace—provides the barrier; or

(ii) if it is not reasonably practicable to provide a protective barrier for the workplace—provides and maintains a safe system of work for the workplace.

- (4) In this section:

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

(a) providing training in relation to risks associated with working in the workplace;

(b) providing supervision or assistance for people working in the workplace;

(c) using a fall-arresting device in the workplace if practicable;

(d) if a safe working platform can reasonably be provided in the workplace—providing a safe working platform;

(e) if a safe working platform cannot reasonably be provided in the workplace—using a safety harness or pole safety static-line system if practicable.

75 Protection against falls—maintenance work

- (1) A person conducting a business or undertaking at a workplace commits an offence if a worker is carrying out maintenance work on a structure at the workplace, and the person conducting the business or undertaking does not ensure that the worker uses—
- (a) a properly installed building maintenance unit; or
 - (b) scaffolding or a working platform; or
 - (c) if it is not reasonably practicable to use a building maintenance unit, scaffolding or a working platform—a safety harness attached to a safety line attached to an anchorage that is appropriate taking into account the situation of the work and the construction of the structure.

Maximum penalty: 30 penalty units.

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

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

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

76 Use of safety harness, safety line and anchorage

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

Note For maintenance work on a structure, a safety harness, safety line or anchorage may be used only if it is not reasonably practicable to provide a building maintenance unit, scaffolding or a working platform (see s 75 (1) (c)).

(2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that the safety harness, safety line or anchorage used at the workplace is—

- (a) regularly inspected; and
- (b) kept in efficient working order.

Maximum penalty: 30 penalty units.

(3) For subsection (2) (b), an anchorage that is permanently fixed to a structure is not kept in efficient working order if it is not inspected at least every 6 months.

(4) A person commits an offence if the person intentionally uses a safety harness or safety line at a workplace that is not—

- (a) suitable for the use; and
- (b) undamaged and effective; and
- (c) maintained in a suitable condition for the use.

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

- (a) is aware that the load-bearing capacity of the anchorage at the workplace is impaired; and
- (b) allows the anchorage to be used before it is repaired or replaced.

Maximum penalty: 30 penalty units.

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

77 Use of ladders

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

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

78 Use of particular types of ladders

- (1) A person commits an offence if the person uses a portable single ladder or extension ladder at a workplace in any of the following circumstances:
- (a) the horizontal distance between the ladder's top support point and its foot is more than $\frac{1}{4}$ of its supported length;
 - (b) the ladder is not placed on a firm footing;
 - (c) the ladder is not secured to prevent slipping and sideways movement.

Maximum penalty: 30 penalty units.

- (2) A person commits an offence if—
- (a) the person uses a ladder at a workplace to support planks for a working platform; and
 - (b) the ladder is not a trestle ladder.

Maximum penalty: 30 penalty units.

- (3) A person commits an offence if—
- (a) the person uses a working platform supported by trestle ladders at a workplace; and
 - (b) the working platform is used for work other than light duty work.

Maximum penalty: 30 penalty units.

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

- (5) In this section:

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

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

Note 2 This standard may be purchased at www.standards.org.au.

Division 7.4 Atmosphere and ventilation

79 Definitions—div 7.4

In this division:

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

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

safe unclassified inhalable dust level means a level of unclassified inhalable dust of 10mg/m³ (TWA) or less.

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

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

TWA—see ***time-weighted average***.

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

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

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

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

80 Ventilation

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

- (3) What is adequate for this section must be decided having regard to—

- (a) the nature of the work undertaken at the workplace; and
- (b) the size and location of the workplace; and
- (c) the number of workers at the workplace and their characteristics including gender, age and special needs.

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

81 Unsafe oxygen levels—particular measures

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

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

Maximum penalty: 30 penalty units.

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

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

Maximum penalty: 30 penalty units.

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

82 Unsafe levels of unclassified inhalable dust—particular measures

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

Maximum penalty: 30 penalty units.

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

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

- (2) A person in control of premises commits an offence if—
- (a) atmospheres in the premises contain, or are reasonably likely to develop, unsafe unclassified inhalable dust levels; and
 - (b) the person does not display warning signs about the unsafe unclassified inhalable dust levels at the premises; and

- (c) the person does not otherwise manage the risk associated with unsafe unclassified inhalable dust levels.

Maximum penalty: 30 penalty units.

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

83 Unsafe levels of oxygen and unclassified inhalable dust—entry

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

- (a) the unsafe place in the person's workplace is isolated; and
- (b) appropriate warning signs are displayed at entry points to the unsafe place.

Maximum penalty: 30 penalty units.

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

- (a) the unsafe place in the premises is isolated; and
- (b) appropriate warning signs are displayed at entry points to the unsafe place.

Maximum penalty: 30 penalty units.

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

84 Monitoring levels of oxygen and unclassified inhalable dust

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Division 7.5 Heat and cold

85 Air temperature

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

Maximum penalty: 30 penalty units.

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

86 Heat—particular measures

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

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

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

Maximum penalty: 10 penalty units.

- (3) What is adequate for subsection (2) must be decided having regard to—

- (a) the nature of the work undertaken at the workplace; and
- (b) the size and location of the workplace; and
- (c) the number of workers at the workplace and their characteristics including gender, age and special needs.

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

87 Cold—particular measures

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

Maximum penalty: 10 penalty units.

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

Division 7.6 Surfaces and floors

88 Floors—general

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

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

89 Floors that become slippery

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

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

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

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

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

Maximum penalty: 20 penalty units.

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

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

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

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

Maximum penalty: 20 penalty units.

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

90 Floors—hard surfaces

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

Maximum penalty: 20 penalty units.

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

Division 7.7 Electricity

91 Definitions—div 7.7

In this division:

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

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

92 Electricity—measures for electrical installations

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

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

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

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

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

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

Examples

See examples to s (2).

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

live part means a live part as defined in AS/NZS 3000.

93 Electricity—measures for articles of electrical equipment

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

Maximum penalty: 30 penalty units.

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

- (3) A person in control of premises commits an offence if—
- (a) the person does not ensure that the article of electrical equipment is safe; or
 - (b) if the article of electrical equipment is not safe—
 - (i) the person does not ensure that the article is disconnected from the electricity supply; and
 - (ii) if found unsafe by an electrical inspector—the person does not ensure that the article, or the part of the article that is unsafe, is danger labelled and secured to prevent inadvertent reconnection.

Maximum penalty: 30 penalty units.

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

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

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

94 Electricity—measures for preventing contact

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

Maximum penalty: 30 penalty units.

- (2) A person in control of premises commits an offence if the person does not ensure that a person working in, or undertaking maintenance at, the premises is prevented from making inadvertent contact with a live, conductive part of an electrical installation.

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

- (4) A person in control of premises commits an offence if the person does not ensure that a person working in, or undertaking maintenance at, the premises is prevented from going within an unsafe distance of overhead or underground electrical power lines or exposed cables.

Maximum penalty: 30 penalty units.

- (5) Subsections (1), (2), (3) and (4) do not apply in relation to a person undertaking electrical work if the person is licensed under the *Construction Occupations (Licensing) Act 2004* to undertake the work.

- (6) Subsections (3) and (4) do not apply if—

- (a) a written risk assessment is given to the electricity network operator; and
- (b) the electricity network operator is satisfied—
 - (i) with the content of the risk assessment; and
 - (ii) that work to be done in accordance with the risk assessment will be safe.

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

- (8) In this section:

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

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

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

Division 7.8 Confined spaces

95 Definitions—div 7.8

In this division:

atmospheric contaminant means—

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

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

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

Examples

- 1 storage tanks, tank cars, process vessels, boilers, pressure vessels, silos and other tank-like compartments
- 2 pits, degreasers and other open-topped spaces

3 pipes, sewers, shafts, ducts and similar structures

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

entry permit means a written document that—

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

safe oxygen level—see section 79.

unsafe oxygen level—see section 79.

96 Design etc—confined spaces

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

97 Hazard identification and risk assessment—confined spaces

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

- (a) identify each confined space at the workplace; and
(b) identify each reasonably foreseeable hazard associated with working in the space.

Maximum penalty: 20 penalty units.

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

Maximum penalty: 30 penalty units.

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

- (a) there is evidence that risk assessment does not address, or no longer addresses, the risks posed by the confined space for which the assessment is undertaken; and
(b) the person does not ensure that the risk assessment is reviewed.

Maximum penalty: 20 penalty units.

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

(5) In this section:

risk assessment includes at least an assessment of—

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

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

98 Entry to and work in confined spaces

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

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

Maximum penalty: 30 penalty units.

(2) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that, before anyone enters a confined space at the workplace—

- (a) the space contains a safe oxygen level; and

- (b) any atmospheric contaminant in the space is reduced to below the exposure standard under the national exposure standards for the contaminant; and

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

- (c) the concentration of any flammable contaminant in the atmosphere of the space is below 5% of its LEL; and
- (d) the space is not extremely hot or extremely cold; and
- (e) steps are taken to minimise any risk associated with the presence of vermin in the space.

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

LEL—see *lower explosive limit*.

lower explosive limit (or *LEL*), 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.

**99 Isolation and control of potentially hazardous services—
particular measures**

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

Examples—potentially hazardous service

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

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

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

Maximum penalty: 30 penalty units.

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

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

Maximum penalty: 30 penalty units.

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

100 Clearing containment before entry—particular measures

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

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

101 Unsafe level of oxygen and atmospheric contaminants

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

Maximum penalty: 30 penalty units.

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

- (3) A person in control of premises commits an offence if the person allows—
- (a) someone to enter a confined space at the premises; and

- (b) the person entering is not equipped with suitable personal protective and safety equipment including air supplied respiratory protective equipment.

Maximum penalty: 30 penalty units.

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

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

102 Entry permits—particular measures

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

Maximum penalty: 20 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not give each person who is required to do work in a confined space at the workplace—
 - (a) a copy of the entry permit; and
 - (b) reasonable time to read the entry permit before the person is required to enter the space.

Maximum penalty: 20 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence if—
 - (a) someone enters or works in a confined space at the workplace; and
 - (b) the entry or work does not comply with an entry permit under this section.

Maximum penalty: 20 penalty units.

- (4) A person conducting a business or undertaking at a workplace commits an offence if—
- (a) a confined space at the workplace is returned to normal use; and
 - (b) the person does not have written confirmation from the person in direct control of the work in the confined space, that—
 - (i) the work has been completed; and
 - (ii) each person involved in the work has left the space.

Maximum penalty: 20 penalty units.

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

Maximum penalty: 20 penalty units.

- (6) A person in control of premises commits an offence if—
- (a) someone enters or works in a confined space at the premises; and
 - (b) the entry or work does not comply with an entry permit under this section.

Maximum penalty: 20 penalty units.

- (7) A person in control of premises commits an offence if—
- (a) a confined space at the premises is returned to normal use; and
 - (b) the person does not have written confirmation from the person in direct control of the work in the confined space, that—
 - (i) the work has been completed; and

(ii) each person involved in the work has left the space.

Maximum penalty: 20 penalty units.

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

103 Standby people—particular measures

(1) This section applies if—

- (a) there is a confined space at a workplace; and
- (b) someone is in the confined space.

(2) A person conducting a business or undertaking at the workplace commits an offence if the person does not appoint 1 or more people as standby people for the work in the confined space at the workplace.

Maximum penalty: 30 penalty units.

(3) A person conducting a business or undertaking at the workplace commits an offence if the person appoints a person as a standby person for the work in the confined space at the workplace and the person appointed—

- (a) has not undertaken training in accordance with section 107 (Training about confined spaces); and
- (b) cannot operate the monitoring equipment used to ensure safety during entry to, and work in, the confined space; and
- (c) cannot initiate emergency procedures (including rescue procedures).

Maximum penalty: 30 penalty units.

- (4) A person conducting a business or undertaking at the workplace commits an offence if the person does not ensure that a standby person—
- (a) remains outside and near the confined space at the workplace while anyone is in the confined space; and
 - (b) is able to communicate continuously with anyone in the confined space; and
 - (c) if practicable, is able to see anyone in the confined space.

Maximum penalty: 30 penalty units.

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

104 Emergencies—particular measures

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

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

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

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

Maximum penalty: 30 penalty units.

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

105 Entry protection—particular measures

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

106 Atmospheric testing and monitoring—particular measures

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

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

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

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

Maximum penalty: 30 penalty units.

- (2) A person in control of premises commits an offence if the person does not ensure that appropriate atmospheric testing and monitoring is carried out in a confined space at the premises if the space—
- (a) is or may be contaminated with an atmospheric contaminant; or
 - (b) is or may be contaminated with a flammable contaminant; or
 - (c) has or may have an unsafe oxygen level.

Maximum penalty: 30 penalty units.

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

107 Training about confined spaces

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

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

- (a) anyone who does 1 or more of the following:
 - (i) assesses the safety of confined spaces;
 - (ii) issues entry permits for confined spaces;
 - (iii) designs and fixes the layout of workplaces;
 - (iv) supervises people working in or near confined spaces;

- (v) maintains equipment used in confined spaces;
 - (vi) purchases, distributes, fits, wears or maintains personal protective and safety equipment used for work in confined spaces; and
- (b) anyone who could be involved in rescue and first aid procedures involving a confined space.
- (4) A person conducting a business or undertaking at a workplace commits an offence if the person fails to make a written record of—
- (a) the training given under this section; and
 - (b) the people to whom the training is given.

Maximum penalty: 20 penalty units.

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

standby person means a person appointed as a standby person under section 103.

training must include instruction in each of the following:

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

108 Record keeping

- (1) A person conducting a business or undertaking at a workplace must keep—
- (a) entry permits for a confined space at the workplace for 1 month after the day the space is returned to normal use; and
 - (b) risk assessment reports for work in a confined space at the workplace for 5 years after the last entry in the report; and
 - (c) a record of training relating to work in a confined space at the workplace while the person to whom the training has been given is engaged.

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

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

Maximum penalty: 20 penalty units.

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

Division 7.9 Lighting

109 Person conducting business or undertaking to provide lighting

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

Maximum penalty: 30 penalty units.

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

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

- (a) allows workers to work safely; and
- (b) does not create excessive glare or reflection; and
- (c) allows people who are not workers to move safely within the workplace; and
- (d) facilitates safe entry to, and exit from, the workplace.

Maximum penalty: 20 penalty units.

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

Division 7.10 Noise management

110 Definitions—div 7.10

In this division:

exposure standard means—

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

sound pressure level, in relation to a person, means the level of noise worked out, at the person's ear position, in accordance with AS/NZS 1269.1, without taking into account any protection that may be given by a personal hearing protector.

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

For this division, the value of $L_{C,peak}$ must be worked out by using sound-measuring equipment with a peak detector-indicator characteristic that allows measurement of sound in accordance with AS/NSZ 1269.1

112 Noise management—duties of designers etc

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

- (b) the person in control of the manufacture, import or supply of the plant fails to provide the person to whom the plant is supplied with information about—
 - (i) the noise emitted by the plant; and
 - (ii) ways to keep the noise to the lowest level that is reasonably practicable to achieve.

Maximum penalty: 20 penalty units.

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

unsafe level of noise means—

- (a) an A-weighted sound pressure level of 70dB (A); or
- (b) an $L_{C,peak}$ of 130dB (C).

113 Noise management—duties of person conducting business or undertaking

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not—
 - (a) properly maintain noise control measures at the workplace; and
 - (b) give workers at the workplace information and training about noise control measures in accordance with AS/NZS 1269; and
 - (c) ensure that any personal hearing protectors given to a worker are used and maintained in accordance with AS/NZS 1269.

Maximum penalty: 30 penalty units.

- (2) If action is required to reduce the noise level to which a worker is exposed, the person conducting a business or undertaking at a workplace must—
 - (a) as far as is reasonably practicable, implement engineering noise controls to reduce the noise level; and

- (b) if action under paragraph (a) does not reduce the noise level to the exposure standard or less—as far as is reasonably practicable, implement administrative noise controls to reduce the noise to which the worker is exposed; and
 - (c) if action under paragraph (a) and (b) does not reduce the noise level to the exposure standard or less—give the worker personal hearing protectors that—
 - (i) meet the requirements of AS/NZS 1270; and
 - (ii) have been selected according to the procedures stated in AS/NZS 1269.3.
- (3) A person conducting a business or undertaking at a workplace commits an offence if—
- (a) noise levels at the workplace exceed the exposure standards for a worker; and
 - (b) the person does not—
 - (i) take the action mentioned in subsection (2) (a) and (b) to reduce the noise level to which the worker is exposed; or
 - (ii) give the worker the personal hearing protectors required under subsection (2) (c).

Maximum penalty: 20 penalty units.

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

114 Noise management—duties of workers

- (1) A worker commits an offence if—
- (a) noise control measures are taken at a workplace under this division; and

- (b) the worker intentionally does not comply with the measures at the workplace, as far as reasonably practicable.

Maximum penalty: 20 penalty units.

- (2) A worker commits an offence if the worker—
 - (a) is given personal hearing protectors for use at work; and
 - (b) is given information and training about the protectors in accordance with AS/NZS 1269: and
 - (c) does not use the protectors, as far as reasonably practicable.

Maximum penalty: 20 penalty units.

Division 7.11 Isolated work

115 Isolated workers

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

Examples—par (c)

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

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

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

Maximum penalty: 20 penalty units.

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

Division 7.12 Fire and explosion

116 Fire and explosion—risk control

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

Maximum penalty: 30 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person does not—
- (a) regularly remove waste materials and accumulated dust at the workplace; and;
 - (b) eliminate potential ignition sources from proximity to flammable substances, combustible dusts or waste materials at the workplace.

Maximum penalty: 30 penalty units.

- (3) A person conducting a business or undertaking at a workplace commits an offence if—
- (a) the person does not monitor the workplace regularly to ensure the continued effectiveness of control measures for fire or explosion at the workplace; and

- (b) there are flammable substances, combustible dusts or waste materials at the workplace.

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

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

Maximum penalty: 30 penalty units.

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

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

Maximum penalty: 30 penalty units.

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

117 Fire and explosion—facilities

- (1) A person conducting a business or undertaking at a workplace commits an offence if the person does not ensure that appropriate fire appliances are—
- (a) available at the workplace; and
 - (b) maintained to a reasonable standard by a suitably qualified person.

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

- (3) A person in control of premises commits an offence if the person does not ensure that appropriate fire appliances are—
- (a) available at the premises; and
 - (b) maintained to a reasonable standard by a suitably qualified person.

Maximum penalty: 30 penalty units.

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

Maximum penalty: 30 penalty units.

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

(6) In this section:

fire appliance includes—

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

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

Division 7.13 Emergency procedures

118 Person conducting business or undertaking to provide for emergencies

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

Maximum penalty: 30 penalty units.

- (2) A person conducting a business or undertaking at a workplace commits an offence if the person engages workers at the workplace and does not ensure that—
- (a) arrangements are made for shutting down and evacuating the workplace in an emergency, including appropriate practice evacuations; and
 - (b) details of the arrangements are displayed in appropriate places at the workplace; and
 - (c) an appropriate number of people are properly trained to oversee any evacuation and use any on-site fire appliances.

Maximum penalty: 30 penalty units.

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

Part 8 **Licensing high risk work**

Division 8.1 **Important concepts**

119 **Definitions—pt 8**

In this part:

AQF—see *Australian qualifications framework*.

AQTF—see *Australian quality training framework*.

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

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

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

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

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

corresponding law means a law mentioned in schedule 2.

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

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

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

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

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

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

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

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

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

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

registered training organisation means—

- (a) a training organisation registered under the *Training and Tertiary Education Act 2003*, chapter 3; or
- (b) a training organisation registered by a state registering body in accordance with the Australian quality training framework within a defined scope of registration.

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

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

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

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

supervisor, for a trainee carrying out a class of high risk work, means a person who holds—

- (a) a national licence to carry out the work; or
- (b) a certificate of competency to do scheduled work that corresponds with the class of high risk work.

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

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

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

Division 8.2 High risk work licence

120 Carrying out high risk work without licence

- (1) A person commits an offence if—
- (a) the person carries out high risk work; and
 - (b) the person is not licensed to carry out the work.
- Maximum penalty: 20 penalty units.
- (2) Subsection (1) does not apply to a person if—
- (a) the person holds a national licence to carry out the high risk work; or
 - (b) the person—
 - (i) is a trainee; and
 - (ii) carries out the high risk work in accordance with division 8.4 (Trainees under supervision); or
 - (c) the person (other than a person doing scaffolding, dogging or rigging work) is testing, trialling, installing, commissioning, maintaining, servicing, repairing, altering or disposing of plant; or
 - (d) the high risk work is exempt under an exemption granted by the chief executive under division 8.7 (Exemptions).
- (3) An offence against this section is a strict liability offence.

121 Allowing unlicensed person to carry out work

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

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

Maximum penalty: 30 penalty units.

- (2) Subsection (1) does not apply if—
 - (a) the worker carrying out the high risk work holds a national licence to carry out the high risk work; or
 - (b) the worker carrying out the high risk work is a trainee and the work done by the trainee is in accordance with division 8.4 (Trainees under supervision); or
 - (c) the worker carrying out the high risk work (other than a person doing scaffolding, dogging or rigging work) is testing, trialling, installing, commissioning, maintaining, servicing, repairing, altering or disposing of plant; or
 - (d) the high risk work is exempt under an exemption granted by the chief executive under division 8.7 (Exemptions).
- (3) An offence against this section is a strict liability offence.

122 Licence application

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

Note If a form is approved under the Act, s 229 for this provision, the form must be used.
- (2) The application must state each class of high risk work for which the licence is required.
- (3) The person must make the application not later than—
 - (a) 60 days after the day the person receives a statement of attainment for the class of high risk work; or

- (b) if the chief executive allows a later time—the later time.
- (4) The application must be accompanied by the following:
- (a) evidence of the applicant’s identity and age;
 - (b) a sample of the person’s usual signature;
 - (c) a recent photograph of the applicant;
 - (d) either—
 - (i) a statement of attainment issued to the person for each class of high risk work; or
 - (ii) a certified copy of a national licence to carry out each class of high risk work under a corresponding law;
 - (e) a statutory declaration stating whether the applicant, in the 5 years before the day the application is made—
 - (i) has held a certificate of competency, a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that has been suspended or cancelled; and
 - (ii) has been convicted or found guilty of a serious offence under the *Occupational Health and Safety Act 1989*, the *Work Safety Act 2008*, the *Crimes Act 1900*, part 2A (Industrial manslaughter) or a corresponding offence against the law of a State; and

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

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

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

123 Licence issue

- (1) If a person applies under section 122 for a licence to carry out a class of high risk work, the chief executive must—
 - (a) issue the licence; or
 - (b) refuse to issue the licence.
- (2) The chief executive must issue the licence if satisfied that the applicant—
 - (a) is aged 18 years or over; and
 - (b) has either—
 - (i) a statement of attainment for the class of high risk work; or
 - (ii) a national licence to carry out the class of high risk work under a corresponding law; and
 - (c) does not hold a current licence to carry out the class of high risk work; and
 - (d) does not hold a certificate of competency, a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that is or has been suspended in the 5 years before the day the application was made; and
 - (e) has not held a certificate of competency, a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that has been cancelled in the 5 years before the day the application was made; and

- (f) has not been convicted or found guilty of a serious offence under the *Occupational Health and Safety Act 1989*, the *Work Safety Act 2008*, the *Crimes Act 1900*, part 2A (Industrial manslaughter) or a corresponding offence against the law of a State in the 5 years before the day the application was made.

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

124 Licence conditions

The chief executive may issue a licence on conditions.

125 Failing to comply with condition of licence

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

Maximum penalty: 10 penalty units.

Note The effect of the Criminal Code, s 45 is that a person who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the commission of an offence is taken to have committed the offence. For example, a person who aided or abetted or counselled or procured another person to carry out a class of high risk work without a licence (s 120) or contrary to the conditions of a licence (s 121) would also commit the offence.

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

126 Form of licence

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

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

127 Term of licence

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

128 Renewal of licence

- (1) A licensee may apply to the chief executive to renew a licence to carry out high risk work—

- (a) before the licence term ends; or
- (b) if the chief executive extends the time for an application to renew—before the end of the extended time.

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

- (2) The application must be accompanied by the following:

- (a) a certified copy of the licence;
- (b) evidence of the licensee's continued competency to carry out the class of high risk work, satisfactory to the chief executive;
- (c) proof of the licensee's identity;

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

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

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

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

129 Issue of renewed licence

- (1) If a licensee applies under section 128 to renew a licence to carry out high risk work, the chief executive must—
- (a) renew the licence; or
 - (b) refuse to renew the licence.
- (2) The chief executive must renew a licence to carry out high risk work if satisfied that—
- (a) the licensee—
 - (i) demonstrates continuing competency in safely carrying out the high risk work under workplace conditions; and

- (ii) does not hold a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that is or has been suspended in the 5 years before the day the application for renewal was made; and
 - (iii) has not held a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that has been cancelled in the 5 years before the day the application for renewal was made; and
 - (iv) has not been convicted or found guilty of a serious offence under the *Occupational Health and Safety Act 1989*, the *Work Safety Act 2008*, the *Crimes Act 1900*, part 2A (Industrial manslaughter) or a corresponding offence against the law of a State in the 5 years before the day the application for renewal was made; and
- Note* **State** includes the Northern Territory (see Legislation Act, dict, pt 1, def **State**).
- (b) no complaints against the licensee in relation to the licence in the ACT or another state or territory have been upheld in the 5 years before the day the application for renewal was made.
- (3) The chief executive may renew a licence to carry out high risk work if satisfied that—
- (a) the licensee demonstrates continuing competency in safely carrying out the high risk work under workplace conditions; and
 - (b) it is otherwise appropriate to renew the licence.
- (4) The renewal of a licence begins on the day after the licence being renewed ends.

130 Application to vary licence

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

Note If a form is approved under the Act, s 229 for this provision, the form must be used.
- (2) If the application is to add or remove a class of high risk work, the application must state each class of high risk work to be added to, or removed from, the licence.
- (3) If the application is to add a class of high risk work, the person must make the application not later than—
 - (a) 60 days after the day the person receives a statement of attainment for the class of high risk work; or
 - (b) if the chief executive allows a later time—the later time.
- (4) The application must be accompanied by the following:
 - (a) a certified copy of the licence;
 - (b) proof of the licensee's identity;
 - (c) if the application is to change the licensee's name—evidence that the licensee has changed name;

Examples

- 1 marriage certificate
- 2 change of name certificate

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

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

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

131 Variation of licence

- (1) If a licensee applies under section 130 to vary a licence to carry out high risk work, the chief executive must—
 - (a) vary the licence; or
 - (b) refuse to vary the licence.
- (2) The chief executive must vary the licence to add a class of high risk work mentioned in the application if satisfied that the licensee—
 - (a) has a statement of attainment for the additional class of high risk work; and
 - (b) does not hold a current licence to carry out the additional class of high risk work; and
 - (c) does not hold a licence to carry out the additional high risk work, or a recognised qualification to carry out the additional high risk work under a corresponding law, that is or has been suspended in the 5 years before the day the application for variation was made; and

- (d) has not held a licence to carry out the additional high risk work, or a recognised qualification to carry out the additional high risk work under a corresponding law, that has been cancelled in the 5 years before the day the application for variation was made.
- (3) The chief executive must vary the licence to change the licensee's name if satisfied that the licensee's name has changed to the name set out in the application.
- (4) The variation of the licence takes effect on the day the chief executive varies the licence.
- (5) If the chief executive varies a licence, the licensee must surrender the previous licence to the chief executive not later than 14 days after the day the varied licence is given to the licensee.

Maximum penalty: 5 penalty units.

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

132 Licensee not to hold other licence

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

Maximum penalty: 5 penalty units.

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

133 Replacement of lost etc licence

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

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

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

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

- (4) If a licensee applies for a replacement licence to carry out high risk work, the chief executive must—
 - (a) replace the licence; or
 - (b) refuse to replace the licence.
- (5) The chief executive must replace the licence to carry out high risk work if satisfied that—
 - (a) the licensee held a licence to carry out the class of high risk work mentioned in the application; and
 - (b) the licence is current; and
 - (c) the licence is lost, stolen or damaged.
- (6) If the chief executive replaces a licence under this section, the licensee must—
 - (a) if the licence was lost and the licensee finds the licence—surrender the found licence to the chief executive not later than 14 days after the licence is found; or

- (b) if the licence was damaged—surrender the damaged licence to the chief executive not later than 14 days after the days the replaced licence is given to the licensee.

Maximum penalty: 5 penalty units.

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

Division 8.3 Suspension or cancellation of licence

134 Grounds for compulsory cancellation of licence

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

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

135 Compulsory cancellation of licence

- (1) The chief executive must cancel the licence if the chief executive—
 - (a) has given notice to the licensee of an intention to cancel the licence; and
 - (b) has considered any reasons given by the licensee in accordance with the notice; and
 - (c) is satisfied that there is a ground for cancellation under section 134; and
 - (d) is not satisfied that it is appropriate to suspend the licence.

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

136 Grounds for discretionary cancellation of licence

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

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

- (c) the assessor who assessed the licensee for the statement of attainment for the licence was approved by the chief executive under section 148 because—
 - (i) information given to the chief executive was false or misleading in a material particular; or
 - (ii) the assessor failed to give information relevant to the approval to the chief executive;
- (d) the assessor who assessed the licensee for the statement of attainment for the licence has been convicted or found guilty of an offence against the Act or a corresponding law in relation to the assessment of the licensee;

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).
- (e) the licensee's assessment for the statement of attainment for the licence was not conducted in accordance with—
 - (i) this part or any guidelines under this part; or
 - (ii) a corresponding law, or any guidelines under the corresponding law.

137 Discretionary cancellation of licence

- (1) The chief executive may cancel the licence if the chief executive—
 - (a) has given notice to the licensee of an intention to cancel the licence; and
 - (b) has considered any reasons given by the licensee in accordance with the notice; and
 - (c) is satisfied that there is a ground for cancellation under section 136; and
 - (d) is not satisfied that it is appropriate to suspend the licence.

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

138 Suspension of licence after notice

- (1) The chief executive may, after considering any representations made by the licensee in accordance with a notice under section 135 (2) or section 137 (2), by written notice given to the licensee, suspend the licence until the earlier of—
 - (a) 28 days after the notice is given to the licensee; or
 - (b) the chief executive advises the licensee that the suspension is revoked.
- (2) A suspension takes effect on the day after the chief executive gives the notice to the licensee.

139 Immediate suspension of licence

- (1) The chief executive may by written notice given to a licensee suspend a licence to carry out a class of high risk work immediately if the chief executive reasonably believes that—
 - (a) there is a ground for cancellation under section 134 or section 136; and
 - (b) the health or safety of the licensee or someone else may be endangered if the chief executive does not immediately suspend the licence.
- (2) The suspension—
 - (a) operates immediately after the licensee is given notice of the suspension; and
 - (b) continues to operate until the earlier of—
 - (i) 28 days after the day the notice is given to the licensee; or
 - (ii) the chief executive advises the licensee in writing that the suspension is revoked; or
 - (iii) the chief executive cancels the licence under section 135 or section 137.

140 Review of licence suspension or cancellation

- (1) The chief executive may, on the chief executive's own initiative or on application by a licensee, review—
 - (a) the suspension of a licence; or
 - (b) if the cancellation of a licence has not taken effect—the cancellation of the licence.
- (2) The chief executive may, in carrying out a review, consider any information (*new information*) given to the chief executive that was not available to the chief executive when the decision to suspend or cancel was made.

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

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

141 Surrender of suspended or cancelled licence

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

Maximum penalty: 5 penalty units.

- (2) If a surrendered licence includes a class of high risk work that is not suspended or cancelled, the chief executive must issue a licence to the licensee for that class of work at no cost to the licensee.
- (3) The chief executive must return a suspended licence to the licensee if—
- (a) the suspension period has expired; or
 - (b) the suspension is revoked.
- (4) Subsection (3) does not apply if the licence expires or is further suspended or cancelled under this part.
- (5) An offence against this section is a strict liability offence.

142 Cooperation with other jurisdictions

- (1) The chief executive must tell a licensing authority, and the Commonwealth regulatory authority, if—
 - (a) the chief executive has information about a licensee whose licence was issued by the licensing authority; and
 - (b) having regard to the information, the chief executive reasonably believes that the licensee's licence should be suspended or cancelled.
- (2) If the chief executive receives information from a licensing authority about a licensee whose licence was issued by the chief executive, the chief executive must—
 - (a) investigate the matter; and
 - (b) if the chief executive is satisfied that there is a ground for cancellation under section 134 or section 136—take action to suspend or cancel the licence under this part.

Division 8.4 Trainees under supervision

143 Supervisor's obligations

- (1) A supervisor for a trainee must directly supervise the trainee when the trainee is carrying out high risk work.
Maximum penalty: 10 penalty units.
- (2) Subsection (1) does not apply if the supervisor is satisfied on reasonable grounds that—
 - (a) because of the trainee's level of competence, supervision may be reduced; and
 - (b) the reduced level of supervision will not endanger the health and safety of the trainee or someone else.

- (3) A supervisor for a trainee must sign the trainee's record each day the trainee carries out high risk work under the supervisor's supervision.

Maximum penalty: 5 penalty units.

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

Maximum penalty: 10 penalty units.

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

144 Trainee's obligations

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

- (a) the trainee's name and address;
- (b) the name of the registered training organisation that is training the trainee;
- (c) the date and times the work was carried out;
- (d) if the trainee carried out the work for an employer—the name and address of the employer;
- (e) the signature, full name and licence number of the trainee's supervisor for the work;
- (f) a description of the work carried out including the type of equipment used for the work and the result of the work.

Maximum penalty: 5 penalty units.

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

Division 8.5 Training and assessment

145 Training and assessment

- (1) Before applying for a statement of attainment for a class of high risk work, a person must undertake training by completing 1 or more of the following in relation to the work:
 - (a) a unit of competency in a training package;
 - (b) a course accredited by the registered training organisation for a statement of attainment.
- (2) A unit of competency or course mentioned in subsection (1) must be provided, in accordance with the Australian quality training framework, by—
 - (a) a registered training organisation; or
 - (b) a person under the supervision of a registered training organisation; or
 - (c) a person in partnership with a registered training organisation.
- (3) Training of a person in a unit of competency or course mentioned in subsection (1) must consist of—
 - (a) structured training; and
 - (b) practical training and experience.
- (4) Practical training may be provided—
 - (a) in the workplace as part of the person's work; or
 - (b) in a training facility that includes a simulated workplace; or
 - (c) by a combination of training mentioned in paragraphs (a) and (b).

- (5) A person who undertakes training in a unit of competency or course under this section must be assessed for competency—
- (a) by an assessor on behalf of the registered training organisation that provides, or is involved in providing, the unit of competency or course; and
 - (b) in accordance with the requirements of the unit or course.

146 Chief executive may issue directions

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

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

147 Exemption from training

A registered training organisation may exempt a person from all or part of training under section 145 if satisfied that the person has qualifications or previous training that satisfies the requirements for the exempted training.

148 Assessor qualifications

- (1) A person (an *assessor*) may assess a person undertaking a unit of competency or accredited course only if the assessor—
- (a) has the following requirements under the Australian quality training framework standards for registered training organisations:
 - (i) workplace assessor competencies;

- (ii) relevant current industry experience;
 - (iii) vocational competencies; and
- (b) either—
- (i) is a licensee for the class of high risk work to be assessed and has been a licensee or held a certificate of competency under the repealed regulation or a corresponding law for a total of at least 2 years; or
 - (ii) holds a certificate of competency issued under the repealed regulation or a corresponding law, and has held the certificate for at least 2 years; and
- (c) either—
- (i) is approved in writing by the chief executive; or
 - (ii) satisfies the criteria agreed in writing by the chief executive and the registered training organisation that provides the unit or course.
- (2) The chief executive may issue guidelines about the approval of an assessor.
- (3) A guideline is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (4) In this section:
- repealed regulation*** means the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000* in force at any time before the commencement of this section.

149 Statement of attainment

- (1) A person may apply to a registered training organisation for a statement of attainment for a class of high risk work.
- (2) The registered training organisation may issue the statement of attainment to the person if satisfied that the person—
 - (a) has completed the training mentioned in section 145 for which the person is not exempt; and
 - (b) has been assessed and meets the competency standard for the class of high risk work; and
 - (c) has the necessary knowledge to carry out the class of high risk work; and
 - (d) can safely carry out the class of high risk work under workplace conditions; and
 - (e) has sufficient knowledge of the English language to carry out the high risk work in accordance with the competency standard for the work.
- (3) A statement of attainment issued by the registered training organisation to a person must state that the person has met the competency standard for the class of high risk work for which the statement is issued.

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

A registered training organisation may provide training in a unit of competency or course mentioned in section 145 (1) or section 146 (2), and issue a statement of attainment for the training, to a person only if the organisation—

- (a) has told the chief executive that it intends to provide training and issue statements; and

- (b) has entered into an agreement with the chief executive about the training and issue of statements.

151 Improperly issuing statement of attainment

A person commits an offence if the person—

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

Maximum penalty: 30 penalty units.

152 Improperly obtaining statement of attainment

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

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

Maximum penalty: 30 penalty units.

Division 8.6 Administration

153 Keeping and providing records of training and assessment

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

154 Cooperation with licensing authorities

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

155 Cooperation with registered training organisations

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

Division 8.7 Exemptions

156 Application for exemption

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

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

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

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

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

Maximum penalty: 30 penalty units.

157 Grant of exemption

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

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

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

158 Exemption conditions

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

159 Failing to comply with condition of exemption

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

Maximum penalty: 30 penalty units.

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

160 Notice of exemption

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

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

- (2) A notice is a notifiable instrument.

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

Division 8.8 Miscellaneous

161 Chief executive may make inquiries

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

162 Guidelines

- (1) The chief executive may issue or approve guidelines for this part.
- (2) A guideline may provide for any matter relating to the issue of a licence to carry out high risk work.

Examples

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

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

- (3) A guideline is a notifiable instrument.

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

163 Production of licence etc on request

- (1) A person carrying out high risk work must produce the person's licence to carry out the work, and a sample of the person's usual signature or other form of identification, if asked to do so by—
 - (a) the chief executive; or
 - (b) an inspector; or
 - (c) the Commonwealth regulatory authority; or
 - (d) someone else authorised to ask for the production of a licence or a recognised qualification to carry out high risk work under a corresponding law.

Maximum penalty: 5 penalty units.

- (2) A person granted an exemption under division 8.7 (Exemptions) must produce the notice of exemption given by the chief executive for the exemption if asked to do so by—
- (a) the chief executive; or
 - (b) an inspector; or
 - (c) the Commonwealth regulatory authority; or
 - (d) someone else authorised to ask for the production of a notice of exemption under a corresponding law.

Maximum penalty: 5 penalty units.

- (3) A trainee carrying out high risk work must produce the trainee's record of training under section 144 (Trainee's obligations) if asked to do so by—
- (a) the chief executive; or
 - (b) an inspector; or
 - (c) the Commonwealth regulatory authority; or
 - (d) someone else authorised to ask for the production of the trainee's training records under a corresponding law.

Maximum penalty: 5 penalty units.

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

164 Production of information etc on request

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

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

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

Maximum penalty: 5 penalty units.

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

165 Licensee's change of address

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

Maximum penalty: 5 penalty units.

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

Part 9 Construction induction training

Division 9.1 Definitions—pt 9

166 Definitions—pt 9

In this part:

AQF—see *Australian qualifications framework*.

AQTF—see *Australian quality training framework*.

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

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

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

construction induction training means construction induction training under division 9.3.

construction induction training card—

- (a) means a construction induction training card issued by the chief executive under section 177; and
- (b) in divisions 9.2 and 9.6, includes a card or certificate issued by a licensing authority under a corresponding law to a person who has completed induction training for the construction industry.

construction site means a workplace at which construction work is carried out.

construction work means any work carried out on or near a construction site in relation to the construction of a structure—

- (a) including the following:
- (i) demolishing or dismantling all or part of the structure and removing from the site anything resulting from the demolition or dismantlement;
 - (ii) assembling prefabricated elements to form the structure or disassembling the prefabricated elements that formed the structure;
 - (iii) excavation, landscaping, preparatory work or site preparation carried out on the site;
 - (iv) work carried out under water, including on a buoy, an obstruction to navigation, a raft, ship or wreck; but
- (b) not including exploring for, or extracting, minerals or preparatory work in relation to the extraction carried out where exploration or extraction is carried out.

corresponding law means a law mentioned in schedule 2.

licensing authority means the authority responsible for the issue of a construction induction training card under a corresponding law.

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

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

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

registered training organisation means—

- (a) a training organisation registered under the *Training and Tertiary Education Act 2003*, chapter 3; or
- (b) a training organisation registered by a state registering body in accordance with the Australian quality training framework within a defined scope of registration.

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

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

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

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

Division 9.2 Requirement to hold construction induction training card

167 Person on construction site without construction induction training card

- (1) A person commits an offence if—
 - (a) the person is on a construction site; and
 - (b) the person does not have a construction induction training card.Maximum penalty: 20 penalty units.
- (2) Subsection (1) does not apply—
 - (a) if—
 - (i) the person has applied under section 176 or a corresponding law for a construction induction training card; and
 - (ii) a decision has not been made on the application; and
 - (iii) the person holds a statement of attainment for construction induction training issued to the person under section 173 or a corresponding law; or
 - (b) if the person—
 - (i) is a visitor to the construction site; and
 - (ii) is, at all times while the person is on the construction site, accompanied by another person who has a construction induction training card; or
 - (c) if the person is temporarily on the construction site to deliver plant, supplies or materials.
- (3) An offence against this section is a strict liability offence.

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

- (1) An employer commits an offence if—
- (a) the employer directs or allows a worker to be on a construction site; and
 - (b) the worker—
 - (i) is on the construction site; but
 - (ii) does not have a construction induction training card.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the worker has applied under section 176 or a corresponding law for a construction induction training card; and
 - (b) a decision has not been made on the application; and
 - (c) the worker holds a statement of attainment for construction induction training issued to the worker under section 173 or a corresponding law.
- (3) An offence against this section is a strict liability offence.

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

- (1) A person in control of a construction site (the *first person*) commits an offence if—
- (a) the first person directs or allows another person (the *second person*) to be on a construction site; and
 - (b) the second person—
 - (i) is on the construction site; but

(ii) does not have a construction induction training card.

Maximum penalty: 20 penalty units.

- (2) Subsection (1) does not apply if—
- (a) the second person has applied under section 176 or a corresponding law for a construction induction training card; and
 - (b) a decision has not been made on the application; and
 - (c) the second person holds a statement of attainment for construction induction training issued to the second person under section 173 or a corresponding law.
- (3) An offence against this section is a strict liability offence.

Division 9.3 Construction induction training

170 Construction induction training and assessment

- (1) Construction induction training—
- (a) consists of—
 - (i) construction industry unit of competency CPCCOHS1001A—Work safely in the construction industry; or
 - (ii) training determined by the chief executive; and
 - (b) must be provided by a registered training organisation.
- (2) A determination under this section is a notifiable instrument.

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

171 Construction induction training—registered training organisation agreement with chief executive

A registered training organisation may provide construction induction training, and issue a statement of attainment for the training, to a person only if the organisation—

- (a) has told the chief executive that it intends to provide training and issue statements; and
- (b) has entered into an agreement with the chief executive about the training and issue of statements.

172 Construction induction training—trainer qualifications

A person (the *trainer*) may give construction induction training to a person only if the trainer—

- (a) either—
 - (i) holds a certificate IV in training and assessment from the training and assessment training package under the Australian Quality Training Framework; or
 - (ii) can demonstrate competency equivalent to the competency stated in subparagraph (i); and
- (b) has vocational competencies relevant to the construction industry.

173 Construction induction training—statement of attainment

- (1) A person may apply to a registered training organisation for a statement of attainment for construction induction training.
- (2) The registered training organisation may only issue the statement of attainment for construction induction training to the person if the person has satisfactorily completed the training mentioned in section 170.

174 Construction induction training—improperly issuing statement of attainment

A person commits an offence if—

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

Maximum penalty: 30 penalty units.

175 Construction induction training—improperly obtaining statement of attainment

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

- (a) the first person does something with the intention of dishonestly influencing another person to issue a statement of attainment for construction induction training; and
- (b) the other person issues a statement of attainment for construction induction training to the first person.

Maximum penalty: 30 penalty units.

Division 9.4 Construction induction training card

176 Construction induction training card—application

- (1) A person may apply to the chief executive for a construction induction training card.

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

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

- (2) The person must make the application not later than—
- (a) 60 days after the day the person receives a statement of attainment for construction induction training; or
 - (b) if the chief executive allows a later time—the later time.
- (3) The application must be accompanied by the following:
- (a) evidence of the applicant’s identity and date of birth;
 - (b) a sample of the applicant’s usual signature;
 - (c) the statement of attainment for construction induction training issued to the applicant;
 - (d) any other document or further information required in writing by the chief executive that the chief executive considers is relevant to the application.
- (4) The chief executive may, by written notice given to an applicant, require the applicant to give the chief executive additional information or documents the chief executive reasonably needs to decide the application.

177 Construction induction training card—issue

- (1) If a person applies under section 176 for a construction induction training card, the chief executive must—
 - (a) issue the card; or
 - (b) refuse to issue the card.
- (2) The chief executive must issue the card if satisfied that the application is in accordance with section 176.

178 Construction induction training card—form

A construction induction training card must contain the following details:

- (a) the applicant's full name and date of birth;
- (b) the applicant's signature;
- (c) the date of issue of the card;
- (d) a unique identifying number for the card.

179 Production of construction induction training card to inspector on request

- (1) A person who is on a construction site must produce the person's construction induction training card, and a sample of the person's usual signature or other form of identification, if asked to do so by an inspector.

Maximum penalty: 5 penalty units.

- (2) Subsection (1) does not apply—
 - (a) if—
 - (i) the person has applied for a construction induction training card; and
 - (ii) a decision has not been made on the application; and

- (iii) the person holds a statement of attainment for construction induction training issued to the person under section 173; or
 - (b) if the person—
 - (i) is a visitor to the construction site; and
 - (ii) is, at all times that the person is on the construction site, accompanied by another person who has a construction induction card; or
 - (c) if the person is temporarily on the construction site to deliver plant, supplies or materials.
- (3) An offence against this section is a strict liability offence.

180 Replacement of lost etc card

- (1) This section applies if a construction induction training card issued to a person is lost, stolen or damaged.
- (2) The person may apply to the chief executive for a replacement card.
- Note 1* If a form is approved under the Act, s 229 for this provision, the form must be used.
- Note 2* A fee may be determined under the Act, s 228 for this provision.
- (3) The application must be accompanied by a statutory declaration made by the applicant setting out the circumstances in which the card was lost, stolen or damaged.
- (4) If a person applies for a replacement card, the chief executive must—
 - (a) replace the card; or
 - (b) refuse to replace the card.

- (5) The chief executive must replace the card if satisfied that—
 - (a) the person held a construction induction training card; and
 - (b) the card is lost, stolen or damaged.
- (6) If the chief executive refuses to replace the card, the chief executive must give the person written notice of the refusal.

Division 9.5 Cancellation of construction induction training card

181 Grounds for cancellation of construction induction training card

The chief executive must cancel a construction induction training card on the ground that the card was issued to a person because information given to the chief executive in relation to the application for the card was false or misleading in a material particular.

182 Cancellation of construction induction training card

- (1) The chief executive must cancel a construction induction training card if the chief executive—
 - (a) has given written notice to the cardholder of an intention to cancel the card; and
 - (b) has considered any reasons given by the cardholder in accordance with the notice; and
 - (c) is satisfied that the ground for cancellation under section 181 exists.
- (2) A notice of intention to cancel a construction induction training card must—
 - (a) set out the ground for cancellation; and

- (b) state that the cardholder may, not later than 14 days after the day the notice is given to the cardholder, give reasons why the cardholder considers that the card should not be cancelled.
- (3) The cancellation takes effect—
 - (a) on the day after the day the chief executive gives the cardholder written notice that the card is cancelled; or
 - (b) if a later date is stated in the notice of cancellation—the later date.
- (4) A notice of cancellation must set out the ground for cancellation.

183 Surrender of cancelled construction induction training card

- (1) If a construction induction training card is cancelled under section 182, the cardholder must surrender the card to the chief executive not later than 14 days after the day the cancellation takes effect.

Maximum penalty: 5 penalty units.
- (2) An offence against this section is a strict liability offence.

Division 9.6 Miscellaneous

184 Employer to keep training records

- (1) An employer who engages a worker to carry out work on a construction site must—
 - (a) record the following details from the worker's construction induction training card:
 - (i) the worker's name and date of birth;
 - (ii) the unique identifying number for the card; or

- (b) if the worker does not have a construction induction training card—record the following:
 - (i) the worker’s name and date of birth;
 - (ii) the date the worker applied for a construction induction training card;
 - (iii) the date and place where the worker undertook construction induction training;
 - (iv) the name of the registered training organisation that issued the statement of attainment for the training.

Maximum penalty: 5 penalty units.

- (2) The employer must keep the record for 5 years after the later of—
 - (a) the day the construction work is completed; and
 - (b) the day the worker stops working for the employer.

Maximum penalty: 5 penalty units.

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

185 Chief executive to cooperate with other jurisdictions

- (1) The chief executive must tell a licensing authority, and the Commonwealth regulatory authority, if—
 - (a) the chief executive has information about a person whose construction induction training card was issued by the licensing authority; and
 - (b) having regard to the information, the chief executive reasonably believes that the person’s card should be cancelled.

- (2) If the chief executive receives information from a licensing authority about the issue of a construction induction training card to a person whose card was issued by the chief executive, the chief executive must—
- (a) investigate the matter; and
 - (b) if the chief executive is satisfied that the ground for cancellation under section 181 exists—take action to cancel the card under this part.

Part 10 Carrying out manual tasks

Note The *Work Safety Act 2008*, pt 3 (Work safety duties) sets out duties that people conducting businesses or undertakings, and people in control, must comply with to ensure work safety by managing risk. The Act defines *manages risk* (s 14) and *reasonably practicable steps* (s 15) in relation to the duties in pt 3.

186 Meaning of *manual task*—pt 10

In this part:

manual task means an activity that requires a person to use his or her musculoskeletal system to perform the activity.

187 Person conducting business or undertaking must give information etc

- (1) A person conducting a business or undertaking at a workplace must give appropriate information, instruction, training and supervision to a worker who carries out a manual task at the workplace—
 - (a) on the following in relation to the manual task:
 - (i) safe methods of carrying out the task;
 - (ii) use of safe systems of work;
 - (iii) ways that the worker may eliminate or minimise the risk of musculoskeletal disorders; and
 - (b) including new information affecting the task in relation to the workplace, or any plant, substance, structure or system of work used in carrying out the task as it becomes available; and

- (c) in a way that takes into account the worker's communication needs.

Examples—communication needs

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

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

Maximum penalty: 20 penalty units.

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

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

- (1) This section applies to a person in control of any of the following:
- (a) premises;
 - (b) plant or a system, or the operation of the plant or system.

Note The Act, s 22 (Duty—person in control of premises) and s 23 (Duty—person in control of plant or system etc) set out duties that apply to particular people in control.

- (2) The person must give appropriate information, instruction, training and supervision to a worker who carries out a manual task at the premises or in relation to the plant or system to allow the worker—
- (a) to carry out the task safely; and
 - (b) to participate in managing risk in relation to the task.

Maximum penalty: 20 penalty units.

- (3) In particular, the person must give the information, instruction, training and supervision—
- (a) on the following in relation to the manual task:
 - (i) safe methods of carrying out the task;
 - (ii) use of safe systems of work; and
 - (iii) ways that the worker may eliminate or minimise the risk of musculoskeletal disorders; and
 - (b) including new information affecting the task in relation to the premises, or any plant, substance, structure or system of work used in carrying out the task as it becomes available; and

- (c) in a way that takes into account the worker's communication needs.

Examples—communication needs

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

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

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

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

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

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

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

- (2) The person in control must give information about the following to a worker using the plant or structure to carry out a manual task:
- (a) the intended use of the plant or structure;
 - (b) the risk of using the plant or structure;

- (c) ways that the worker may eliminate or minimise the risk of musculoskeletal disorders.

Maximum penalty: 20 penalty units.

- (3) The information mentioned in subsection (2) must—
 - (a) describe the risk of using the plant or structure sufficiently to allow the plant or structure to be used safely; and
 - (b) be updated if new information is available about—
 - (i) the plant or structure; or
 - (ii) a manual task that is carried out using the plant or structure; and
 - (c) be able to be readily understood by a worker using the plant or structure to carry out a manual task or a person in control of the worker; and
 - (d) be kept for—
 - (i) 5 years after the information is given; or
 - (ii) if the plant or structure is likely to be used as intended for more than 5 years—the period the plant or structure is used as intended.

Part 11 Incorporated documents

190 Meaning of *incorporated document*

In this regulation:

incorporated document means any of the following:

- (a) AS/NZS 1269.1 (Occupational noise management Part 1—Measurement and assessment of noise immission and exposure);
- (b) AS/NZS 1269.3 (Occupational noise management Part 3—Hearing protector program);
- (c) AS/NZS 1270 (Acoustics—Hearing protectors);
- (d) AS/NZS 1891 (Industrial fall-arrest systems and devices—safety belts and harnesses);
- (e) AS 2444 (Portable fire extinguishers and fire blankets—Selection and location);
- (f) the national exposure standards;
- (g) a document approved in writing by the Minister to be an incorporated document;
- (h) any other document incorporated, applied or adopted by a document mentioned in paragraphs (a) to (g).

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

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

Note 3 This standard may be purchased at www.standards.org.au.

191 Inspection of incorporated documents

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

amendment, of an incorporated document—see section 191 (6).

replacement, for an incorporated document—see section 191 (6).

192 Notification of certain incorporated documents

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

Example—replacement document

a new edition of the incorporated document

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

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

- (c) for an amendment of an incorporated document—the date of publication of the amendment (or of the standard as amended) and a brief summary of the effect of the amendment;
 - (d) for an incorporated document or any amendment or replacement—
 - (i) a date of effect (not earlier than the day after the day of notification of the notice); and
 - (ii) details of how access to inspect the document, amendment or replacement may be obtained under section 190 (Inspection of incorporated documents); and
 - (iii) details of how copies may be obtained, including an indication of whether there is a cost involved.
- (3) An incorporated document notice is a notifiable instrument.
- Note* A notifiable instrument must be notified under the Legislation Act.
- (4) The incorporated document, amendment or replacement has no effect under the Act unless—
- (a) an incorporated document notice is notified in relation to the document, amendment or replacement; or
 - (b) the document, amendment or replacement is notified under the Legislation Act, section 47 (6).
- (5) The Legislation Act, section 47 (7) does not apply in relation to the incorporated document, amendment or replacement.
- (6) In this section:

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

replacement, for an incorporated document, means—

- (a) a standard that replaces the incorporated document; or

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

Part 12 Reviewable decisions

193 Reviewable decision—Act, s 174 (b)

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

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

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

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

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

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

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

Part 13 Transitional

196 Definitions—pt 13

In this part:

certificate of competency means a certificate of competency issued, or taken to have been issued, under the repealed regulation, section 12 as in force at any time.

Note The following certificates are taken to have been issued under the repealed regulation, s 12:

- (a) a certificate of competency issued under the *Scaffolding and Lifts Regulation 1950*, s 159;
- (b) a boiler attendant's certificate issued under the *Boilers and Pressure Vessels Regulation 1954*, pt 4
(see the repealed regulation, s 37).

commencement day means the day this regulation, section 122 (Licence application) commences.

repealed instruments means the following instruments:

- (a) *Occupational Health and Safety (Mast-Type Elevating Work Platforms) Exemption 2009* (NI2009-190);
- (b) *Occupational Health and Safety (National Certificates of Competency) Exemption 2006* (NI2006-418);
- (c) *Occupational Health and Safety (Pallet Trucks) Exemption 2009* (NI2009-192);
- (d) *Occupational Health and Safety (Work Assist Vehicles) Exemption 2009* (NI2009-189).

repealed regulation means the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000* (SL2000-48).

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

- (1) Despite the repeal of the repealed regulation, the repealed regulation (other than section 15) and the repealed instruments continue to apply to the following:
 - (a) a person doing scheduled work unless the person—
 - (i) holds a national licence to carry out a class of high risk work that corresponds with the scheduled work the person is doing; or
 - (ii) is a trainee under this regulation for a class of high risk work that corresponds with the scheduled work the person is doing;
 - (b) a person supervising a trainee under the repealed regulation in relation to supervision of the trainee;
 - (c) an assessor accredited under the repealed regulation in relation to the assessment under the repealed regulation of a person's competency to do scheduled work.
- (2) A reference in the repealed regulation to a supervisor, for a trainee doing scheduled work, includes a reference to a person who holds a national licence to carry out high risk work that corresponds with the scheduled work.

198 Transitional—application of regulation in relation to scheduled work etc

- (1) Part 8 (Licensing high risk work) and schedule 1 (High risk work) do not apply to the following:
 - (a) a person doing scheduled work if the person—
 - (i) holds a certificate of competency to do the scheduled work issued under the repealed regulation; or

- (ii) holds a notice of satisfactory assessment to do the scheduled work issued under the repealed regulation, and has applied for a certificate of competency under the old regulation; or
- (iii) is a trainee in relation to the scheduled work under the repealed regulation;
- (b) a person supervising a trainee under the repealed regulation in relation to supervision of the trainee;
- (c) an assessor accredited under the repealed regulation in relation to the assessment under the repealed regulation of a person's competency to do scheduled work.

199 Transitional—certificates of competency

- (1) 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 unless the certificate is cancelled or surrendered sooner.

Table 199

column 1 item	column 2 date certificate issued	column 3 date until which certificate in force
1	before 1 Jan 2001	30 June 2010
2	1 Jan 2001 to 31 Dec 2004	30 June 2011
3	1 Jan 2005 to 30 June 2009	30 June 2012
4	1 July 2009 to 30 June 2011	30 June 2014

- (2) The chief executive must not issue a certificate of competency under the repealed regulation after 30 June 2011.

- (3) After 30 June 2011, a certificate of competency authorising a person to operate a tower crane does not authorise the person to operate a self-erecting tower crane.

200 Transitional—converting certificate of competency to licence

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

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

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

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

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

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

- (3) If the holder of a certificate of competency applies to convert the certificate to a licence to carry out a class of high risk work, the chief executive must—
 - (a) issue the licence; or
 - (b) refuse to issue the licence.
- (4) The chief executive must issue the licence to the person if satisfied that the person—
 - (a) has a valid certificate of competency for work that corresponds with the class of high risk work; and
 - (b) has the necessary competency to carry out the class of high risk work; and
 - (c) does not hold a licence to carry out high risk work; and
 - (d) does not hold a certificate of competency, a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that is or has been suspended in the 5 years before the day the application was made; and
 - (e) has not held a certificate of competency, a licence to carry out high risk work, or a recognised qualification to carry out high risk work under a corresponding law, that has been cancelled in the 5 years before the day the application was made; and

- (f) has not been convicted or found guilty of a serious offence under the *Occupational Health and Safety Act 1989*, the *Work Safety Act 2008*, the *Crimes Act 1900*, part 2A (Industrial manslaughter) or a corresponding offence against the law of a State in the 5 years before the day the application was made.

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

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

201 Expiry—pt 13

- (1) This part expires on 1 October 2014.
- (2) This part is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

Schedule 1 High risk work

(see s 119, def *high risk work*)

Part 1.1 Definitions—sch 1

1.1 Boilers

- (1) A **boiler** is a vessel or arrangement of vessels and interconnecting parts, in which steam or other vapour is generated, or water or other liquid is heated, at a pressure above atmospheric pressure, by fire, the products of combustion, electrical power or other similar method.
- (2) A **boiler** includes the valves, gauges, fittings, controls, boiler setting and any directly associated equipment.
- (3) A **boiler** ends at the first connection point after the first valve or valve assembly but does not include the following:
 - (a) a boiler that satisfies AS 2593 by having—
 - (i) an attendance category of unattended operation; or
 - (ii) an attendance category of limited attendance except to the extent that AS 2593 states that certain checks must be undertaken by an accredited operator;
 - (b) a vessel designed in a way that allows it to operate empty of the liquid or vapour that it is designed to heat without adversely affecting the structure or operation of the vessel;
 - (c) a direct-fired process heater;

- (d) a Hobby Miniature Locomotive type boiler, made from steel and with an internal volume of not more than 50L and having a maximum working pressure of not more than 700kPa, or made from copper and with an internal volume of not more than 25L and having a maximum working pressure of not more than 700kPa, if—
 - (i) during construction of the locomotive, the boiler is inspected in the way described in the Australian Miniature Boiler Safety Committee Code Part 1: Copper Boilers, or Part 2: Steel Boilers, as appropriate, by a person registered with the Committee and is certified by the person as having been inspected in that way; and
 - (ii) the locomotive containing the boiler is in the charge of a person at least 18 years old whenever it is operated in a public place;
- (e) a hot drink dispenser having an internal volume of not more than 0.014 cubic metres and a heat output of not more than 5kW and a maximum working pressure of not more than 210kPa;
- (f) a fully flooded or pressurised liquid heating unit if the liquid is intended to be heated at a pressure above atmospheric pressure to a temperature not more 1° below the normal atmospheric boiling temperature of the liquid.

1.2 Boom-type elevating work platform

- (1) A *boom-type elevating work platform* is a telescoping, hinged or articulated device, or any combination of those devices, used to support a platform on which people, equipment or materials may be elevated to carry out work, if the boom length is 11 metres or more.

- (2) The boom length is taken to be the greater of—
 - (a) the vertical distance from the floor of the platform to the ground supporting the elevating work platform when the platform is at its maximum height; and
 - (b) the nominal reach measured from the centre point of rotation to the outer edge of the platform when the platform is at its maximum extended position.

1.3 Bridge crane

- (1) A *bridge crane* is a crane that—
 - (a) consists of 1 or more bridge beams mounted at each end to an end carriage; and
 - (b) is capable of travelling along elevated runways; and
 - (c) has 1 or more hoisting mechanisms that can travel across the bridge beams.
- (2) A *bridge crane* does not include a crane that is controlled from a location remote to a permanent cabin or control station on the crane and has not more than 3 powered operations (hoist, raise and lower is 1 operation).

1.4 Crane

- (1) A *crane* is plant designed to raise or lower a load or move it horizontally.
- (2) A *crane* does not include—
 - (a) an industrial lift-truck, earthmoving machinery or tractor; or
 - (b) a front-end loader, backhoe, excavator or similar plant designed for use as a crane; or
 - (c) a non-slewing mobile crane used only for towing motor vehicles; or

- (d) an amusement structure, industrial robot or lift.

1.5 Direct-fired process heater

A *direct-fired process heater* is an arrangement of tubes comprising 1 or more coils located in the radiant zone or convection zone, or both, of a combustion chamber, the primary purpose of which is to raise the temperature of a process fluid circulated through the coils, to allow distillation, fractionation, reaction or other petrochemical process of the process fluid, whether that fluid is liquid or gas, or a combination of liquid and gas.

1.6 Derrick crane

A *derrick crane* is a slewing strut-boom crane with the boom pivoted at the base of a mast that—

- (a) is guyed (a *guy-derrick*) or held by backstays (a *stiff-leg derrick*); and
(b) is capable of luffing under load.

1.7 Dogging work

Dogging work is—

- (a) the application of slinging techniques, including the selection and inspection of lifting gear, for moving a load using a crane, hoist or other plant configured for use as a crane or hoist; or
(b) directing an operator of a crane, hoist or other plant configured for use as a crane or hoist in the movement of a load, including when the load is out of the operator's view.

1.8 Forklift truck

- (1) A *forklift truck* is a powered industrial truck with—
 - (a) a mast; and
 - (b) an elevating load carriage with fork arms or other attachment.
- (2) A *forklift truck* does not include a pedestrian-operated industrial truck.

1.9 Gantry crane

- (1) A *gantry crane* is a crane that—
 - (a) consists of 1 or more bridge beams, supported at each end by legs mounted on end carriages; and
 - (b) is capable of travelling on a supporting surface or deck level, whether or not fixed; and
 - (c) has 1 or more hoisting units able to travel across a bridge beam.
- (2) A *gantry crane* does not include a crane that is controlled from a location remote to a permanent cabin or control station on the crane and has not more than 3 powered operations (hoist, raise and lower is 1 operation).

1.10 Hoist

- (1) A *hoist* is plant designed for raising or lowering a load or people, or both.
- (2) A *hoist* includes a mast-climbing work platform, a scaffolding hoist and a serial hoist.
- (3) A *hoist* does not include a lift or building maintenance equipment.

1.11 Materials hoist

A *materials hoist* is a hoist—

- (a) for hoisting goods or materials but not people; and
- (b) with a car, bucket or platform cantilevered from, and travelling up and down externally to, a face of the support structure.

1.12 Mobile crane

A *mobile crane* is a crane that forms part of a vehicle.

1.13 Non-slewing mobile crane

- (1) A *non-slewing mobile crane* is a mobile crane with a capacity of more than 3t incorporating a boom or jib that cannot be slewed.
- (2) A *non-slewing mobile crane* includes an articulated mobile crane and a locomotive crane, but does not include a vehicle tow truck.

1.14 Order-picking forklift truck

An *order-picking forklift truck* is a forklift truck with operator's controls that are incorporated in, and move with, the load carriage or lifting equipment.

1.15 Outrigger

- (1) An *outrigger* is an extendable member attached to a crane or hoist that rests on a support at the outer end to increase stability.

1.16 Personnel and materials hoist

- (1) A *personnel and materials hoist* is a hoist in which people, goods and materials may be hoisted.
- (2) A *personnel and materials hoist* may be a cantilever hoist, a tower hoist or a multiple winch operation, and includes the car, structure, machinery and other equipment associated with the hoist.

1.17 Portal boom crane

A *portal boom crane* is a boom crane or jib crane mounted on a portal frame that is supported on runways along which the crane travels.

1.18 Reciprocating steam engine

A *reciprocating steam engine* is equipment driven by steam acting on a piston under pressure causing the piston to move, if the piston diameter is greater than 250mm, and includes an expanding (steam) reciprocating engine.

1.19 Rigging work

- (1) *Rigging work* is the use of mechanical load-shifting equipment and associated gear—
 - (a) to move, place or secure a load using plant, equipment or members of a building or structure; or
 - (b) to ensure the stability of the members of a building or structure; or
 - (c) to set up or dismantle a crane or hoist.
- (2) *Rigging work* does not include setting up a crane or hoist that only requires the positioning of integral outriggers or stabilisers.

1.20 Scaffolding work

Scaffolding work is the erection, alteration or dismantling of a temporary structure specifically erected to support a platform from which a person or object could fall more than 4m.

1.21 Self-erecting tower crane

A *self-erecting tower crane* is a tower crane that—

- (a) cannot be disassembled into a tower element and a boom or jib element; and
- (b) for which the erection and dismantling processes are inherent parts of the crane's function; and
- (c) can be transported between sites as a complete unit.

1.22 Slewing mobile crane

A *slewing mobile crane* is a mobile crane that incorporates a boom or jib capable of being slewed, but does not include a front-end loader, backhoe, excavator or other earthmoving equipment when configured for crane operation.

1.23 Slinging techniques

Slinging techniques, in relation to dogging work, are slinging techniques that require judgment to be exercised in relation to—

- (a) the suitability and condition of lifting gear; or
- (b) the slinging method, by consideration of the nature of the load, its mass and centre of gravity.

1.24 Stabiliser

A *stabiliser* is an extendable member used to increase stability, but not to hoist or level.

1.25 Tower crane

- (1) A *tower crane* is a boom crane or jib crane mounted on a demountable or permanent tower structure.
- (2) If the crane is a jib crane, the crane may be a horizontal or luffing jib type.

1.26 Turbine

- (1) A *turbine*—
 - (a) is equipment—
 - (i) in which steam acting on a turbine or rotor causes a rotary motion; and
 - (ii) that produces a power output of not less than 500kW; and
 - (b) that—
 - (i) is multi-wheeled; or
 - (ii) is capable of a speed greater than 3600rpm; or
 - (iii) uses attached condensers; or
 - (iv) incorporates a multi-staged heat exchange extraction process.

1.27 Vehicle-loading crane

- (1) A *vehicle-loading crane* is a crane with a rated capacity of 10 metre tonnes, mounted on a vehicle for the principal purpose of loading and unloading the vehicle.
- (2) A *vehicle-loading crane* must be taken to have a rated capacity of 10 metre tonnes if, at 1 or more boom lengths, the maximum radius in metres at which a load may be lifted at the boom length, multiplied by the working load limit in metric tons at the radius, equals or is greater than 10.0.
- (3) A *vehicle-loading crane* does not include a vehicle tow truck.

1.28 Vehicle-mounted concrete-placing boom

- (1) A *vehicle-mounted concrete-placing boom* is a mobile vehicle-mounted plant incorporating a knuckle boom that is capable of power-operated slewing or luffing to place concrete by pumping the concrete through a pipeline attached to, or forming part of, the boom.

Part 1.2 Classes of high risk work

column 1 item	column 2 classes	column 3 description of work
1	basic scaffolding	<p>scaffolding work including scaffolding work associated with the operation or use of 1 or more of the following:</p> <ul style="list-style-type: none">(a) a modular or prefabricated scaffold;(b) a cantilevered materials hoist with a maximum working load limit of up to 500kg;(c) ropes;(d) gin wheels;(e) safety nets or static lines;(f) a bracket scaffold (tank and formwork); <p>but not scaffolding work associated with the operation or use of 1 or more of the following:</p> <ul style="list-style-type: none">(a) a cantilevered crane-loading platform;(b) a cantilevered scaffold;(c) a spurred scaffold;(d) a barrow ramp or sloping platform;(e) perimeter safety screens or shutters;(f) a mast-climber;(g) a tube and coupler scaffold (including tube and coupler covered ways and gantries);(h) a hung scaffold, including a scaffold hanging from tubes, wire ropes or chains;(i) a suspended scaffold

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High risk work
Classes of high risk work

column 1 item	column 2 classes	column 3 description of work
2	intermediate scaffolding	<p>all basic scaffolding work together with scaffolding work associated with the operation or use of 1 or more of the following:</p> <ul style="list-style-type: none"> (a) a cantilevered crane-loading platform; (b) a cantilevered scaffold; (c) a spurred scaffold; (d) a barrow ramp or sloping platform; (e) perimeter safety screens or shutters; (f) a mast-climber; (g) a tube and coupler scaffold (including tube and coupler covered ways and gantries); <p>but not scaffolding work associated with the operation or use of 1 or more of the following:</p> <ul style="list-style-type: none"> (a) a hung scaffold, including a scaffold hanging from tubes, wire ropes or chains; (b) a suspended scaffold
3	advanced scaffolding	<p>all intermediate scaffolding work together with all other scaffolding work associated with the operation or use of—</p> <ul style="list-style-type: none"> (a) a hung scaffold, including a scaffold hanging from tubes, wire ropes or chains; or (b) a suspended scaffold
4	dogging	dogging work

column 1 item	column 2 classes	column 3 description of work
5	basic rigging	<p>dogging work together with rigging work associated with 1 or more of the following:</p> <ul style="list-style-type: none"> (a) movement of plant or equipment; (b) steel erection; (c) hoists (other than hoists with jibs or self-climbing hoists); (d) placement of pre-cast concrete; (e) safety nets or static lines; (f) perimeter safety screens or shutters; (g) cantilevered crane-loading platforms; <p>but not rigging work associated with 1 or more of the following:</p> <ul style="list-style-type: none"> (a) load-equalising gear; (b) cranes, conveyors, dredges or excavators; (c) tilt slabs; (d) hoists with jibs or self-climbing hoists; (e) demolition; (f) dual lifts; (g) gin poles or shear legs; (h) flying foxes or cableways; (i) guyed derricks or structures; (j) suspended scaffolds; (k) fabricated hung scaffolds

Schedule 1
Part 1.2

High risk work
Classes of high risk work

column 1 item	column 2 classes	column 3 description of work
6	intermediate rigging	<p>all basic rigging work together with rigging work associated with 1 or more of the following:</p> <ul style="list-style-type: none"> (a) load-equalising gear; (b) cranes, conveyors, dredges or excavators; (c) tilt slabs; (d) hoists with jibs or self-climbing hoists; (e) demolition; (f) dual lifts; <p>but not rigging work associated with 1 or more of the following:</p> <ul style="list-style-type: none"> (a) gin poles or shearlegs; (b) flying foxes or cableways; (c) guyed derricks or structures; (d) suspended scaffolds; (e) fabricated hung scaffolds
7	advanced rigging	<p>all intermediate rigging work together with rigging work associated with 1 or more of the following:</p> <ul style="list-style-type: none"> (a) gin poles or shearlegs; (b) flying foxes or cableways; (c) guyed derricks or structures; (d) suspended scaffolds; (e) fabricated hung scaffolds
8	tower crane	operating a tower crane other than a self-erecting tower crane, but not dogging work associated with the operation of the crane
9	self-erecting tower crane	operating a self-erecting tower crane but not dogging work associated with the operation of the crane

column 1 item	column 2 classes	column 3 description of work
10	derrick crane	operating a derrick crane but not dogging work associated with the operation of the crane
11	portal boom crane	operating a portal boom crane but not dogging work associated with the operation of the crane
12	bridge and gantry crane	operating a bridge crane or gantry crane but not dogging work associated with the operation of the crane
13	vehicle-loading crane	operating a vehicle-loading crane but not dogging work associated with the operation of the crane
14	non-slewing mobile crane	operating a non-slewing mobile crane but not dogging work associated with the operation of the crane
15	slewing mobile crane with a capacity of not more than 20t	operating a slewing mobile crane with a capacity of not more than 20t but not dogging work associated with the operation of the crane
16	slewing mobile crane with a capacity of not more than 60t	operating a slewing mobile crane with a capacity of not more than 60t but not dogging work associated with the operation of the crane
17	slewing mobile crane with a capacity of not more than 100t	operating a slewing mobile crane with a capacity of not more than 100t but not dogging work associated with the operation of the crane
18	slewing mobile crane with a capacity of over 100t	operating a slewing mobile crane with a capacity of over 100t but not dogging work associated with the operation of the crane
19	materials hoist	operating a materials hoist but not dogging work associated with the operation of the hoist
20	personnel and materials hoist	operating a materials hoist or personnel and materials hoist but not dogging work associated with the operation of the hoist
21	boom-type elevating work platform	operating a boom-type elevating work platform
22	vehicle-mounted concrete-placing boom	operating a vehicle-mounted concrete-placing boom

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High risk work
Classes of high risk work

column 1 item	column 2 classes	column 3 description of work
23	forklift truck	operating a forklift truck other than an order-picking forklift truck
24	order-picking forklift truck	operating an order-picking forklift truck
25	basic boiler operation	operating a boiler with the following features: <ul style="list-style-type: none">(a) a single fixed combustion air supply;(b) a non-modulating single heat source;(c) a fixed firing rate; but not with any of the following features: <ul style="list-style-type: none">(a) a modulating combustion air supply;(b) a modulating heat source;(c) a superheater;(d) an economiser;(e) multiple fuel types which may be fired simultaneously
26	intermediate boiler operation	all basic boiler operations, together with operating a boiler with any of the following features: <ul style="list-style-type: none">(a) a modulating combustion air supply;(b) a modulating heat source;(c) a superheater;(d) an economiser; but not with multiple fuel types which may be fired simultaneously

column 1 item	column 2 classes	column 3 description of work
27	advanced boiler operation	all intermediate boiler operations together with operating a boiler with multiple fuel types which may be fired simultaneously <i>Note</i> a boiler is not taken to be capable of being fired by multiple fuel types simultaneously only because it changes fuel types during start sequences or is fired by different grades of the same fuel simultaneously
28	turbine operation	operating a turbine
29	reciprocating steam engine	operating a reciprocating steam engine

Schedule 2 Corresponding laws

(see s 119, def *corresponding law*)

Occupational Health and Safety Act 2000 (NSW)

Occupational Health and Safety Regulation 2001 (NSW)

Occupational Health and Safety Act 2004 (Vic)

Occupational Health and Safety Regulations 2007 (Vic)

Workplace Health and Safety Act 1995 (Qld)

Workplace Health and Safety Regulation 2008 (Qld)

Occupational Health, Safety and Welfare Act 1986 (SA)

Occupational Health, Safety and Welfare Regulations 1995 (SA)

Occupational Safety and Health Act 1984 (WA)

Occupational Safety and Health Regulations 1996 (WA)

Workplace Health and Safety Act 1995 (Tas)

Workplace Health and Safety Regulations 1998 (Tas)

Workplace Health and Safety Act 2007 (NT)

Workplace Health and Safety Regulations (NT)

Schedule 3 Reviewable decisions

(see pt 11)

Part 3.1 Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
1	Act, 55	direct employer to arrange election of work safety committee	employer directed to arrange election of work safety committee	chief executive
2	Act, 55A	direct employers in an industry to arrange election of work safety committee	employers directed to arrange election of work safety committee	chief executive
3	Act, 57	decision made in arbitration of dispute	person adversely affected by decision made in arbitration of dispute	chief executive
4	Act, 85	seize anything at premises	<ul style="list-style-type: none"> • person with a property interest in seized thing • person conducting business or undertaking adversely affected by the seizure 	inspector
5	Act, 86	remove or restrict access to seized things	<ul style="list-style-type: none"> • person with a property interest in seized thing • person conducting business or undertaking adversely affected by the removal or restriction 	inspector

Schedule 3
Part 3.1

Reviewable decisions
Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
6	Act, 87	destroy or dispose of seized thing or require destruction or disposal	<ul style="list-style-type: none"> • person with a property interest in seized thing • person conducting business or undertaking adversely affected by the destruction or disposal 	inspector
7	Act, 96	seize data, electronic equipment or storage device	<ul style="list-style-type: none"> • person with a property interest in seized thing • person conducting business or undertaking adversely affected by the seizure 	inspector
8	Act, 106	direct to dispose of seized thing that has been forfeited to the Territory	<ul style="list-style-type: none"> • person with a property interest in seized thing • person conducting business or undertaking adversely affected by the disposal 	chief executive
9	Act, 107	return seized thing	<ul style="list-style-type: none"> • person with a property interest in seized thing • person conducting business or undertaking adversely affected by the return 	chief executive

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
10	Act, 126	end compliance agreement	<ul style="list-style-type: none"> • relevant responsible person for the compliance agreement • person conducting business or undertaking adversely affected by the decision 	inspector
11	Act, 131	give an improvement notice	<ul style="list-style-type: none"> • relevant responsible person for the improvement notice • person conducting business or undertaking adversely affected by the decision 	inspector
12	Act, 134	extend compliance period for improvement notice	<ul style="list-style-type: none"> • relevant responsible person for the improvement notice • person conducting business or undertaking adversely affected by the decision 	inspector

Schedule 3
Part 3.1

Reviewable decisions
Reviewable decisions

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

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

Schedule 3
Part 3.1

Reviewable decisions
Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
18	Act, 148	revoke prohibition notice	<ul style="list-style-type: none"> • if there is a work safety representative for a worker adversely affected by the decision—the work safety representative • if there is a work safety committee for a worker adversely affected by the decision—the work safety committee • if there is no work safety representative or work safety committee for a worker adversely affected by the decision—the workers adversely affected by the decision • relevant responsible person for the prohibition notice • person conducting business or undertaking adversely affected by the decision 	inspector
19	Act, 154	alleged contravention of provision of Act	person alleged to have contravened provision of Act	chief executive
20	Act, 155	accept safety undertaking	relevant person for enforceable undertaking	chief executive

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
21	Act, 156	agree to withdraw or amend enforceable undertaking	relevant person for enforceable undertaking	chief executive
22	Act, 157	end enforceable undertaking	relevant person for enforceable undertaking	chief executive
23	Act, 166	finding that person in control of public sector workplace has failed to comply with a compliance agreement, an enforceable undertaking, an improvement notice or a prohibition notice	person in control of public sector workplace	chief executive

Schedule 3
Part 3.1

Reviewable decisions
Reviewable decisions

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

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
26	Act, 170	finding that person in control of public sector workplace has failed to comply with safety duty and appropriate steps have not been taken to address the failure	responsible chief executive	chief executive
27	38	disqualify work safety representative	person adversely affected by decision to disqualify	chief executive
28	39	revoke disqualification of work safety representative	person adversely affected by decision to revoke disqualification	chief executive
29	65	disqualify work authorised representative	person adversely affected by decision to disqualify	chief executive
30	66	revoke disqualification of work authorised representative	person adversely affected by decision to revoke disqualification	chief executive
31	123 (1) (b)	refuse to issue licence	applicant for licence	chief executive
32	129 (1) (b)	refuse to renew licence	applicant for renewal	chief executive
33	131 (1) (b)	refuse to vary licence	applicant for variation	chief executive
34	133 (4) (b)	refuse to replace licence	applicant for replacement	chief executive

Schedule 3
Part 3.1

Reviewable decisions
Reviewable decisions

column 1 item	column 2 section	column 3 decision	column 4 entity	column 5 decision- maker
35	135 (1)	licence cancellation	licensee	chief executive
36	137 (1)	licence cancellation	licensee	chief executive
37	138 (1)	licence suspension	licensee	chief executive
38	139 (1)	licence suspension	licensee	chief executive
39	140 (4)	confirm licence suspension extend licence suspension confirm licence cancellation	licensee	chief executive
40	157	refusal to grant exemption	applicant for exemption	chief executive
41	158	grant exemption on conditions	applicant for exemption	chief executive
42	177	refuse to issue card	applicant for card	chief executive
43	180	refuse to replace card	applicant for replacement card	chief executive
44	182	cancel card	cardholder of cancelled card	chief executive

Part 3.2 **Internal review of decisions**

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

Dictionary

(see s 3)

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

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

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

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

- authorised representative (see s 61)
- business or undertaking (see s 11)
- commissioner
- council
- dangerous occurrence (see s 37)
- employer (see s 10)
- hazard
- inspector

- manages risk (see s 14)
- person in control (see s 13)
- plant
- premises
- reasonably practicable steps (see s 15)
- registered organisation
- risk (see s 8)
- substance
- worker (see s 9)
- worker consultation unit (see s 46)
- workplace (see s 12)
- work safety (see s 7)
- work safety committee
- work safety representative.

anchorage, for division 7.3 (Prevention of falls)—see section 73 .

approved refresher training course—see section 41.

approved training course—see section 40.

AQF—see *Australian qualifications framework*.

AQTF—see *Australian quality training framework*.

atmospheric contaminant, for division 7.8 (Confined spaces)—see section 95.

Australian qualifications framework (or ***AQF***)—

- (a) for part 8 (Licensing high risk work)—see section 119; and
- (b) for part 9 (Construction induction training)—see section 166.

Australian quality training framework (or ***AQTF***)—

- (a) for part 8 (Licensing high risk work)—see section 119; and
- (b) for part 9 (Construction induction training)—see section 166.

boiler, for schedule 1 (High risk work)—see schedule 1, section 1.1.

boom-type elevating work platform, for schedule 1 (High risk work)—see schedule 1, section 1.2.

bridge crane, for schedule 1 (High risk work)—see schedule 1, section 1.3.

Commonwealth regulatory authority—

(a) for part 8 (Licensing high risk work)—see section 119; and

(b) for part 9 (Construction induction training)—see section 166.

competency, for part 8 (Licensing high risk work)—see section 119.

competency standard, for part 8 (Licensing high risk work)—see section 119.

confined space, for a workplace, for division 7.8 (Confined spaces)—see section 95.

construction induction training, for part 9 (Construction induction training)—see section 166.

construction induction training card, for part 9 (Construction induction training)—see section 166.

construction site, for part 9 (Construction induction training)—see section 166.

construction work, for part 9 (Construction induction training)—see section 166.

corresponding law—

(a) for part 8 (Licensing high risk work)—see section 119; and

(b) for part 9 (Construction induction training)—see section 166.

crane, for schedule 1 (High risk work)—see schedule 1, section 1.4.

dangerous substance—see the *Dangerous Substances Act 2004*, section 10.

derrick crane, for schedule 1 (High risk work)—see schedule 1, section 1.6.

direct-fired process heater, for schedule 1 (High risk work)—see schedule 1, section 1.5.

direct supervision, of a trainee, for part 8 (Licensing high risk work)—see section 119.

dogging work, for schedule 1 (High risk work)—see schedule 1, section 1.7.

electrical inspector, for division 7.7 (Electricity)—see section 91.

electrical installation, for division 7.7 (Electricity)—see the *Electricity Safety Act 1971*, dictionary.

entry permit, for division 7.8 (Confined spaces)—see section 95.

exposure standard, for division 7.10 (Noise management)—see section 110.

fixed workplace means a workplace in a building or other permanent structure.

forklift truck, for schedule 1 (High risk work)—see schedule 1, section 1.8.

gantry crane, for schedule 1 (High risk work)—see schedule 1, section 1.9.

guy-derrick, for schedule 1 (High risk work)—see schedule 1, section 1.6.

high risk work, for part 8 (Licensing high risk work)—see section 119.

hoist, for schedule 1 (High risk work)—see schedule 1, section 1.10.

incorporated document—see section 190.

inhalable dust, for division 7.4 (Atmosphere and ventilation)—see section 79.

licensing authority—

- (a) for part 8 (Licensing high risk work)—see section 119; and
- (b) for part 9 (Construction induction training)—see section 166.

manual task, for part 10 (Carrying out manual tasks)—see section 186.

materials hoist, for schedule 1 (High risk work)—see schedule 1, section 1.11.

Ministerial Council—

- (a) for part 8 (Licensing high risk work)—see section 119; and
- (b) for part 9 (Construction induction training)—see section 166.

mobile crane, for schedule 1 (High risk work)—see schedule 1, section 1.12.

national exposure standards means the *Exposure Standards for Atmospheric Contaminants in the Occupational Environment* (NOHSC 1003 (1995) and Guidance Note NOHSC 3008 (1995)) published by the National Occupational Health and Safety Commission.

national licence, for part 8 (Licensing high risk work)—see section 119.

nationally endorsed, for a training package—

- (a) for part 8 (Licensing high risk work)—see section 119; and
- (b) for part 9 (Construction induction training)—see section 166.

non-slewing mobile crane, for schedule 1 (High risk work)—see schedule 1, section 1.13

order-picking forklift truck, for schedule 1 (High risk work)—see schedule 1, section 1.14.

outrigger , for schedule 1 (High risk work)—see schedule 1, section 1.15.

personal health information, of a consumer—see the *Health Records (Privacy and Access) Act 1997*, dictionary.

personal protective and safety equipment includes anything used, or to be used, to protect a person's health, safety or welfare.

Examples

- 1 protective clothing
- 2 sunscreen

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

personnel and materials hoist, for schedule 1 (High risk work)—see schedule 1, section 1.16.

portal boom crane, for schedule 1 (High risk work)—see schedule 1, section 1.17.

reciprocating steam engine, for schedule 1 (High risk work)—see schedule 1, section 1.18

recognised qualification, to carry out high risk work under a corresponding law, for part 8 (Licensing high risk work)—see section 119.

registered training organisation—

- (a) for part 8 (Licensing high risk work)—see section 119; and
- (b) for part 9 (Construction induction training)—see section 166.

represented worker, for a worker consultation unit, means a worker in the unit.

responsible person, for division 4.5 (Work safety representatives—provisional improvement notices)—see section 45 (1).

rigging work, for schedule 1 (High risk work)—see schedule 1, section 1.19.

safe oxygen level, for division 7.4 (Atmosphere and ventilation) and division 7.8 (Confined spaces)—see section 79.

safety harness—see AS/NZS 1891.

safe unclassified inhalable dust level, for division 7.4 (Atmosphere and ventilation)—see section 79.

scaffolding work, for schedule 1 (High risk work)—see schedule 1, section 1.20.

self-erecting tower crane, for schedule 1 (High risk work)—see schedule 1, section 1.21.

show cause notice—

(a) for part 4 (Work safety representatives)—see section 37 (1); and

(b) for part 6 (Authorised representatives)—see section 64 (1).

slewing mobile crane, for schedule 1 (High risk work)—see schedule 1, section 1.22

slinging techniques, for schedule 1 (High risk work)—see schedule 1, section 1.23.

sound pressure level, in relation to a person, for division 7.10 (Noise management)—see section 110.

stabiliser, for schedule 1 (High risk work)—see schedule 1, section 1.24.

statement of attainment—

(a) for part 8 (Licensing high risk work)—see section 119; and

(b) for part 9 (Construction induction training)—see section 166.

state registering body, for part 8 (Licensing high risk work)—see section 119.

stiff-leg derrick, for schedule 1 (High risk work)—see schedule 1, section 1.6.

supervisor, for a trainee carrying out a class of high risk work, for part 8 (Licensing high risk work)—see section 119.

time-weighted average, for division 7.4 (Atmosphere and ventilation)—see section 79.

tower crane, for schedule 1 (High risk work)—see schedule 1, section 1.25.

trainee, for part 8 (Licensing high risk work)—see section 119.

training package—

(a) for part 8 (Licensing high risk work)—see section 119; and

(b) for part 9 (Construction induction training)—see section 166.

turbine, for schedule 1 (High risk work)—see schedule 1, section 1.26.

TWA—see ***time-weighted average***.

unclassified inhalable dust, for division 7.4 (Atmosphere and ventilation)—see section 79.

unit of competency—

(a) for part 8 (Licensing high risk work)—see section 119; and

(b) for part 9 (Construction induction training)—see section 166.

unsafe oxygen level, for division 7.4 (Atmosphere and ventilation) and division 7.8 (Confined spaces)—see section 79.

unsafe unclassified inhalable dust level, for division 7.4 (Atmosphere and ventilation)—see section 79.

vehicle-loading crane, for schedule 1 (High risk work)—see schedule 1, section 1.27.

vehicle-mounted concrete-placing boom, for schedule 1 (High risk work)—see schedule 1, section 1.28.

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

Work Safety Regulation 2009 SL2009-45

notified LR 24 September 2009

s 1, s 2 commenced 24 September 2009 (LA s 75 (1))

remainder commenced 1 October 2009 (s 2 and see Work Safety Act 2008 A2008-51, s 2 (1) (b) and CN2009-11)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Transitional

pt 13 hdg exp 1 October 2014 (s 201 (LA s 88 declaration applies))

Definitions—pt 13

s 196 exp 1 October 2014 (s 201 (LA s 88 declaration applies))

Transitional—continuing application of repealed regulation in relation to scheduled work etc

s 197 exp 1 October 2014 (s 201 (LA s 88 declaration applies))

Transitional—application of regulation in relation to scheduled work etc

s 198 exp 1 October 2014 (s 201 (LA s 88 declaration applies))

Transitional—certificates of competency

s 199 exp 1 October 2014 (s 201 (LA s 88 declaration applies))

Transitional—converting certificate of competency to licence

s 200 exp 1 October 2014 (s 201 (LA s 88 declaration applies))

Expiry—pt 13

s 201 exp 1 October 2014 (s 201 (LA s 88 declaration applies))

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