Australian Capital Territory

Work Health and Safety Regulation 2011

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made under the

Work Health and Safety Act 2011

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About this republication

The republished law

This is a republication of the *Work Health and Safety Regulation 2011*, made under the *Work Health and Safety Act 2011* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 9 June 2023. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 9 June 2023.

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

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Penalties

At the republication date, the value of a penalty unit for an offence against this law is $160 for an individual and $810 for a corporation (see *Legislation Act 2001*, s 133).

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Australian Capital Territory

Work Health and Safety Regulation 2011

made under the

Work Health and Safety Act 2011

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Chapter 1 Preliminary

Part 1.1 Introductory matters

1 Name of regulation

This regulation is the *Work Health and Safety Regulation 2011*.

5 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 '***VET course***—see the *National Vocational Education and Training Regulator Act 2011* (Cwlth).' means that the term 'VET course' is defined in that Act 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)).

6A Offences are offences of strict liability

Strict liability applies to each physical element of each offence under this regulation unless otherwise stated in the section containing the offence.

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6B Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note *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***).

7 Meaning of *person conducting a business or undertaking*—persons excluded—Act, s 5 (6)

(1) For the purposes of the Act, section 5 (6) (Meaning of *person conducting a business or undertaking*), a strata title body corporate that is responsible for any common areas used only for residential purposes may be taken not to be a person conducting a business or undertaking in relation to those premises.

(2) Subsection (1) does not apply if the strata title body corporate engages any worker as an employee.

(3) For the purposes of the Act, section 5 (6), an incorporated association may be taken not to be a person conducting a business or undertaking if the incorporated association consists of a group of volunteers working together for 1 or more community purposes where—

(a) the incorporated association, either alone or jointly with any other similar incorporated association, does not employ any person to carry out work for the incorporated association; and

(b) none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the incorporated association.

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(4) In this section:

strata title body corporate means an owners corporation for a units plan under the *Unit Titles (Management) Act 2011*, section 8 (Owners corporation—establishment).

8 Meaning of *supply*—Act, s 6 (3) (b)

For the purposes of the Act, section 6 (3) (b) (Meaning of *supply*), a supply of a thing does not include the supply of a thing by a person who does not control the supply and has no authority to make decisions about the supply.

Examples

1 an auctioneer who auctions a thing without having possession of the thing

2 a real estate agent acting in his or her capacity as a real estate agent

9 Provisions linked to health and safety duties in Act—Act, sch 3, s 1.1

If a note at the foot of a provision of this regulation states 'WHS Act' followed by a reference to a section number, the regulation provision sets out the way in which a person's duty or obligation under that section of the Act is to be performed in relation to the matters and to the extent set out in the regulation provision.

Note 1 A failure to comply with a duty or obligation under a section of the Act mentioned in a 'WHS Act' note is an offence to which a penalty applies.

Note 2 A note at the foot of a provision forms part of this regulation (see Act, s 9).

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9A Meaning of *corresponding WHS law*—Act, dict

For the Act, dictionary, definition of ***corresponding WHS law***, the following laws are prescribed:

(a) the following laws of the Commonwealth:

(i) *Work Health and Safety Act 2011*;

(ii) regulations made under the *Work Health and Safety Act 2011*;

(iii) *Occupational Health and Safety Act 1991*;

(iv) an instrument made under the *Occupational Health and Safety Act 1991*;

(v) any other law relating to occupational health and safety matters;

(b) the following laws of NSW:

(i) *Work Health and Safety Act 2011*;

(ii) regulations made under the *Work Health and Safety Act 2011*;

(iii) *Occupational Health and Safety Act 2000*;

(iv) an instrument made under the *Occupational Health and Safety Act 2000*;

(v) any other law relating to occupational health and safety matters;

(c) the following laws of Victoria:

(i) *Occupational Health and Safety Act 2004*;

(ii) an instrument made under the *Occupational Health and Safety Act 2004*;

(iii) *Occupational Health and Safety Act 1985*;

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(iv) an instrument made under the *Occupational Health and Safety Act 1985*;

(v) any other law relating to occupational health and safety matters;

(d) the following laws of Queensland:

(i) *Work Health and Safety Act 2011*;

(ii) regulations made under the *Work Health and Safety Act 2011*;

(iii) *Workplace Health and Safety Act 1995*;

(iv) an instrument made under the *Workplace Health and Safety Act 1995*;

(v) any other law relating to occupational health and safety matters;

(e) the following laws of Western Australia:

(i) *Occupational Safety and Health Act 1984*;

(ii) an instrument made under the *Occupational Safety and Health Act 1984*;

(iii) *Industrial Relations Act 1979*;

(iv) an instrument made under the *Industrial Relations Act 1979*;

(v) any other law relating to occupational health and safety matters;

(f) the following laws of South Australia:

(i) *Occupational Health, Safety and Welfare Act 1986*;

(ii) an instrument made under the *Occupational Health, Safety and Welfare Act 1986*;

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(iii) any other law relating to occupational health and safety matters;

(g) the following laws of Tasmania:

(i) *Workplace Health and Safety Act 1995*;

(ii) an instrument made under the *Workplace Health and Safety Act 1995*;

(iii) any other law relating to occupational health and safety matters;

(h) the following laws of the Northern Territory:

(i) *Workplace Health and Safety Act 2007*;

(ii) an instrument made under the *Workplace Health and Safety Act 2007*;

(iii) any other law relating to occupational health and safety matters.

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).

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Part 1.2 Application

10 Application of the Act to dangerous goods and high risk plant—Act, sch 1, s 5

The following provisions of the Act are excluded from the operation of the Act, schedule 1 (Application of Act to dangerous goods and high risk plant):

(a) division 5.2 (Consultation with workers);

(b) division 5.3 (Health and safety representatives);

(c) division 5.4 (Health and safety committees);

(d) division 5.5 (Issue resolution);

(e) division 5.6 (Right to cease or direct cessation of unsafe work);

(f) division 5.7 (Provisional improvement notices);

(g) division 5.8 (Part not to apply to prisoners);

(h) part 6 (Discriminatory, coercive and misleading conduct);

(i) part 7 (Workplace entry by WHS entry permit-holders).

10A Application of the Act to dangerous goods—Act, sch 1, s 6, definition of *dangerous goods*

Dangerous goods under the ADG Code listed in table 328, column 2, are prescribed as dangerous goods if the quantity of the goods at the premises at or in which the goods are stored or handled is more than the relevant threshold for the goods mentioned in table 328, column 3.

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11 Application of this regulation

A duty imposed on a person under a provision of this regulation in relation to health and safety does not limit or affect any duty the person has under the Act or, unless otherwise expressly provided, any other provision of this regulation.

12 Assessment of risk in relation to a class of hazards, tasks, circumstances or things

If this regulation requires an assessment of risks to health and safety associated with a hazard, task, thing or circumstance, an assessment of risks associated with a class of hazards, tasks, things or circumstances may be conducted if—

(a) all hazards, tasks, things or circumstances in the class are the same; and

(b) the assessment of risks for the class does not result in any worker or other person being exposed to a greater, additional or different risk to health and safety than if the risk assessment were carried out in relation to each individual hazard, task, thing or circumstance.

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Part 1.3 Incorporated documents

13 Documents incorporated as in force when incorporated

A reference to any document applied, adopted or incorporated by, or mentioned in, this regulation is to be read as a reference to that document as in force at the time the document is applied, adopted, incorporated or mentioned unless express provision is made to the contrary.

Note A person is required to comply with an Australian Standard or Australian/New Zealand Standard that is applied by this regulation only to the extent this regulation provides.

For example, in the definition of ***boiler***, par (b) (iii) (C), there is an exception that mentions AS 2593:2004. The definition does not require a person to comply with AS 2593:2004, but particular equipment must be certified in compliance with AS 2593:2004 to fall within the exception.

The reference to an Australian Standard in this case is part of a description of equipment excluded from the definition of ***boiler***. As a result, the equipment is not covered by particular provisions of this regulation relating to high risk work.

14 Inconsistencies between provisions

If a provision of any document applied, adopted or incorporated by, or mentioned in, this regulation is inconsistent with any provision in this regulation, the provision of this regulation prevails.

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15 Disapplication of Legislation Act, s 47 (5) and (6)

(1) The Legislation Act, section 47 (5) does not apply in relation to an instrument applied, adopted or incorporated as in force at a particular time under this regulation unless the instrument is expressed to be a notifiable instrument.

Examples—instruments to which s 47 (5) does not apply

1 an Australian Standard

2 the *Globally Harmonised System of Classification and Labelling of Chemicals* (GHS)

3 the Australian Miniature Boiler Safety Committee Code (AMBSC)

(2) The Legislation Act, section 47 (6) does not apply in relation to an instrument applied, adopted or incorporated as in force from time to time under this regulation unless the instrument is expressed to be a notifiable instrument.

Examples—instruments to which s 47 (6) does not apply

1 the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (ADG Code)

2 the Standard for the Uniform Scheduling of Medicines and Poisons

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Chapter 2 Representation and participation

Part 2.1 Representation

Division 2.1.1 Work groups

16 Negotiations for and determination of work groups

Negotiations for and determination of work groups and variations of work groups must be directed at ensuring that the workers are grouped in a way that—

(a) most effectively and conveniently enables the interests of the workers, in relation to work health and safety, to be represented; and

(b) has regard to the need for a health and safety representative for the work group to be readily accessible to each worker in the work group.

Note Under the Act, a work group may be determined for workers at more than 1 workplace (see s 51 (3)) or for workers carrying out work for 2 or more persons conducting businesses or undertakings at 1 or more workplaces (see Act, subdiv 5.3.3).

17 Matters to be taken into account in negotiations— Act, s 52 (6) and s 56 (4)

For the purposes of the Act, section 52 (6) (Negotiations for agreement for work group) and section 56 (4) (Negotiation of agreement for work groups of multiple businesses), negotiations for and determination of work groups and variation of agreements concerning work groups must take into account all relevant matters including the following:

(a) the number of workers;

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(b) the views of workers in relation to the determination and variation of work groups;

(c) the nature of each type of work carried out by the workers;

(d) the number and grouping of workers who carry out the same or similar types of work;

(e) the areas or places where each type of work is carried out;

(f) the extent to which any worker must move from place to place while at work;

(g) the diversity of workers and their work;

(h) the nature of any hazards at the workplace or workplaces;

(i) the nature of any risks to health and safety at the workplace or workplaces;

(j) the nature of the engagement of each worker;

Examples

1 employee

2 contractor

(k) the pattern of work carried out by workers;

Examples

1 full-time

2 part-time

3 casual

4 short-term

(l) the times at which work is carried out;

(m) any arrangements at the workplace or workplaces relating to overtime or shift work.

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Division 2.1.2 Health and safety representatives

18 Procedures for election of health and safety representatives—Act, s 61 (2)

(1) This section sets out minimum procedural requirements for the election of a health and safety representative for a work group for the purposes of the Act, section 61 (2) (Procedure for election of health and safety representatives).

(2) The person conducting the election must take all reasonable steps to ensure that the following procedures are complied with:

(a) each person conducting a business or undertaking in which a worker in the work group works is informed of the date on which the election is to be held as soon as practicable after the date is determined;

(b) all workers in the work group are given an opportunity to—

(i) nominate for the position of health and safety representative; and

(ii) vote in the election;

(c) all workers in the work group and all relevant persons conducting a business or undertaking are informed of the outcome of the election.

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19 Person conducting business or undertaking must not delay election

A person conducting a business or undertaking at a workplace must not unreasonably delay the election of a health and safety representative.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

20 Removal of health and safety representatives—Act, s 64 (2) (d)

(1) For the purposes of the Act, section 64 (2) (d) (Term of office of health and safety representative), the majority of the members of a work group may remove a health and safety representative for the work group if the members sign a written declaration that the health and safety representative should no longer represent the work group.

(2) A member of the work group nominated by the members who signed the declaration must, as soon as practicable—

(a) inform the following persons of the removal of the health and safety representative:

(i) the health and safety representative who has been removed;

(ii) each person conducting a business or undertaking in which a worker in the work group works; and

(b) take all reasonable steps to inform all members of the work group of the removal.

(3) The removal of the health and safety representative takes effect when the persons mentioned in subsection (2) (a) and the majority of members of the work group have been informed of the removal.

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21 Training for health and safety representatives—Act, s 72 (1) and s 72A (2)

(1) For the purposes of the Act, section 72 (1) (Obligation to train health and safety representatives) and section 72A (Obligation to train health and safety representatives—major construction project), a health and safety representative is entitled to attend the following courses of training in work health and safety:

(a) an initial course of training of 5 days;

(b) 1 day's refresher training each year, with the entitlement to the first refresher training commencing 1 year after the initial training.

(2) In approving a course of training in work health and safety for the purposes of the Act, section 72 (1) and section 72A (2), the regulator may have regard to any relevant matters, including—

(a) the content and quality of the curriculum, including its relevance to the powers and functions of a health and safety representative; and

(b) the qualifications, knowledge and experience of the person who is to provide the course.

Note 1 This section prescribes courses of training to which a health and safety representative is entitled. In addition to these courses, the health and safety representative and the person conducting the business or undertaking may agree that the representative will attend or receive further training.

Note 2 Under the Legislation Act, s 46, the power to approve a course of training includes a power to amend or repeal the approval.

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21A Establishing a health and safety committee—major construction project—Act, s 75 (1) (b)

(1) This section applies in relation to a major construction project.

(2) The principal contractor for the major construction project must establish a health and safety committee for the project.

(3) The health and safety committee must be established within 2 months after the day work on the major construction project commences.

21B Training for health and safety committee members—major construction project—Act, s 79A (2)

(1) For the purposes of the Act, section 79A (2) (Obligation to train health and safety committee members—major construction project), members of the health and safety committee are entitled to attend a course of training in work health and safety that is not less than 4 hours of training.

(2) In approving a course of training in work health and safety for the purposes of the Act, section 79A (2) (a), the regulator may have regard to any relevant matters, including—

(a) the content and quality of the curriculum, including its relevance to the powers and functions of a health and safety committee; and

(b) the qualifications, knowledge and experience of the person who is to provide the course.

Note This section prescribes a course of training to which a health and safety committee member is entitled. In addition to the course, the health and safety committee member and the principal contractor for the major construction project may agree that the member will attend or receive further training.

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Part 2.2 Issue resolution

22 Agreed procedure—minimum requirements

(1) This section sets out minimum requirements for an agreed procedure for issue resolution at a workplace.

(2) The agreed procedure for issue resolution at a workplace must include the steps set out in section 23.

(3) A person conducting a business or undertaking at a workplace must ensure that the agreed procedure for issue resolution at the workplace—

(a) complies with subsection (2); and

(b) is set out in writing; and

(c) is communicated to all workers to whom the agreed procedure applies.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

23 Default procedure—Act, s 81 (2)

(1) This section sets out the default procedure for issue resolution for the purposes of the Act, section 81 (2) (Resolution of health and safety issues).

(2) Any party to the issue may commence the procedure by informing each other party—

(a) that there is an issue to be resolved; and

(b) the nature and scope of the issue.

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(3) As soon as parties are informed of the issue, all parties must meet or communicate with each other to attempt to resolve the issue.

(4) The parties must have regard to all relevant matters including the following:

(a) the degree and immediacy of risk to workers or other persons affected by the issue;

(b) the number and location of workers and other persons affected by the issue;

(c) the measures (both temporary and permanent) that must be implemented to resolve the issue;

(d) who will be responsible for implementing the resolution measures.

(5) A party may, in resolving the issue, be assisted or represented by a person nominated by the party.

(6) If the issue is resolved, details of the issue and its resolution must be set out in a written agreement if any party to the issue requests this.

Note Under the Act, ***parties*** to an issue include not only a person conducting a business or undertaking, a worker and a health and safety representative, but also representatives of these persons (see Act, s 80).

(7) If a written agreement is prepared all parties to the issue must be satisfied that the agreement reflects the resolution of the issue.

(8) A copy of the written agreement must be given to—

(a) all parties to the issue; and

(b) if requested, to the health and safety committee for the workplace.

(9) To avoid doubt, nothing in this procedure prevents a worker from bringing a work health and safety issue to the attention of the worker's health and safety representative.

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Part 2.3 Cessation of unsafe work

24 Continuity of engagement of worker—Act, s 88

For the purposes of the Act, section 88 (Continuity of engagement of worker), the prescribed purposes are the assessment of eligibility for, or the calculation of benefits for, any benefit or entitlement associated with the worker's engagement, including 1 or more of the following:

(a) remuneration and promotion, as affected by seniority;

(b) superannuation benefits;

(c) leave entitlements;

(d) any entitlement to notice of termination of the engagement.

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Part 2.4 Workplace entry by WHS entry permit-holders

25 Training requirements for WHS entry permits—Act, s 131 and s 133

(1) The prescribed training for the purposes of the Act, section 131 (Application for WHS entry permit) and section 133 (Eligibility criteria), is training, that is provided or approved by the regulator, in relation to the following:

(a) the right of entry requirements under the Act, part 7 (Workplace entry by WHS entry permit-holders);

(b) the issue resolution requirements under the Act and this regulation;

(c) the duties under, and the framework of, the Act and this regulation;

(d) the requirements for the management of risks under the Act, section 17 (Management of risks);

(e) the meaning of ***reasonably practicable*** as set out in the Act, section 18 (What is *reasonably practicable* in ensuring health and safety);

(f) the relationship between the Act and this regulation and the *Fair Work Act 2009* (Cwlth).

(2) The training must include providing the participant with information about the availability of any guidance material published by the regulator in relation to the Act and this regulation.

(3) For the purpose of approving training, the regulator may have regard to any relevant matters including—

(a) the content and quality of the curriculum, including its relevance to the powers and functions of a WHS permit-holder; and

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(b) the qualifications, knowledge and experience of the person who is to provide the training.

Note Under the Legislation Act, s 46, the power to approve training includes a power to amend or repeal the approval.

26 Form of WHS entry permit

A WHS entry permit must include the following:

(a) the section of the Act under which the WHS entry permit is issued;

(b) the full name of the WHS entry permit-holder;

(c) the name of the union that the WHS entry permit-holder represents;

(d) a statement that the WHS entry permit-holder is entitled, while the WHS entry permit is in force, to exercise the rights given to the WHS entry permit-holder under the Act;

(e) the date of issue of the WHS entry permit;

(f) the expiry date for the WHS entry permit;

(g) the signature of the WHS entry permit-holder;

(h) any conditions on the WHS entry permit.

27 Notice of entry—general

A notice of entry under the Act, part 7 (Workplace entry by WHS entry permit-holders) must—

(a) be written; and

(b) include the following:

(i) the full name of the WHS entry permit-holder;

(ii) the name of the union that the WHS entry permit-holder represents;

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(iii) the section of the Act under which the WHS entry permit-holder is entering or proposing to enter the workplace;

(iv) the name and address of the workplace entered or proposed to be entered;

(v) the date of entry or proposed entry;

(vi) the additional information and other matters required under section 28, section 29 or section 30 (as applicable).

28 Additional requirements—entry under Act, s 117—Act, s 119

A notice of entry under the Act, section 119 (Notice of entry) in relation to an entry under the Act, section 117 (Entry to inquire into suspected contraventions) must also include the following:

(a) so far as is practicable, the particulars of the suspected contravention to which the notice relates;

(b) a declaration stating—

(i) that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace entered and is a member, or eligible to be a member, of that union; and

(ii) the provision in the union's rules that entitles the union to represent the industrial interests of that worker; and

(iii) that the suspected contravention relates to, or affects, that worker.

Note The Act, s 130 provides that a WHS entry permit-holder is not required to disclose the name of any worker to the person conducting the business or undertaking, and may do so only with the consent of the worker.

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29 Additional requirements—entry under Act, s 120—Act, s 120

A notice of entry under the Act, section 120 (Entry to inspect employee records or information held by another person) in relation to an entry under that section must also include the following:

(a) so far as is practicable, the particulars of the suspected contravention to which the notice relates;

(b) a description of the employee records and other documents, or of the classes of records and documents, directly relevant to the suspected contravention, that are proposed to be inspected;

(c) a declaration stating—

(i) that the union is entitled to represent the industrial interests of a worker who is a member, or eligible to be a member, of that union; and

(ii) the provision in the union's rules that entitles the union to represent the industrial interests of that worker; and

(iii) that the suspected contravention relates to, or affects, that worker; and

(iv) that the records and documents proposed to be inspected relate to that contravention.

Note The Act, s 130 provides that a WHS entry permit-holder is not required to disclose the name of any worker to the person conducting the business or undertaking, and may do so only with the consent of the worker.

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30 Additional requirements—entry under Act, s 121—Act, s 122

A notice of entry under the Act, section 122 (Notice of entry) in relation to an entry under the Act, section 121 (Entry to consult and advise workers) must also include a declaration stating—

(a) that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace proposed to be entered and is a member, or eligible to be a member, of that union; and

(b) the provision in the union's rules that entitles the union to represent the industrial interests of that worker.

Note The Act, s 130 provides that a WHS entry permit-holder is not required to disclose the name of any worker to the person conducting the business or undertaking, and may do so only with the consent of the worker.

31 Register of WHS entry permit-holders—Act, s 151

For the purposes of the Act, section 151 (Register of WHS entry permit-holders), the regulator must publish on its website—

(a) an up-to-date register of WHS entry permit-holders; and

(b) the date on which the register was last updated.

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Chapter 3 General risk and workplace management

Part 3.1 Managing risks to health and safety

32 Application—pt 3.1

This part applies to a person conducting a business or undertaking who has a duty under this regulation to manage risks to health and safety.

33 Specific requirements must be complied with

Any specific requirements under this regulation for the management of risk must be complied with when implementing the requirements of this part.

Examples

1 a requirement not to exceed an exposure standard

2 a duty to implement a specific control measure

3 a duty to assess risk

34 Duty to identify hazards

A duty holder, in managing risks to health and safety, must identify reasonably foreseeable hazards that could give rise to risks to health and safety.

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35 Managing risks to health and safety

A duty holder, in managing risks to health and safety, must—

(a) eliminate risks to health and safety so far as is reasonably practicable; and

(b) if it is not reasonably practicable to eliminate risks to health and safety—minimise those risks so far as is reasonably practicable.

36 Hierarchy of control measures

(1) This section applies if it is not reasonably practicable for a duty holder to eliminate risks to health and safety.

(2) A duty holder, in minimising risks to health and safety, must implement risk control measures in accordance with this section.

(3) The duty holder must minimise risks, so far as is reasonably practicable, by doing 1 or more of the following:

(a) substituting (wholly or partly) the hazard giving rise to the risk with something that gives rise to a lesser risk;

(b) isolating the hazard from any person exposed to it;

(c) implementing engineering controls.

(4) If a risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by implementing administrative controls.

(5) If a risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by ensuring the provision and use of suitable personal protective equipment.

Note A combination of the controls set out in this section may be used to minimise risks, so far as is reasonably practicable, if a single control is not sufficient for the purpose.

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37 Maintenance of control measures

A duty holder who implements a control measure to eliminate or minimise risks to health and safety must ensure that the control measure is, and is maintained so that it remains, effective, including by ensuring that the control measure is and remains—

(a) fit for purpose; and

(b) suitable for the nature and duration of the work; and

(c) installed, set up and used correctly.

38 Review of control measures

(1) A duty holder must review and, as necessary, revise control measures implemented under this regulation so as to maintain, so far as is reasonably practicable, a work environment that is without risks to health or safety.

(2) Without limiting subsection (1), the duty holder must review and, as necessary, revise a control measure in the following circumstances:

(a) the control measure does not control the risk it was implemented to control so far as is reasonably practicable;

Examples

1 the results of monitoring show that the control measure does not control the risk

2 a notifiable incident occurs because of the risk

(b) before a change at the workplace that is likely to give rise to a new or different risk to health or safety that the measure may not effectively control;

(c) a new relevant hazard or risk is identified;

(d) the results of consultation by the duty holder under the Act or this regulation indicate that a review is necessary;

(e) a health and safety representative requests a review under subsection (4).

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(3) Without limiting subsection (2) (b), a change at the workplace includes—

(a) a change to the workplace itself or any aspect of the work environment; or

(b) a change to a system of work, a process or a procedure.

(4) A health and safety representative for workers at a workplace may request a review of a control measure if the representative reasonably believes that—

(a) a circumstance mentioned in subsection (2) (a), (b), (c) or (d) affects or may affect the health and safety of a member of the work group represented by the health and safety representative; and

(b) the duty holder has not adequately reviewed the control measure in response to the circumstance.

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Part 3.2 General workplace management

Division 3.2.1 Information, training and instruction

39 Provision of information, training and instruction—Act, s 19

(1) This section applies for the purposes of the Act, section 19 (Primary duty of care) to a person conducting a business or undertaking.

(2) The person must ensure that information, training and instruction provided to a worker is suitable and adequate having regard to—

(a) the nature of the work carried out by the worker; and

(b) the nature of the risks associated with the work at the time the information, training or instruction is provided; and

(c) the control measures implemented.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure, so far as is reasonably practicable, that the information, training and instruction provided under this section is provided in a way that is readily understandable by any person to whom it is provided.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Division 3.2.2 General working environment

40 Duty in relation to general workplace facilities

A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the following:

(a) the layout of the workplace allows, and the workplace is maintained so as to allow, for persons to enter and exit and to move about without risk to health and safety, both under normal working conditions and in an emergency;

(b) work areas have space for work to be carried out without risk to health and safety;

(c) floors and other surfaces are designed, installed and maintained to allow work to be carried out without risk to health and safety;

(d) lighting enables—

(i) each worker to carry out work without risk to health and safety; and

(ii) persons to move within the workplace without risk to health and safety; and

(iii) safe evacuation in an emergency;

(e) ventilation enables workers to carry out work without risk to health and safety;

(f) workers carrying out work in extremes of heat or cold are able to carry out work without risk to health and safety;

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(g) work in relation to or near essential services does not give rise to a risk to the health and safety of persons at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

41 Duty to provide and maintain adequate and accessible facilities

(1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets, drinking water, washing facilities and eating facilities.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that the facilities provided under subsection (1) are maintained so as to be—

(a) in good working order; and

(b) clean, safe and accessible.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) For the purposes of this section, a person conducting a business or undertaking must have regard to all relevant matters, including the following:

(a) the nature of the work being carried out at the workplace;

(b) the nature of the hazards at the workplace;

(c) the size, location and nature of the workplace;

(d) the number and composition of the workers at the workplace.

Division 3.2.3 First-aid

42 Duty to provide first-aid

(1) A person conducting a business or undertaking at a workplace must ensure—

(a) the provision of first-aid equipment for the workplace; and

(b) that each worker at the workplace has access to the equipment; and

(c) access to facilities for the administration of first-aid.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A person conducting a business or undertaking at a workplace must ensure that—

(a) an adequate number of workers are trained to administer first-aid at the workplace; or

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(b) workers have access to an adequate number of other persons who have been trained to administer first-aid.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) For the purposes of this section, the person conducting the business or undertaking must have regard to all relevant matters, including the following:

(a) the nature of the work being carried out at the workplace;

(b) the nature of the hazards at the workplace;

(c) the size and location of the workplace;

(d) the number and composition of the workers and other persons at the workplace.

Division 3.2.4 Emergency plans

43 Duty to prepare, maintain and implement emergency plan

(1) A person conducting a business or undertaking at a workplace must ensure that an emergency plan is prepared for the workplace, that provides for the following:

(a) emergency procedures, including—

(i) an effective response to an emergency; and

(ii) evacuation procedures; and

(iii) notifying emergency service organisations at the earliest opportunity; and

(iv) medical treatment and assistance; and

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(v) effective communication between the person authorised by the person conducting the business or undertaking to coordinate the emergency response and all persons at the workplace;

(b) testing of the emergency procedures, including the frequency of testing;

(c) information, training and instruction to relevant workers in relation to implementing the emergency procedures.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A person conducting a business or undertaking at a workplace must maintain the emergency plan for the workplace so that it remains effective.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) For the purposes of subsections (1) and (2), the person conducting the business or undertaking must have regard to all relevant matters, including the following:

(a) the nature of the work being carried out at the workplace;

(b) the nature of the hazards at the workplace;

(c) the size and location of the workplace;

(d) the number and composition of the workers and other persons at the workplace.

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(4) A person conducting a business or undertaking at a workplace must implement the emergency plan for the workplace in the event of an emergency.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 3.2.5 Personal protective equipment

44 Provision to workers and use of personal protective equipment

(1) This section applies if personal protective equipment is to be used to minimise a risk to health and safety in relation to work at a workplace in accordance with section 36 (Hierarchy of control measures).

(2) The person conducting a business or undertaking who directs the carrying out of work must provide the personal protective equipment to workers at the workplace, unless the personal protective equipment has been provided by another person conducting a business or undertaking.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) The person conducting the business or undertaking who directs the carrying out of work must ensure that personal protective equipment provided under subsection (2) is—

(a) selected to minimise risk to health and safety, including by ensuring that the equipment is—

(i) suitable having regard to the nature of the work and any hazard associated with the work; and

(ii) a suitable size and fit and reasonably comfortable for the worker who is to use or wear it; and

(b) maintained, repaired or replaced so that it continues to minimise risk to the worker who uses it, including by ensuring that the equipment is—

(i) clean and hygienic; and

(ii) in good working order; and

(c) used or worn by the worker, so far as is reasonably practicable.

(4) The person conducting a business or undertaking who directs the carrying out of work must provide the worker with information, training and instruction in the—

(a) proper use and wearing of personal protective equipment; and

(b) the storage and maintenance of personal protective equipment.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 A person conducting a business or undertaking must not charge or impose a levy on a worker for the provision of personal protective equipment (see Act, s 273).

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45 Personal protective equipment used by other persons

The person conducting a business or undertaking who directs the carrying out of work must ensure, so far as is reasonably practicable, that—

(a) personal protective equipment to be used or worn by any person other than a worker at the workplace is capable of minimising risk to the person's health and safety; and

(b) the person uses or wears the equipment.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

46 Duties of worker

(1) This section applies if a person conducting a business or undertaking provides a worker with personal protective equipment.

(2) The worker must, so far as the worker is reasonably able, use or wear the equipment in accordance with any information, training or reasonable instruction by the person conducting the business or undertaking.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) The worker must not intentionally misuse or damage the equipment.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The worker must inform the person conducting the business or undertaking of any damage to, defect in or need to clean or decontaminate any of the equipment of which the worker becomes aware.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

47 Duty of person other than worker

A person other than a worker must wear personal protective equipment at a workplace in accordance with any information, training or reasonable instruction provided by the person conducting the business or undertaking at the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Division 3.2.6 Remote or isolated work

48 Remote or isolated work—Act, s 19

(1) A person conducting a business or undertaking must manage risks to the health and safety of a worker associated with remote or isolated work, in accordance with part 3.1 (Managing risks to health and safety).

Note WHS Act—s 19 (see s 9).

(2) In minimising risks to the health and safety of a worker associated with remote or isolated work, a person conducting a business or undertaking must provide a system of work that includes effective communication with the worker.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) In this section:

assistance includes rescue, medical assistance and the attendance of emergency services workers.

remote or isolated work, in relation to a worker, means work that is isolated from the assistance of other persons because of location, time or the nature of the work.

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Division 3.2.7 Managing risks from airborne contaminants

48A Exposure standards

(1) The Minister may declare exposure standards in the Workplace Exposure Standard for Airborne Contaminants for this regulation (other than part 4.1 (Noise)).

Note The Workplace Exposure Standard for Airborne Contaminants does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The Standard is available at www.safeworkaustralia.gov.au.

(2) A declaration is a notifiable instrument.

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

49 Ensuring exposure standards for substances and mixtures not exceeded

A person conducting a business or undertaking at a workplace must ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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50 Monitoring airborne contaminant levels

(1) A person conducting a business or undertaking at a workplace must ensure that air monitoring is carried out to determine the airborne concentration of a substance or mixture at the workplace to which an exposure standard applies if—

(a) the person is not certain on reasonable grounds whether or not the airborne concentration of the substance or mixture at the workplace exceeds the relevant exposure standard; or

(b) monitoring is necessary to determine whether there is a risk to health.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A person conducting a business or undertaking at a workplace must ensure that the results of air monitoring carried out under subsection (1) are recorded, and kept for 30 years after the date the record is made.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) A person conducting a business or undertaking at a workplace must ensure that the results of air monitoring carried out under subsection (1) are readily accessible to persons at the workplace who may be exposed to the substance or mixture.

Maximum penalty:

(a) in the case of an individual—$3 600; or

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(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 3.2.8 Hazardous atmospheres

51 Managing risks to health and safety—Act, s 19

(1) A person conducting a business or undertaking at a workplace must manage risks to health and safety associated with a hazardous atmosphere at the workplace, in accordance with part 3.1 (Managing risks to health and safety).

Note WHS Act—s 19 (see s 9).

(2) An atmosphere is a ***hazardous atmosphere*** if—

(a) the atmosphere does not have a safe oxygen level; or

(b) the concentration of oxygen in the atmosphere increases the fire risk; or

(c) the concentration of flammable gas, vapour, mist or fumes exceeds 5% of the LEL for the gas, vapour, mist or fumes; or

(d) combustible dust is present in a quantity and form that would result in a hazardous area.

52 Ignition sources—Act, s 19

(1) A person conducting a business or undertaking at a workplace must manage risks to health and safety associated with an ignition source in a hazardous atmosphere at the workplace, in accordance with part 3.1 (Managing risks to health and safety).

Note WHS Act—s 19 (see s 9).

(2) This section does not apply if the ignition source is part of a deliberate process or activity at the workplace.

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Division 3.2.9 Storage of flammable or combustible substances

53 Flammable and combustible substances not to be accumulated

(1) A person conducting a business or undertaking at a workplace must ensure that, if flammable or combustible substances are kept at the workplace, the substances are kept at the lowest practicable quantity for the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) In this section:

flammable or combustible substances include—

(a) flammable and combustible liquids, including waste liquids, in containers, whether empty or full; and

(b) gas cylinders, whether empty or full.

Division 3.2.10 Falling objects

54 Management of risk of falling objects—Act, s 19

A person conducting a business or undertaking at a workplace must manage, in accordance with part 3.1 (Managing risks to health and safety), risks to health and safety associated with an object falling on a person if the falling object is reasonably likely to injure the person.

Note WHS Act—s 19 (see s 9).

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55 Minimising risk associated with falling objects

(1) This section applies if it is not reasonably practicable to eliminate the risk mentioned in section 54.

(2) The person conducting the business or undertaking at a workplace must minimise the risk of an object falling on a person by providing adequate protection against the risk in accordance with this section.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person provides adequate protection against the risk if the person provides and maintains a safe system of work, including—

(a) preventing an object from falling freely, so far as is reasonably practicable; or

(b) if it is not reasonably practicable to prevent an object from falling freely—providing, so far as is reasonably practicable, a system to arrest the fall of a falling object.

Examples

1 providing a secure barrier

2 providing a safe means of raising and lowering objects

3 providing an exclusion zone persons are prohibited from entering

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Chapter 4 Hazardous work

Part 4.1 Noise

56 Meaning of *exposure standard for noise*

(1) In this regulation:

exposure standard for noise, in relation to a person, means—

(a) $L_{Aeq,8h}$ of 85 dB(A); or

(b) $L_{C,peak}$ of 140 dB(C).

(2) In this section:

LAeq,8h means the eight-hour equivalent continuous A-weighted sound pressure level in decibels (dB(A)) referenced to 20 micropascals, determined in accordance with AS/NZS 1269.1:2005 (Occupational noise management—Measurement and assessment of noise immission and exposure).

Note AS/NZS 1269.1:2005 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

LC,peak means the C-weighted peak sound pressure level in decibels (dB(C)) referenced to 20 micropascals, determined in accordance with AS/NZS 1269.1:2005 (Occupational noise management—Measurement and assessment of noise immission and exposure).

57 Managing risk of hearing loss from noise—Act, s 19

(1) A person conducting a business or undertaking at a workplace must manage, in accordance with part 3.1 (Managing risks to health and safety), risks to health and safety relating to hearing loss associated with noise.

Note WHS Act—s 19 (see s 9).

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(2) A person conducting a business or undertaking at a workplace must ensure that the noise that a worker is exposed to at the workplace does not exceed the exposure standard for noise.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

58 Audiometric testing

(1) This section applies in relation to a worker who is frequently required by the person conducting the business or undertaking to use personal protective equipment to protect the worker from the risk of hearing loss associated with noise that exceeds the exposure standard for noise.

(2) The person conducting the business or undertaking who provides the personal protective equipment as a control measure must provide audiometric testing for the worker—

(a) within 3 months of the worker commencing the work; and

(b) in any event, at least every 2 years.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) In this section:

audiometric testing means the testing and measurement of the hearing threshold levels of each ear of a person by means of pure tone air conduction threshold tests.

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59 Duties of designers, manufacturers, importers and suppliers of plant

(1) A designer of plant must ensure that the plant is designed so that its noise emission is as low as is reasonably practicable.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A designer of plant must give to each person who is provided with the design for the purpose of giving effect to it adequate information about—

(a) the noise emission values of the plant; and

(b) the operating conditions of the plant when noise emission is to be measured; and

(c) the methods the designer has used to measure the noise emission of the plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) A manufacturer of plant must ensure that the plant is manufactured so that its noise emission is as low as is reasonably practicable.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) A manufacturer of plant must give to each person to whom the manufacturer provides the plant adequate information about—

(a) the noise emission values of the plant; and

(b) the operating conditions of the plant when noise emission is to be measured; and

(c) the methods the manufacturer has used to measure the noise emission of the plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) An importer of plant must take all reasonable steps to—

(a) obtain information about—

(i) the noise emission values of the plant; and

(ii) the operating conditions of the plant when noise emission is to be measured; and

(iii) the methods the designer or manufacturer has used to measure the noise emission of the plant; and

(b) give that information to any person to whom the importer supplies the plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(6) A supplier of plant must take all reasonable steps to—

(a) obtain the information the designer, manufacturer or importer is required to give a supplier under subsection (2), (4) or (5); and

(b) give that information to any person to whom the supplier supplies the plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Part 4.2 Hazardous manual tasks

60 Managing risks to health and safety—Act, s 19

(1) A person conducting a business or undertaking must manage risks to health and safety relating to a musculoskeletal disorder associated with a hazardous manual task, in accordance with part 3.1 (Managing risks to health and safety).

Note WHS Act—s 19 (see s 9).

(2) In determining the control measures to implement under subsection (1), the person conducting the business or undertaking must have regard to all relevant matters that may contribute to a musculoskeletal disorder, including—

(a) postures, movements, forces and vibration relating to the hazardous manual task; and

(b) the duration and frequency of the hazardous manual task; and

(c) workplace environmental conditions that may affect the hazardous manual task or the worker performing it; and

(d) the design of the work area; and

(e) the layout of the workplace; and

(f) the systems of work used; and

(g) the nature, size, weight or number of persons, animals or things involved in carrying out the hazardous manual task.

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61 Duties of designers, manufacturers, importers and suppliers of plant or structures

(1) A designer of plant or a structure must ensure that the plant or structure is designed so as to eliminate the need for any hazardous manual task to be carried out in connection with the plant or structure.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If it is not reasonably practicable to comply with subsection (1), the designer must ensure that the plant or structure is designed so that the need for any hazardous manual task to be carried out in connection with the plant or structure is minimised so far as is reasonably practicable.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The designer must give to each person who is provided with the design for the purpose of giving effect to it adequate information about the features of the plant or structure that eliminate or minimise the need for any hazardous manual task to be carried out in connection with the plant or structure.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) A manufacturer of plant or a structure must ensure that the plant or structure is manufactured so as to eliminate the need for any hazardous manual task to be carried out in connection with the plant or structure.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) If it is not reasonably practicable to comply with subsection (4), the manufacturer must ensure that the plant or structure is manufactured so that the need for any hazardous manual task to be carried out in connection with the plant or structure is minimised so far as is reasonably practicable.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(6) The manufacturer must give to each person to whom the manufacturer provides the plant or structure adequate information about the features of the plant or structure that eliminate or minimise the need for any hazardous manual task to be carried out in connection with the plant or structure.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(7) An importer of plant or a structure must take all reasonable steps to—

(a) obtain the information the designer or manufacturer is required to give under subsection (3) or (6); and

(b) give that information to any person to whom the importer supplies the plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(8) A supplier of plant or a structure must take all reasonable steps to—

(a) obtain the information the designer, manufacturer or importer is required to give a supplier under subsection (3), (6) or (7); and

(b) give that information to any person to whom the supplier supplies the plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Part 4.3 Confined spaces

Division 4.3.1 Preliminary

62 Confined spaces to which this part applies

(1) This part applies to confined spaces that—

(a) are entered by any person; or

(b) are intended or likely to be entered by any person; or

(c) could be entered inadvertently by any person.

(2) In this part, a reference to a ***confined space*** in relation to a person conducting a business or undertaking is a reference to a confined space that is under the person's management or control.

63 Application to emergency services workers

Section 67 (Confined space entry permit) and section 68 (Signage) do not apply to the entry into a confined space by an emergency services worker if, at the direction of the emergency service organisation, the worker is—

(a) rescuing a person from the space; or

(b) providing first-aid to a person in the space.

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Division 4.3.2 Duties of designer, manufacturer, importer, supplier, installer and constructor of plant or structure

64 Duty to eliminate or minimise risk

(1) This section applies in relation to plant or a structure that includes a space that is, or is intended to be, a confined space.

(2) A designer, manufacturer, importer or supplier of the plant or structure, and a person who installs or constructs the plant or structure, must ensure that—

(a) the need for any person to enter the space and the risk of a person inadvertently entering the space are eliminated, so far as is reasonably practicable; or

(b) if it is not reasonably practicable to eliminate the need to enter the space or the risk of a person inadvertently entering the space—

(i) the need or risk is minimised so far as is reasonably practicable; and

(ii) the space is designed with a safe means of entry and exit; and

(iii) the risk to the health and safety of any person who enters the space is eliminated so far as is reasonably practicable or, if it is not reasonably practicable to eliminate the risk, the risk is minimised so far as is reasonably practicable.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Division 4.3.3 Duties of person conducting business or undertaking

65 Entry into confined space must comply with this division

A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that a worker does not enter a confined space before this division has been complied with in relation to that space.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

66 Managing risks to health and safety—Act, s 19

(1) A person conducting a business or undertaking must manage, in accordance with part 3.1 (Managing risks to health and safety), risks to health and safety associated with a confined space at a workplace including risks associated with entering, working in, on or in the vicinity of the confined space (including a risk of a person inadvertently entering the confined space).

Note WHS Act—s 19 (see s 9).

(2) A person conducting a business or undertaking must ensure that a risk assessment is conducted by a competent person for the purposes of subsection (1).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) The person must ensure that a risk assessment conducted under subsection (2) is recorded in writing.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) For the purposes of subsections (1) and (2), the person conducting a business or undertaking must have regard to all relevant matters, including the following:

(a) whether the work can be carried out without the need to enter the confined space;

(b) the nature of the confined space;

(c) if the hazard is associated with the concentration of oxygen or the concentration of airborne contaminants in the confined space—any change that may occur in that concentration;

(d) the work required to be carried out in the confined space, the range of methods by which the work can be carried out and the proposed method of working;

(e) the type of emergency procedures, including rescue procedures, required.

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(5) The person conducting a business or undertaking must ensure that a risk assessment under this section is reviewed and as necessary revised by a competent person to reflect any review and revision of control measures under part 3.1 (Managing risks to health and safety).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

67 Confined space entry permit

(1) A person conducting a business or undertaking at a workplace must not direct a worker to enter a confined space to carry out work unless the person has issued a confined space entry permit for the work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A confined space entry permit must—

(a) be completed by a competent person; and

(b) be in writing; and

(c) state the following:

(i) the confined space to which the permit relates;

(ii) the names of persons permitted to enter the space;

(iii) the period of time during which the work in the space will be carried out;

(iv) measures to control risk associated with the proposed work in the space; and

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(d) contain space for an acknowledgement that work in the confined space has been completed and that all persons have left the confined space.

(3) The control measures stated in a confined space permit must—

(a) be based on a risk assessment conducted under section 66 (Managing risks to health and safety—Act, s 19); and

(b) include—

(i) control measures to be implemented for safe entry; and

(ii) details of the system of work provided under section 69 (Communication and safety monitoring).

(4) The person conducting a business or undertaking must ensure that, when the work for which the entry permit was issued is completed—

(a) all workers leave the confined space; and

(b) the acknowledgement mentioned in subsection (2) (d) is completed by the competent person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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68 Signage

(1) A person conducting a business or undertaking must ensure that signs that comply with subsection (2) are erected—

(a) immediately before work in a confined space commences and while the work is being carried out; and

(b) while work is being carried out in preparation for, and in the completion of, work in a confined space.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The signs must—

(a) identify the confined space; and

(b) inform workers that they must not enter the space unless they have a confined space entry permit; and

(c) be clear and prominently located next to each entry to the space.

69 Communication and safety monitoring

A person conducting a business or undertaking must ensure that a worker does not enter a confined space to carry out work unless the person provides a system of work that includes—

(a) continuous communication with the worker from outside the space; and

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(b) monitoring of conditions within the space by a standby person who is in the vicinity of the space and, if practicable, observing the work being carried out.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

70 Specific control—connected plant and services

(1) A person conducting a business or undertaking must, so far as is reasonably practicable, eliminate any risk associated with work in a confined space in either of the following circumstances:

(a) the introduction of any substance or condition into the space from or by any plant or services connected to the space;

(b) the activation or energising in any way of any plant or services connected to the space.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If it is not reasonably practicable for the person to eliminate risk under subsection (1), the person must minimise that risk so far as is reasonably practicable.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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71 Specific control—atmosphere

(1) A person conducting a business or undertaking must ensure, in relation to work in a confined space, that—

(a) purging or ventilation of any contaminant in the atmosphere of the space is carried out, so far as is reasonably practicable; and

(b) pure oxygen or gas mixtures with oxygen in a concentration exceeding 21% by volume are not used for purging or ventilation of any airborne contaminant in the space.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure that, while work is being carried out in a confined space—

(a) the atmosphere of the space has a safe oxygen level; or

(b) if it is not reasonably practicable to comply with paragraph (a) and the atmosphere in the space has an oxygen level less than 19.5% by volume—any worker carrying out work in the space is provided with air-supplied respiratory equipment.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) In this section:

purging means the method used to displace any contaminant from a confined space.

Note 1 Section 44 applies to the use of personal protective equipment, including the equipment provided under s (2).

Note 2 Section 50 applies to airborne contaminants.

72 Specific control—flammable gases and vapours

(1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that while work is being carried out in a confined space, the concentration of any flammable gas, vapour or mist in the atmosphere of the space is less than 5% of its LEL.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If it is not reasonably practicable to limit the atmospheric concentration of a flammable gas, vapour or mist in a confined space to less than 5% of its LEL and the atmospheric concentration of the flammable gas, vapour or mist in the space is—

(a) equal to or greater than 5% but less than 10% of its LEL—the person must ensure that any worker is immediately removed from the space unless a suitably calibrated, continuous-monitoring flammable gas detector is used in the space; or

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(b) equal to or greater than 10% of its LEL—the person must ensure that any worker is immediately removed from the space.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

73 Specific control—fire and explosion

A person conducting a business or undertaking must ensure that an ignition source is not introduced into a confined space (from outside or within the space) if there is a possibility of the ignition source causing a fire or explosion in the space.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

74 Emergency procedures

(1) A person conducting a business or undertaking must—

(a) establish first-aid procedures and rescue procedures to be followed in the event of an emergency in a confined space; and

(b) ensure that the procedures are practised as necessary to ensure that they are efficient and effective.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The person must ensure that first-aid and rescue procedures are initiated from outside the confined space as soon as practicable in an emergency.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure, in relation to any confined space, that—

(a) the entry and exit openings of the confined space are large enough to allow emergency access; and

(b) the entry and exit openings of the space are not obstructed; and

(c) plant, equipment and personal protective equipment provided for first-aid or emergency rescue are maintained in good working order.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 See pt 3.2 for general provisions relating to first-aid, personal protective equipment and emergency plans.

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75 Personal protective equipment in emergencies

(1) This section applies in relation to a worker who is to enter a confined space in order to carry out first-aid or rescue procedures in an emergency.

(2) The person conducting the business or undertaking for which the worker is carrying out work must ensure that air-supplied respiratory equipment is available for use by, and is provided to, the worker in an emergency in which—

(a) the atmosphere in the confined space does not have a safe oxygen level; or

(b) the atmosphere in the space has a harmful concentration of an airborne contaminant; or

(c) there is a serious risk of the atmosphere in the space becoming affected in the way mentioned in paragraph (a) or (b) while the worker is in the space.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) The person conducting the business or undertaking for which the worker is carrying out work must ensure that suitable personal protective equipment is available for use by, and is provided to, the worker in an emergency in which—

(a) an engulfment has occurred inside the confined space; or

(b) there is a serious risk of an engulfment occurring while the worker is in the space.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 Section 44 applies to the use of personal protective equipment, including the equipment provided under this section.

76 Information, training and instruction for workers

(1) A person conducting a business or undertaking must ensure that relevant workers are provided with suitable and adequate information, training and instruction in relation to the following:

(a) the nature of all hazards relating to a confined space;

(b) the need for, and the appropriate use of, control measures to control risks to health and safety associated with those hazards;

(c) the selection, fit, use, wearing, testing, storage and maintenance of any personal protective equipment;

(d) the contents of any confined space entry permit that may be issued in relation to work carried out by the worker in a confined space;

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(e) emergency procedures.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure that a record of all training provided to a worker under this section is kept for 2 years.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) In this section:

relevant worker means—

(a) a worker who, in carrying out work for the business or undertaking, could—

(i) enter or work in a confined space; or

(ii) carry out any function in relation to work in a confined space or the emergency procedures established under section 74 (Emergency procedures), but who is not required to enter the space; or

(b) any person supervising a worker mentioned in paragraph (a).

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77 Confined space entry permit and risk assessment must be kept

(1) This section applies if a person conducting a business or undertaking—

(a) prepares a risk assessment under section 66 (Managing risks to health and safety—Act, s 19); or

(b) issues a confined space entry permit under section 67 (Confined space entry permit).

(2) Subject to subsection (3), the person must keep—

(a) a copy of the risk assessment until at least 28 days after the work to which it relates is completed; and

(b) a copy of the confined space entry permit at least until the work to which it relates is completed.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) If a notifiable incident occurs in connection with the work to which the assessment or permit relates, the person must keep the copy of the assessment or permit (as applicable) for at least 2 years after the incident occurs.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) The person must ensure that, for the period for which the assessment or permit must be kept under this section, a copy is available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) The person must ensure that, for the period for which the assessment or permit must be kept under this section, a copy is available to any relevant worker on request.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Part 4.4 Falls

78 Management of risk of fall—Act, s 19

(1) A person conducting a business or undertaking at a workplace must manage, in accordance with part 3.1 (Managing risks to health and safety), risks to health and safety associated with a fall by a person from 1 level to another that is reasonably likely to cause injury to the person or any other person.

Note WHS Act—s 19 (see s 9).

(2) Subsection (1) includes the risk of a fall—

(a) in or on an elevated workplace from which a person could fall; or

(b) in the vicinity of an opening through which a person could fall; or

(c) in the vicinity of an edge over which a person could fall; or

(d) on a surface through which a person could fall; or

(e) in any other place from which a person could fall.

(3) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that any work that involves the risk of a fall to which subsection (1) applies is carried out on the ground or on a solid construction.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) A person conducting a business or undertaking must provide safe means of access to and exit from—

(a) the workplace; and

(b) any area within the workplace mentioned in subsection (2).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) In this section:

solid construction means an area that has—

(a) a surface that is structurally capable of supporting all persons and things that may be located or placed on it; and

(b) barriers around its perimeter and any openings to prevent a fall; and

(c) an even and readily negotiable surface and gradient; and

(d) a safe means of entry and exit.

79 Specific requirements to minimise risk of fall

(1) This section applies if it is not reasonably practicable for the person conducting a business or undertaking at a workplace to eliminate the risk of a fall to which section 78 applies.

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(2) The person must minimise the risk of a fall by providing adequate protection against the risk in accordance with this section.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person provides adequate protection against the risk if the person provides and maintains a safe system of work, including by—

(a) providing a fall prevention device if it is reasonably practicable to do so; or

(b) if it is not reasonably practicable to provide a fall prevention device, providing a work positioning system; or

(c) if it is not reasonably practicable to comply with either paragraph (a) or (b), providing a fall arrest system, so far as is reasonably practicable.

Examples

1 providing temporary work platforms

2 providing training in relation to the risks involved in working at the workplace

3 providing safe work procedures, safe sequencing of work, safe use of ladders, permit systems and appropriate signs

Note A combination of the controls set out in this subsection may be used to minimise risks so far as is practicable if a single control is not sufficient for the purpose.

(4) This section does not apply in relation to the following work:

(a) the performance of stunt work;

(b) the performance of acrobatics;

(c) a theatrical performance;

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(d) a sporting or athletic activity;

(e) horse riding.

Note Section 36 applies to the management of risk in relation to this work.

(5) In this section:

fall prevention device includes—

(a) a secure fence; and

(b) edge protection; and

(c) working platforms; and

(d) covers.

80 Emergency and rescue procedures

(1) This section applies if a person conducting a business or undertaking provides a fall arrest system as a control measure.

(2) Without limiting section 79, the person must establish emergency procedures, including rescue procedures, in relation to the use of the fall arrest system.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure that the emergency procedures are tested so that they are effective.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) The person must provide relevant workers with suitable and adequate information, training and instruction in relation to the emergency procedures.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) In this section:

relevant worker means—

(a) a worker who, in carrying out work in the business or undertaking, uses or is to use a fall arrest system; and

(b) a worker who may be involved in initiating or implementing the emergency procedures.

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Part 4.5 High risk work

Division 4.5.1 Licensing of high risk work

Subdivision 4.5.1.1 Requirement to be licensed

81 Licence required to carry out high risk work

A person must not carry out a class of high risk work unless the person holds a high risk work licence for that class of high risk work, except as provided in section 82.

Note 1 See the Act, s 43 (Requirements for authorisation of work).

Note 2 Sch 3 (High risk work licences and classes of high risk work) sets out the high risk work licences and classes of high risk work that are within the scope of each licence.
Sch 4 (High risk work licences—competency requirements) sets out the qualifications required for a high risk work licence.

82 Exceptions

(1) A person who carries out high risk work is not required to be licensed to carry out the work if the work is carried out—

(a) in the course of training towards a certification in order to be licensed to carry out the high risk work; and

(b) under the supervision of a person who is licensed to carry out the high risk work.

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(1A) A person who holds a certification in relation to a specified VET course for high risk work is not required to be licensed to carry out the work—

(a) for 60 days after the certification is issued; and

(b) if the person applies for the relevant high risk work licence within that 60 day period, until—

(i) the person is granted the licence; or

(ii) the expiry of 28 days after the person is given written notice under section 91 (2) (Refusal to grant high risk work licence—process) of a decision to refuse to grant the licence.

(1B) A person who carries out high risk work is not required to be licensed to carry out the work if the work is carried out while an accredited assessor is conducting an assessment of the person's competency in relation to the work.

(2) A person who carries out high risk work involving plant is not required to be licensed if—

(a) the work is carried out at a workplace solely for the purpose of the manufacture, testing, trialling, installation, commissioning, maintenance, servicing, repair, alteration, demolition or disposal of the plant at that workplace or moving the plant within the workplace; and

(b) the plant is operated or used without a load except when standard weight loads with predetermined fixing points are used for calibration of the plant.

(3) For the purposes of subsection (2) (a):

moving includes operating the plant in order to load the plant onto, or unload it from, a vehicle or equipment used to move it.

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(4) A person who carries out high risk work with a crane or hoist is not required to be licensed as a crane operator if—

(a) the work is limited to setting up or dismantling the crane or hoist; and

(b) the person carrying out the work holds a licence in relation to rigging, which qualifies the person to carry out the work.

Note See sch 3 (High risk work licences and classes of high risk work) for the classes of crane operator licence.

(5) A person who carries out high risk work with a heritage boiler is not required to be licensed as a boiler operator.

83 Recognition of high risk work licences in other jurisdictions

(1) In this subdivision, a reference to a high risk work licence includes a reference to an equivalent licence—

(a) that was issued under a corresponding WHS law; and

(b) that is being used in accordance with the terms and conditions under which it was granted.

(2) Subsection (1) does not apply to a licence that is suspended or cancelled or has expired in the corresponding jurisdiction.

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84 Duty of person conducting business or undertaking to ensure direct supervision

(1) A person conducting a business or undertaking must ensure that a person supervising the work of a person carrying out high risk work as required by section 82 (1) (a) (Exceptions) provides direct supervision of the person except in the circumstances set out in subsection (2).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Direct supervision of a person is not required if—

(a) the nature or circumstances of a particular task make direct supervision impracticable or unnecessary; and

(b) the reduced level of supervision will not place the health or safety of the supervised person or any other person at risk.

(3) In this section:

direct supervision of a person means the oversight by the supervising person of the work of that person for the purposes of—

(a) directing, demonstrating, monitoring and checking the person's work in a way that is appropriate to the person's level of competency; and

(b) ensuring a capacity to respond in an emergency situation.

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85 Evidence of licence—duty of person conducting business or undertaking

(1) A person conducting a business or undertaking at a workplace must not direct or allow a worker to carry out high risk work for which a high risk work licence is required unless the person sees written evidence provided by the worker that the worker has the relevant high risk work licence for that work.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A person conducting a business or undertaking at a workplace must not direct or allow a worker to carry out high risk work in the circumstances mentioned in section 82 (1) (Exceptions) unless the person sees written evidence provided by the worker that the worker is undertaking the course of training mentioned in section 82 (1) (a).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2A) A person conducting a business or undertaking at a workplace must not direct or allow a worker to carry out high risk work in the circumstances mentioned in section 82 (1A) unless the person sees written evidence provided by the worker that the worker—

(a) in the circumstances mentioned in section 82 (1A) (a)—holds a certification mentioned in section 82 (1A); and

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(b) in the circumstances mentioned in section 82 (1A) (b)—

(i) holds a certification mentioned in section 82 (1A); and

(ii) has applied for the relevant licence within the period mentioned in section 82 (1A) (b).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) A person conducting a business or undertaking at a workplace must not direct or allow a worker to supervise high risk work as mentioned in section 82 (1) and section 84 (Duty of person conducting business or undertaking to ensure direct supervision) unless the person sees written evidence that the worker holds the relevant high risk work licence for that high risk work.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) A person conducting a business or undertaking at a workplace must keep a record of the written evidence provided—

(a) under subsection (1) or (2)—for at least 1 year after the high risk work is carried out;

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(b) under subsection (3)—for at least 1 year after the last occasion on which the worker performs the supervision work.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Subdivision 4.5.1.2 Licensing process

86 Who may apply for a licence

Only a person who holds a qualification set out in schedule 4 (High risk work licences—competency requirements) may apply for a high risk work licence.

87 Application for high risk work licence

(1) This section applies to an application for a high risk work licence.

(2) The application must include the following information:

(a) the applicant's name and home address;

(b) a photograph of the applicant in the form required by the regulator;

(c) evidence of the applicant's age;

(d) any other evidence of the applicant's identity required by the regulator;

(e) the class of high risk work licence to which the application relates;

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(f) a copy of a certification—

(i) that is held by the applicant in relation to the specified VET course, or each of the specified VET courses, for the high risk work licence applied for; and

(ii) that was issued not more than 60 days before the application is made;

(g) a declaration that the applicant does not hold an equivalent licence under a corresponding WHS law;

(h) a declaration as to whether or not the applicant has ever been convicted or found guilty of any offence under the Act or this regulation or under any corresponding WHS law;

Note A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

(i) details of any conviction or finding of guilt declared under paragraph (h);

(j) a declaration as to whether or not the applicant has ever entered into an enforceable undertaking under the Act or under any corresponding WHS law;

(k) details of any enforceable undertaking declared under paragraph (j);

(l) if the applicant has previously been refused an equivalent licence under a corresponding WHS law, a declaration giving details of that refusal;

(m) if the applicant has previously held an equivalent licence under a corresponding WHS law, a declaration—

(i) describing any condition imposed on that licence; and

(ii) stating whether or not that licence had been suspended or cancelled and, if so, whether or not the applicant had been disqualified from applying for any licence; and

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(iii) giving details of any suspension, cancellation or disqualification.

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

88 Additional information

(1) If an application for a high risk work licence does not contain sufficient information to enable the regulator to make a decision whether or not to grant the licence, the regulator may ask the applicant to provide additional information.

(2) A request for additional information must—

(a) state the date (being not less than 28 days after the request) by which the additional information is to be given; and

(b) be confirmed in writing.

(3) If an applicant does not provide the additional information by the date stated, the application is to be taken to have been withdrawn.

(4) The regulator may make more than 1 request for additional information under this section.

89 Decision on application

(1) Subject to subsection (3), the regulator must grant a high risk work licence if satisfied about the matters mentioned in subsection (2).

(2) The regulator must be satisfied about the following:

(a) the application has been made in accordance with this regulation;

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(b) the applicant does not hold an equivalent licence under a corresponding WHS law unless that licence is due for renewal;

(c) the applicant—

(i) resides in the ACT; or

(ii) resides outside the ACT and circumstances exist that justify the grant of the licence;

(d) the applicant is at least 18 years of age;

(e) the applicant has provided the certification required under section 87 (2) (f) (Application for high risk work licence);

(f) the applicant is able to carry out the work to which the licence relates safely and competently.

(3) The regulator must refuse to grant a high risk work licence if satisfied that—

(a) the applicant is disqualified under a corresponding WHS law from holding an equivalent licence; or

(b) the applicant, in making the application, has—

(i) given information that is false or misleading in a material particular; or

(ii) failed to give any material information that should have been given.

(4) If the regulator decides to grant the licence, it must notify the applicant within 14 days after making the decision.

(5) If the regulator does not make a decision within 120 days after receiving the application or the additional information requested under section 88 (Additional information), the regulator is taken to have refused to grant the licence applied for.

Note A refusal to grant a high risk work licence (including under s (5)) is a reviewable decision (see s 676).

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90 Matters to be taken into account

For the purposes of section 89 (2) (f), the regulator must have regard to all relevant matters, including the following:

(a) any offence under the Act or this regulation or under a corresponding WHS law of which the applicant has been convicted or found guilty;

Note A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

(b) in relation to any equivalent licence applied for or held by the applicant under the Act or this regulation or under a corresponding WHS law—

(i) any refusal to grant the licence; and

(ii) any condition imposed on the licence, if granted; and

(iii) any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence;

(c) any enforceable undertaking the applicant has entered into under the Act or a corresponding WHS law;

(d) the applicant's record in relation to any matters arising under the Act or this regulation or under a corresponding WHS law.

91 Refusal to grant high risk work licence—process

(1) If the regulator proposes to refuse to grant a licence, the regulator must give a written notice to the applicant—

(a) informing the applicant of the reasons for the proposed refusal; and

(b) advising the applicant that the applicant may, by a stated date (being not less than 28 days after giving the notice), make a submission to the regulator in relation to the proposed refusal.

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(2) After the date stated in a notice under subsection (1), the regulator must—

(a) if the applicant has made a submission in relation to the proposed refusal to grant the licence—consider that submission; and

(b) whether or not the applicant has made a submission—decide whether to grant or refuse to grant the licence; and

(c) within 14 days after making that decision, give the applicant written notice of the decision, including the reasons for the decision.

Note A decision to refuse to grant a licence is a reviewable decision (see s 676).

91A Conditions of licence

(1) The regulator may impose any conditions it considers appropriate on a high risk work licence.

(2) Without limiting subsection (1), the regulator may impose conditions in relation to 1 or more of the following:

(a) control measures that must be implemented in relation to the carrying out of work or activities under the licence;

(b) the circumstances in which work or activities authorised by the licence may be carried out.

(2A) A licence under this division includes a condition that, if the licensee is issued with an infringement notice under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011*, information about the infringement notice be included in a public register in accordance with section 698A.

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(3) The regulator must give the licence-holder written notice of any conditions imposed by the licence.

Note 1 A person must comply with the conditions of a licence (see Act, s 45).

Note 2 A decision to impose a condition on a licence is a reviewable decision (see s 676).

92 Duration of licence

Subject to this division, a high risk work licence takes effect on the day it is granted and, unless cancelled earlier, expires 5 years after that day.

93 Licence document

(1) If the regulator grants a high risk work licence, the regulator must issue to the applicant a licence document in the form determined by the regulator.

(2) The licence document must include the following:

(a) the name of the licence-holder;

(b) a photograph of the licence-holder;

(c) the date of birth of the licence-holder;

(d) a copy of the signature of the licence-holder or provision for the inclusion of a copy signature;

(e) the class of high risk work licence and a description of the work within the scope of the licence;

(f) the date on which the licence was granted;

(g) the expiry date of the licence.

(3) For the purposes of subsection (2) (e), if the regulator grants more than 1 class of high risk work licence to a person, the licence document must contain a description of each class of licence and the work that is within the scope of each licence.

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(4) If a licence-holder holds more than 1 high risk work licence, the regulator may issue to the licence-holder 1 licence document in relation to some or all those licences.

(5) Despite section 92 (Duration of licence), if a licence document is issued under subsection (4), the licences to which that licence document related expire on the date that the first of those licences expires.

94 Licence document to be available

(1) A licence-holder must keep the licence document available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Subsection (1) does not apply if the licence document is not in the licence-holder's possession because—

(a) it has been returned to the regulator under section 97 (Licence-holder to return licence); or

(b) the licence-holder has applied for, but has not received, a replacement licence document under section 98 (Replacement licence document).

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95 Reassessment of competency of licence-holder

The regulator may direct a licence-holder to obtain a reassessment of the competency of the licence-holder to carry out the high risk work covered by the licence if the regulator reasonably believes that the licence-holder may not be competent to carry out that work.

Examples

1 the training or competency assessment of the licence-holder did not meet the standard required to hold the licence

2 the regulator receives information that the licence-holder has carried out high risk work incompetently

Subdivision 4.5.1.3 Amendment of licence document

96 Notice of change of address

The licence-holder of a high risk work licence must notify the regulator of a change of home address, within 14 days of the change occurring.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

97 Licence-holder to return licence

If a high risk work licence is amended, the licence-holder must return the licence document to the regulator for amendment at the written request of the regulator and within the time stated in the request.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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98 Replacement licence document

(1) A licence-holder must notify the regulator as soon as practicable if the licence document is lost, stolen or destroyed.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If a licence document is lost, stolen or destroyed, the licence-holder may apply to the regulator for a replacement document.

Note A licence-holder is required to keep the licence document available for inspection (see s 94).

(4) An application for a replacement licence document must include a declaration describing the circumstances in which the original document was lost, stolen or destroyed.

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(5) The regulator must issue a replacement licence document if satisfied that the original document was lost, stolen or destroyed.

(6) If the regulator refuses to issue a replacement licence document, it must give the licence-holder written notice of this decision, including the reasons for the decision, within 14 days after making the decision.

Note A decision to refuse to replace a licence is a reviewable decision (see s 676).

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99 Voluntary surrender of licence

(1) A licence-holder may voluntarily surrender the licence document to the regulator.

(2) The licence expires on the surrender of the licence document.

Subdivision 4.5.1.4 Renewal of high risk work licence

100 Regulator may renew licence

The regulator may renew a high risk work licence on application by the licence-holder.

101 Application for renewal

(1) This section applies to an application for renewal of a high risk work licence.

(2) The application must include the following information:

(a) the name and home address of the applicant;

(b) if required by the regulator, a photograph of the applicant in the form required by the regulator;

(c) any other evidence of the applicant's identity required by the regulator;

(d) a declaration by the applicant that he or she has maintained his or her competency to carry out the high risk work, including by obtaining any reassessment directed under section 95 (Reassessment of competency of licence-holder).

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

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(3) The application must be made before the expiry of the licence.

102 Licence continues in force until application is decided

If a licence-holder applies under section 101 for the renewal of a high risk work licence, the licence is taken to continue in force from the day it would, apart from this section, have expired until the licence-holder is given notice of the decision on the application.

103 Renewal of expired licence

A person whose high risk work licence has expired may apply for a renewal of that licence—

(a) within 12 months after the expiry of the licence; or

(b) if the person satisfies the regulator that exceptional circumstances exist—within any longer period that the regulator allows.

Note 1 As the licence has expired, the applicant cannot carry out the work covered by the licence until the licence is renewed. An application made after a period mentioned in par (a) or (b) would be an application for a new licence under s 87.

Note 2 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

104 Provisions relating to renewal of licence

(1) For the purposes of this subdivision—

(a) section 88 (Additional information) applies as if a reference in that section to an application for a licence were a reference to an application to renew a licence; and

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(b) section 89 (except subsection (5)) (Decision on application), section 90 (Matters to be taken into account), section 91A (Conditions of licence) and section 92 (Duration of licence) apply as if a reference in those sections to the grant of a licence were a reference to the renewal of a licence; and

(c) section 91 (Refusal to grant high risk work licence—process) applies as if a reference in that section to a refusal to grant a licence were a reference to a refusal to renew a licence.

(2) The regulator may renew a high risk work licence granted to a person under a corresponding WHS law unless that licence is renewed under that law.

Note A refusal to renew a licence is a reviewable decision (see s 676).

105 Status of licence during review

(1) This section applies if the regulator gives a licence-holder written notice of its decision to refuse to renew the licence.

(2) If the licence-holder does not apply for internal review of the decision, the licence continues to have effect until the last of the following events:

(a) the expiry of the licence;

(b) the end of the period for applying for an internal review.

(3) If the licence-holder applies for an internal review of the decision, the licence continues to have effect until the earlier of the following events:

(a) the licence-holder withdraws the application for review;

(b) the regulator makes a decision on the review.

(4) If the licence-holder does not apply for an external review, the licence continues to have effect until the end of the time for applying for an external review.

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(5) If the licence-holder applies for an external review, the licence continues to have effect until the earlier of the following events:

(a) the licence-holder withdraws the application for review;

(b) the ACAT makes a decision on the review.

(6) The licence continues to have effect under this section even if its expiry date passes.

Subdivision 4.5.1.5 Suspension and cancellation of high risk work licence

106 Suspension or cancellation of licence

(1) The regulator may suspend or cancel a high risk work licence if satisfied about 1 or more of the following:

(a) the licence-holder has failed to take reasonable care to carry out the high risk work safely and competently;

(ab) the licence-holder has failed to comply with a condition of the licence;

(b) the licence-holder has failed to obtain a reassessment of competency directed under section 95 (Reassessment of competency of licence-holder);

(c) the licence-holder, in the application for the grant or renewal of the licence or on request by the regulator for additional information—

(i) gave information that was false or misleading in a material particular; or

(ii) failed to give any material information that should have been given in that application or on that request;

(d) the licence was granted or renewed on the basis of a certification that was obtained on the basis of the giving of false or misleading information by any person or body.

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(2) If the regulator suspends or cancels a licence, the regulator may disqualify the licence-holder from applying for—

(a) a further high risk work licence of the same class; or

(b) another licence under this regulation to carry out work which requires skills that are the same as or similar to those required for the work authorised by the licence that has been suspended or cancelled.

(3) If the regulator suspends a licence, the regulator may vary the conditions of the licence, including by imposing different or additional conditions.

(4) A variation of conditions under subsection (3) takes effect when the suspension of the licence ends.

Note 1 A decision to suspend a licence, to cancel a licence or to disqualify the licence-holder from applying for a further licence is a reviewable decision (see s 676).

Note 2 A variation of licence conditions is a reviewable decision (see s 676).

107 Matters taken into account

(1) In making a decision under section 106, the regulator must have regard to—

(a) any submissions made by the licence-holder under section 108; and

(b) any advice received from a corresponding regulator.

(2) For the purposes of section 106 (1) (a), the regulator must have regard to all relevant matters, including the following:

(a) any offence under the Act or this regulation or under a corresponding WHS law, of which the licence-holder has been convicted or found guilty;

Note A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

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(b) in relation to any equivalent licence applied for or held by the licence-holder under the Act or this regulation or under a corresponding WHS law—

(i) any refusal to grant the licence; and

(ii) any condition imposed on the licence, if granted; and

(iii) any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence;

(c) any enforceable undertaking the licence-holder has entered into under the Act or a corresponding WHS law;

(d) the licence-holder's record in relation to any matters arising under the Act or this regulation or under a corresponding WHS law.

108 Notice to and submissions by licence-holder

(1) Before suspending or cancelling a high risk work licence, the regulator must give the licence-holder a written notice of—

(a) the proposed suspension or cancellation; and

(b) any proposed disqualification; and

(c) any proposed variation of licence conditions.

(2) A notice under subsection (1) must—

(a) outline all relevant allegations, facts and circumstances known to the regulator; and

(b) advise the licence-holder that the licence-holder may, by a stated date (being not less than 28 days after giving the notice), make a submission in relation to the proposed suspension or cancellation, any proposed disqualification and any proposed variation of licence conditions.

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109 Notice of decision

(1) The regulator must give the licence-holder written notice of a decision under section 106 (Suspension or cancellation of licence) to suspend or cancel a high risk work licence within 14 days after making the decision.

(2) The notice must—

(a) state that the licence is to be suspended or cancelled; and

(b) if the licence is to be suspended, state—

(i) when the suspension begins and ends; and

(ii) the reasons for the suspension; and

(iii) whether the licence-holder is required to undergo retraining or reassessment or take any other action before the suspension ends; and

(iv) whether or not the licence-holder is disqualified from applying for a further licence during the suspension; and

(v) if licence conditions are to be varied—

(A) the variation; and

(B) that the variation will take effect when the suspension ends; and

(c) if the licence is to be cancelled, state—

(i) when the cancellation takes effect; and

(ii) the reasons for the cancellation; and

(iii) whether or not the licence-holder is disqualified from applying for a further licence; and

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(d) if the licence-holder is to be disqualified from applying for a further licence, state—

(i) when the disqualification begins and ends; and

(ii) the reasons for the disqualification; and

(iii) whether or not the licence-holder is required to undergo retraining or reassessment or take any other action before the disqualification ends; and

(iv) any other class of high risk work licence or other licence under this regulation the licence-holder is disqualified from applying for during the period of suspension or disqualification; and

(e) state when the licence document must be returned to the regulator.

110 Immediate suspension

(1) The regulator may suspend a high risk work licence on a ground mentioned in section 106 (Suspension or cancellation of licence) without giving notice under section 108 (Notice to and submissions by licence-holder) if satisfied that—

(a) work carried out under the high risk work licence should cease because the work may involve an imminent serious risk to the health or safety of any person; or

(b) a corresponding regulator has suspended an equivalent licence held by the licence-holder under this section as applying in the corresponding jurisdiction.

(2) If the regulator decides to suspend a licence under this section—

(a) the regulator must give the licence-holder written notice of the suspension and the reasons for the suspension; and

(b) the suspension of the licence takes effect on the giving of the notice.

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(3) The regulator must then—

(a) give notice under section 108 within 14 days after giving the notice under subsection (2); and

(b) make its decision under section 106.

(4) If the regulator does not give notice under subsection (3), the suspension ends at the end of the 14-day period.

(5) If the regulator gives notice under subsection (3), the licence remains suspended until the decision is made under section 106.

111 Licence-holder to return licence document

A licence-holder, on receiving a notice under section 109 (Notice of decision), must return the licence document to the regulator in accordance with the notice.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

112 Regulator to return licence document after suspension

When the period of suspension of a licence ends, the regulator must return the licence document to the licence-holder within 14 days after the licence suspension ends.

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Part 4.6 Demolition work

142 Notice of demolition work

(1) Subject to subsection (3), a person conducting a business or undertaking who proposes to carry out any of the following demolition work must ensure that written notice is given to the regulator in accordance with this section at least 5 days before the work commences:

(a) demolition of a structure, or a part of a structure that is load-bearing or otherwise related to the physical integrity of the structure, that is at least 6m in height;

(b) demolition work involving load shifting machinery on a suspended floor;

(c) demolition work involving explosives;

(d) demolition of a structure or part of a structure that contains, or has contained, loose-fill asbestos insulation.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 If a form is approved under the Act, s 277 for the notice, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(2) Subsection (3) applies to an emergency service organisation in relation to demolition work carried out or proposed to be carried out by an emergency services worker at the direction of the emergency service organisation in responding to an emergency.

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(3) An emergency service organisation must give notice under subsection (1) as soon as practicable (whether before or after the work is carried out).

(4) In this section, a reference to the height of a structure is a reference to the height of the structure measured from the lowest level of the ground immediately adjacent to the base of the structure at the point at which the height is to be measured to its highest point.

(5) In this section:

loose-fill asbestos insulation—see the *Dangerous Substances Act 2004*, section 47I.

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Part 4.7 General electrical safety in workplaces and energised electrical work

Division 4.7.1 Preliminary

144 Meaning of *electrical equipment*—pt 4.7

(1) In this part:

electrical equipment—

(a) means any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that—

(i) is used for controlling, generating, supplying, transforming or transmitting electricity at a voltage greater than extra-low voltage; or

(ii) is operated by electricity at a voltage greater than extra-low voltage; or

(iii) is part of an electrical installation located in an area in which the atmosphere presents a risk to health and safety from fire or explosion; or

(iv) is, or is part of, an active impressed current cathodic protection system within the meaning of AS 2832.1:2004 (Cathodic protection of metals—Pipes and cables); but

Note AS 2832.1:2004 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

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(b) does not include any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that is part of a vehicle that is a car or motorcycle if—

(i) the equipment is part of a unit of the vehicle that provides propulsion for the vehicle; or

(ii) the electricity source for the equipment is a unit of the vehicle that provides propulsion for the vehicle.

(2) In this section:

car—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

motorbike—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

motorcycle means a motorbike or motortrike.

motortrike—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

145 Meaning of *electrical installation*—pt 4.7

(1) In this part:

electrical installation means a group of items of electrical equipment that—

(a) are permanently electrically connected together; and

(b) can be supplied with electricity from the works of an electricity supply authority or from a generating source.

(2) An item of electrical equipment may be part of more than 1 electrical installation.

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(3) In subsection (1) (a)—

(a) an item of electrical equipment connected to electricity by a plug and socket outlet is not ***permanently electrically connected***; and

(b) connection achieved through using works of an electricity supply authority is not a consideration in determining whether or not electrical equipment is ***electrically connected***.

146 Meaning of *electrical work*—pt 4.7

In this part:

electrical work—

(a) means—

(i) connecting electricity supply wiring to electrical equipment or disconnecting electricity supply wiring from electrical equipment; or

(ii) installing, removing, adding, testing, replacing, repairing, altering or maintaining electrical equipment or an electrical installation; but

(b) does not include the following:

(i) work that involves connecting electrical equipment to an electricity supply by means of a flexible cord plug and socket outlet;

(ii) work on a non-electrical component of electrical equipment, if the person carrying out the work is not exposed to an electrical risk;

Example

painting electrical equipment covers and repairing hydraulic components of an electrical motor

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(iii) replacing electrical equipment or a component of electrical equipment if that task can be safely performed by a person who does not have expertise in carrying out electrical work;

Example

replacing a fuse or a light bulb

(iv) assembling, making, modifying or repairing electrical equipment as part of a manufacturing process;

(v) building or repairing ducts, conduits or troughs, where electrical wiring is or will be installed if—

(A) the ducts, conduits or troughs are not intended to be earthed; and

(B) the wiring is not energised; and

(C) the work is supervised by a licensed electrical worker;

(vi) locating or mounting electrical equipment, or fixing electrical equipment in place, if this task is not performed in relation to the connection of electrical equipment to an electricity supply;

(vii) assisting a licensed electrical worker to carry out electrical work if—

(A) the assistant is directly supervised by the licensed electrical worker; and

(B) the assistance does not involve physical contact with any energised electrical equipment;

(viii) carrying out electrical work, other than work on energised electrical equipment, in order to meet eligibility requirements in relation to becoming a licensed electrical worker.

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Division 4.7.2 General risk management

147 Risk management—Act, s 19

A person conducting a business or undertaking at a workplace must manage risks to health and safety associated with electrical risks at the workplace, in accordance with part 3.1 (Managing risks to health and safety).

Example

electrical risks associated with the design, construction, installation, protection, maintenance and testing of electrical equipment and electrical installations at a workplace

Note WHS Act—s 19 (see s 9).

Division 4.7.3 Electrical equipment and electrical installations

148 Electrical equipment and electrical installations—div 4.7.3

In this division, a reference to ***electrical equipment*** or an ***electrical installation*** in relation to a person conducting a business or undertaking is a reference to electrical equipment or an electrical installation that is under the person's management or control.

149 Unsafe electrical equipment

(1) A person conducting a business or undertaking at a workplace must ensure that any unsafe electrical equipment at the workplace—

(a) is disconnected (or isolated) from its electricity supply; and

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(b) once disconnected (or isolated)—

(i) is not reconnected until it is repaired or tested and found to be safe; or

(ii) is replaced or permanently removed from use.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) For the purposes of this section, electrical equipment or a component of electrical equipment is ***unsafe*** if there are reasonable grounds for believing it to be unsafe.

150 Inspection and testing of electrical equipment

(1) A person conducting a business or undertaking at a workplace must ensure that electrical equipment is regularly inspected and tested by a competent person if the electrical equipment is—

(a) supplied with electricity through an electrical socket outlet; and

(b) used in an environment in which the normal use of electrical equipment exposes the equipment to operating conditions that are likely to result in damage to the equipment or a reduction in its expected life span, including conditions that involve exposure to moisture, heat, vibration, mechanical damage, corrosive chemicals or dust.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) In the case of electrical equipment that is new and unused at the workplace, the person conducting the business or undertaking—

(a) is not required to comply with subsection (1); and

(b) must ensure that the equipment is inspected for obvious damage before being used.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 However, electrical equipment that is unsafe must not be used (see s 149).

(3) The person must ensure that a record of any testing carried out under subsection (1) is kept until the electrical equipment is—

(a) next tested; or

(b) permanently removed from the workplace or disposed of.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The record of testing—

(a) must state the following:

(i) the name of the person who carried out the testing;

(ii) the date of the testing;

(iii) the outcome of the testing;

(iv) the date on which the next testing must be carried out; and

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(b) may be in the form of a tag attached to the electrical equipment tested.

151 Untested electrical equipment not to be used

A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that electrical equipment is not used if the equipment—

(a) is required to be tested under section 150; or

(b) has not been tested.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 4.7.4 Electrical work on energised electrical equipment

152 Application—div 4.7.4

This division does not apply to work carried out by or on behalf of an electricity supply authority on the electrical equipment, including electric line-associated equipment, controlled or operated by the authority to transform, transmit or supply electricity.

153 Persons conducting a business or undertaking—div 4.7.4

In this division (except section 156 (De-energised equipment must not be inadvertently re-energised), section 159 (Unauthorised access to equipment being worked on) and section 160 (Contact with equipment being worked on)), a reference to a ***person conducting a business or undertaking*** in relation to electrical work is a reference to the person conducting the business or undertaking who is carrying out the electrical work.

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154 Electrical work on energised electrical equipment—prohibited

Subject to this division, a person conducting a business or undertaking must ensure that electrical work is not carried out on electrical equipment while the equipment is energised.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

155 Duty to determine whether equipment is energised

(1) A person conducting a business or undertaking must ensure that, before electrical work is carried out on electrical equipment, the equipment is tested by a competent person to determine whether or not it is energised.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 Section 157 allows electrical testing to be carried out on electrical equipment for the purposes of this section. Section 161 sets out how the testing is to be carried out.

(2) The person conducting a business or undertaking must ensure that—

(a) each exposed part is treated as energised until it is isolated and determined not to be energised; and

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(b) each high-voltage exposed part is earthed after being de-energised.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

156 De-energised equipment must not be inadvertently re-energised

A person conducting a business or undertaking must ensure that electrical equipment that has been de-energised to allow electrical work to be carried out on it is not inadvertently re-energised while the work is being carried out.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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157 Electrical work on energised electrical equipment—when permitted

(1) A person conducting a business or undertaking must ensure that electrical work on energised electrical equipment is not carried out unless—

(a) it is necessary in the interests of health and safety that the electrical work is carried out on the equipment while the equipment is energised; or

Example

It may be necessary that life-saving equipment remain energised and operating while electrical work is carried out on the equipment.

(b) it is necessary that the electrical equipment to be worked on is energised in order for the work to be carried out properly; or

(c) it is necessary for the purposes of testing required under section 155 (Duty to determine whether equipment is energised); or

(d) there is no reasonable alternative means of carrying out the work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The electrical work that may be carried out under subsection (1) (a), (b) and (d) may include testing of the energised electrical equipment.

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158 Preliminary steps

(1) A person conducting a business or undertaking must ensure the following before electrical work on energised electrical equipment commences:

(a) a risk assessment is conducted in relation to the proposed electrical work;

(b) the area where the electrical work is to be carried out is clear of obstructions so as to allow for easy access and exit;

(c) the point at which the electrical equipment can be disconnected or isolated from its electricity supply is—

(i) clearly marked or labelled; and

(ii) clear of obstructions so as to allow for easy access and exit by the worker who is to carry out the electrical work or any other competent person; and

(iii) capable of being operated quickly;

(d) the person authorises the electrical work after consulting with the person with management or control of the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) For the purposes of subsection (1) (a), the risk assessment must be—

(a) conducted by a competent person; and

(b) recorded.

Note Section 12 permits risk assessments to be conducted, in certain circumstances, to a class of hazards, tasks, things or circumstances.

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(3) Subsection (1) (c) does not apply to electrical work on electrical equipment if—

(a) the work is to be carried out on the supply side of the main switch on the main switchboard for the equipment; and

(b) the point at which the equipment can be disconnected from its electricity supply is not reasonably accessible from the work location.

159 Unauthorised access to equipment being worked on

A person conducting a business or undertaking must ensure that only persons authorised by the person conducting the business or undertaking enter the immediate area in which electrical work on energised electrical equipment is being carried out.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

160 Contact with equipment being worked on

A person conducting a business or undertaking must ensure that, while electrical work is being carried out on energised electrical equipment, all persons are prevented from creating an electrical risk by inadvertently making contact with an exposed energised component of the equipment.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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161 How the work is to be carried out

(1) A person conducting a business or undertaking must ensure that electrical work on energised electrical equipment is carried out—

(a) by a competent person who has tools, testing equipment and personal protective equipment that—

(i) are suitable for the work; and

(ii) have been properly tested; and

(iii) are maintained in good working order; and

(b) in accordance with a safe work method statement prepared for the work; and

(c) subject to subsection (5), with a safety observer present who has the competence and qualifications stated in subsection (4).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the person who carries out the electrical work uses the tools, testing equipment and personal protective equipment properly.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) For the purposes of subsection (1) (b), the safe work method statement must—

(a) identify the electrical work; and

(b) state hazards associated with that electrical work and risks associated with those hazards; and

(c) describe the measures to be implemented to control the risks; and

(d) describe how the risk control measures are to be implemented, monitored and reviewed.

(4) For the purposes of subsection (1) (c)—

(a) the safety observer must be competent—

(i) to implement control measures in an emergency; and

(ii) to rescue and resuscitate the worker who is carrying out the work, if necessary; and

(b) the safety observer must have been assessed in the previous 12 months as competent to rescue and resuscitate a person.

(5) A safety observer is not required if—

(a) the work consists only of testing; and

(b) the person conducting the business or undertaking has conducted a risk assessment under section 158 (1) (a) (Preliminary steps) that shows that there is no serious risk associated with the proposed work.

162 Record keeping

(1) This section applies if a person conducting a business or undertaking prepares—

(a) a risk assessment under section 158 (Preliminary steps); or

(b) a safe work method statement under section 161.

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(2) Subject to subsection (3), the person must keep—

(a) a copy of the risk assessment until at least 28 days after the work to which it relates is completed; and

(b) a copy of the safe work method statement until the work to which it relates is completed.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) If a notifiable incident occurs in connection with the work to which the assessment or statement relates, the person must keep the assessment or statement (as applicable) for at least 2 years after the incident occurs.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person must ensure that, for the period for which the assessment or statement must be kept under this section, a copy is readily accessible to any worker engaged by the person to carry out electrical work to which the assessment or statement relates.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(5) The person must ensure that, for the period for which the assessment or statement must be kept under this section, a copy is available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 4.7.5 Electrical equipment and installations and construction work—additional duties

163 Duty of person conducting business or undertaking

(1) A person conducting a business or undertaking that includes the carrying out of construction work must comply with AS/NZS 3012:2010 (Electrical installations—Construction and demolition sites).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 AS/NZS 3012:2010 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and the Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

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(2) For the purposes of subsection (1), AS/NZS 3012:2010 (Electrical installations—Construction and demolition sites) applies as if any term that is defined in that Standard and that is also defined in the Act or this regulation has the same meaning as it has in the Act or this regulation.

(3) If any requirement in AS/NZS 3012:2010 (Electrical installations—Construction and demolition sites) deals with the same matter as a requirement under this part, it is sufficient that the person conducting the business or undertaking complies with the requirement in AS/NZS 3012:2010 as modified by subsection (2).

Division 4.7.6 Residual current devices

164 Use of socket outlets in hostile operating environment

(1) This section applies in the following circumstances:

(a) electrical equipment is used in an environment in which the normal use of electrical equipment exposes the equipment to operating conditions that are likely to result in damage to the equipment or a reduction in its expected life span, including conditions that involve exposure to moisture, heat, vibration, mechanical damage, corrosive chemicals or dust;

(b) electrical equipment is moved between different locations in circumstances where damage to the equipment or to a flexible electricity supply cord is reasonably likely;

(c) electrical equipment is frequently moved during its normal use;

(d) electrical equipment forms part of, or is used in connection with, an amusement device.

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(2) In a circumstance set out in subsection (1), a person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that any electrical risk associated with the supply of electricity to the electrical equipment through a socket outlet is minimised by the use of an appropriate residual current device.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) Without limiting subsection (2), the residual current device must have a tripping current that does not exceed 30mA if electricity is supplied to the equipment through a socket outlet not exceeding 20A.

(4) Subsection (2) does not apply if the supply of electricity to the electrical equipment—

(a) does not exceed 50V AC; or

(b) is DC; or

(c) is provided through an isolating transformer that provides at least an equivalent level of protection; or

(d) is provided from a non-earthed socket outlet supplied by an isolated winding portable generator that provides at least an equivalent level of protection.

Note The *Electricity Safety Act 1971* and the *Building Act 2004* also deal with residual current devices.

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165 Testing of residual current devices

(1) A person with management or control of a workplace must take all reasonable steps to ensure that residual current devices used at the workplace are tested regularly by a competent person to ensure that the devices are operating effectively.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must keep a record of all testing of a residual current device (other than any testing conducted daily) until the earlier of the following occurs:

(a) the device is next tested;

(b) the device is permanently removed from use.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Division 4.7.7 Overhead and underground electric lines

166 Duty of person conducting a business or undertaking

(1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that no person, plant or thing at the workplace comes within an unsafe distance of an overhead or underground electric line.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If it is not reasonably practicable to ensure the safe distance of a person, plant or thing from an overhead or underground electric line, the person conducting the business or undertaking at the workplace must ensure that—

(a) a risk assessment is conducted in relation to the proposed work; and

(b) control measures implemented are consistent with—

(i) the risk assessment; and

(ii) if an electricity supply authority is responsible for the electric line—any requirements for the authority under the *Electricity Safety Act 1971*, the *Utilities Act 2000* and the *Utilities (Technical Regulation) Act 2014*.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Note 2 The *Electricity Safety Act 1971*, the *Utilities Act 2000* and the *Utilities (Technical Regulation) Act 2014* will also apply to the person conducting the business or undertaking.

(3) An electricity supply authority is taken to have complied with this section if the authority has complied with the requirements of the *Electricity Safety Act 1971*, the *Utilities Act 2000* and the *Utilities (Technical Regulation) Act 2014* relating to the work of an electricity supply authority.

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Part 4.8 Diving work

Division 4.8.1 Preliminary

167 Purpose—pt 4.8

The purpose of this part is to impose duties on a person conducting a business or undertaking at a workplace to ensure—

(a) the fitness and competence of persons who carry out general diving work and high risk diving work; and

(b) the health and safety of persons who carry out general diving work and high risk diving work; and

(c) the health and safety of other persons at workplaces where general diving work or high risk diving work is carried out.

Division 4.8.2 General diving work—fitness and competence of worker

168 Person conducting business or undertaking must ensure fitness of workers

(1) A person conducting a business or undertaking at a workplace must not direct or allow a worker to carry out general diving work or undergo training for general diving work unless the worker holds a current certificate of medical fitness.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The person must not direct or allow a worker to carry out general diving work or undergo training for diving work unless the work or training complies with any conditions on the current certificate of medical fitness of the worker.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

169 Certificate of medical fitness

A certificate of medical fitness must—

(a) be issued by a registered medical practitioner with training in underwater medicine; and

(b) state the following:

(i) the name of the person to whom it is issued;

(ii) its date of issue and its expiry date;

(iii) whether or not the person to whom it is issued is, in accordance with the fitness criteria, medically fit to carry out diving work;

(iv) any conditions in relation to the type of diving work the person to whom it is issued is fit to carry out, or the circumstances in which the person is fit to carry out general diving work, including, in the case of a person who is under 18 years of age, any particular conditions applicable to the age of the person.

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170 Duty to keep certificate of medical fitness

A person conducting a business or undertaking at a workplace must keep the certificate of medical fitness of a worker who carries out general diving work for 1 year after the work is carried out.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

171 Competence of worker—general diving work—qualifications—Act, s 44

(1) A person must not carry out any type of general diving work unless the person holds a certificate for general diving work, issued by a training organisation, that demonstrates that the person has acquired the relevant competencies for that type of general diving work.

(2) This section does not apply in relation to incidental diving work or limited scientific diving work.

(3) In this section:

relevant competencies means the competencies stated in AS/NZS 2815 (Training and certification of occupational divers) that are relevant to the type of general diving work to which subsection (1) applies.

Note AS/NZS 2815 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

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171A Competence of worker—general diving work—knowledge and skill—Act, s 44

A person must not carry out general diving work unless the person has, through training, qualification or experience, acquired sound knowledge and skill in relation to the following:

(a) the application of diving physics;

(b) the use, inspection and maintenance of diving equipment (including emergency equipment) and air supply of the type to be used in the proposed general diving work;

(c) the use of decompression tables or dive computers;

(d) dive planning;

(e) ways of communicating with another diver and with persons at the surface during general diving work;

(f) how to safely carry out general diving work of the type proposed to be carried out;

(g) diving physiology, emergency procedures and first aid.

172 Competence of worker—incidental diving work—Act, s 44

(1) A person must not carry out incidental diving work unless the person—

(a) has the knowledge and skill mentioned in section 171A; and

(b) has relevant diving experience; and

(c) is accompanied and supervised in the water by a person who has the competencies mentioned in section 171.

Note See the Act, s 44.

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(2) In this section, a person has ***relevant diving experience*** if the person has logged at least 15 hours of diving, of which at least 8 hours and 20 minutes were spent diving between 10m above and any depth below the maximum depth at which the diving work is to be carried out.

173 Competence of worker—limited scientific diving work—Act, s 44

(1) A person must not carry out limited scientific diving work unless the person has—

(a) the training, qualification or experience referred to in section 171A; and

(b) if the person is not permanently resident in Australia—relevant diving experience, including relevant diving experience obtained outside Australia.

(2) In this section, a person has ***relevant diving experience*** if the person has logged at least 60 hours diving of which at least 8 hours and 20 minutes were spent diving between 10m above and any depth below the maximum depth at which the limited scientific diving work is to be carried out.

174 Competence of competent person supervising general diving work—Act, s 44

A person appointed under section 177 (Appointment of competent person to supervise diving work) must not perform any function associated with that appointment unless the person has—

(a) the qualification stated in section 171; and

(b) experience in the type of diving work to be supervised.

Note See the Act, s 44.

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175 Evidence of competence—duty of person conducting business or undertaking

(1) A person conducting a business or undertaking at a workplace must not direct or allow a worker to carry out general diving work unless the person sees written evidence provided by the worker that the worker has the relevant competence required under this division.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A person conducting a business or undertaking at a workplace must not direct or allow a person appointed under section 177 (Appointment of competent person to supervise diving work) to perform any of the functions associated with that appointment unless the person conducting the business or undertaking sees written evidence provided by the person appointed that the person appointed has the competence required under section 174.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) A person conducting a business or undertaking must keep the written evidence given to the person—

(a) under subsection (1)—for at least 1 year after the diving work is carried out; and

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(b) under subsection (2)—for at least 1 year after the last occasion on which the person performs a function associated with the appointment.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 4.8.3 Managing risks—general diving work

176 Management of risks to health and safety—Act, s 19

(1) A person conducting a business or undertaking at a workplace must manage risks to health and safety associated with general diving work, in accordance with part 3.1 (Managing risks to health and safety).

Note WHS Act—s 19 (see s 9).

(2) A person conducting a business or undertaking must ensure that a risk assessment is conducted by a competent person for the purposes of subsection (1).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) The person must ensure that a risk assessment conducted under subsection (2) is recorded in writing.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

177 Appointment of competent person to supervise diving work

A person conducting a business or undertaking at a workplace must appoint 1 or more competent persons to—

(a) supervise general diving work carried out in the business or undertaking; and

(b) perform other functions under this division.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 See s 174 for the qualifications of the competent person.

178 Additional control—dive plan

(1) A person conducting a business or undertaking at a workplace must not direct or allow general diving work to be carried out unless a dive plan for the dive—

(a) is prepared by a competent person appointed under section 177; or

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(b) has been prepared by a competent person appointed under section 177 on an earlier occasion for a similar dive.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A dive plan must state the following:

(a) the method of carrying out the diving work to which it relates;

(b) the tasks and duties of each person involved in the dive;

(c) the diving equipment, breathing gases and procedures to be used in the dive;

(d) as applicable, dive times, bottom times and decompression profiles;

(e) hazards relating to the dive and measures to be implemented in the control of risks associated with those hazards;

(f) emergency procedures.

179 Dive plan must be complied with

(1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that general diving work is carried out in accordance with the dive plan prepared for it.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) A person conducting a business or undertaking must ensure that a competent person appointed by the person under section 177 gives workers instruction in relation to the dive plan before commencing the diving work to which the plan relates.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

180 Additional control—dive safety log to be kept

A person conducting a business or undertaking at a workplace where general diving work is carried out must keep a dive safety log that contains the following information about each dive carried out by a worker:

(a) the name of the worker who carries out the dive;

(b) the name of any other person with whom the dive is carried out;

(c) the name of the competent person appointed under section 177 to supervise the diving work;

(d) the date and location of the dive;

(e) the time each diver enters and leaves the water;

(f) the maximum depth of the dive;

(g) any incident, difficulty, discomfort or injury that occurs or is experienced during the dive;

(h) if the dive was carried out using a dive computer—the dive time;

(i) if the dive was carried out using dive tables—the repetitive dive group, if available, and either the bottom time or the dive time;

(j) if the repetitive group and surface interval result in a repetitive factor—the surface interval and the repetitive factor;

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(k) if the dive is carried out using EANx—

(i) the oxygen content of the EANx; and

(ii) the maximum operating depth of the EANx;

(l) if the dive is carried out using mixed gas—

(i) the oxygen content and the nitrogen content (if any) of the gas; and

(ii) the maximum operating depth of the mixed gas; and

(iii) the minimum operating depth of the bottom mix.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

181 Use of dive safety log

(1) This section applies to a person conducting a business or undertaking at a workplace where general diving work is carried out.

(2) The person conducting the business or undertaking must ensure that, after each dive carried out in connection with the general diving work is completed, the return of each diver is verified in the dive safety log, as soon as practicable after the return, by—

(a) the diver; and

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(b) a competent person appointed under section 177 to supervise the diving work.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) If workers are carrying out general diving work from a vessel, the person conducting the business or undertaking must ensure that a competent person appointed under section 177 to supervise the diving work makes and verifies entries in the dive safety log of the number of workers and other persons on board the vessel—

(a) before the diving work commences; and

(b) before the vessel leaves the location after the diving work is completed.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person conducting the business or undertaking must ensure that the dive safety log is kept for at least 1 year after the last entry is made.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(5) In this section, an event is ***verified*** in the dive safety log—

(a) by signing; or

(b) if the log is electronic, by entering the verifier's unique identifier.

182 Record keeping

(1) This section applies if a person conducting a business or undertaking prepares—

(a) a risk assessment under section 176 (Management of risks to health and safety—Act, s 19); or

(b) a dive plan under section 178 (Additional control—dive plan).

(2) Subject to subsection (3), the person must keep—

(a) a copy of the risk assessment until at least 28 days after the work to which it relates is completed; and

(b) a copy of the dive plan until the work to which it relates is completed.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) If a notifiable incident occurs in connection with the work to which the assessment or dive plan relates, the person must keep the assessment or dive plan (as applicable) for at least 2 years after the incident occurs.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person must ensure that, for the period for which the assessment or dive plan must be kept under this section, a copy is readily accessible to any worker engaged by the person to carry out the work to which the assessment or dive plan relates.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) The person must ensure that, for the period for which the assessment or dive plan must be kept under this section, a copy is available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Division 4.8.4 High risk diving work

183 Duties of person conducting business or undertaking—Act, s 44

A person conducting a business or undertaking at a workplace where high risk diving work is carried out must ensure that the following are in accordance with AS/NZS 2299.1:2015 (Occupational diving operations—Standard operational practice):

(a) the fitness of persons carrying out the work;

(b) the competence of persons carrying out the work;

Note See the Act, s 44.

(c) the carrying out of the work.

Note AS/NZS 2299.1:2015 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

184 Duty of worker—competence—Act, s 44

A person must not carry out high risk diving work unless the person has the qualifications, knowledge, skills and experience required by AS/NZS 2299.1:2015 (Occupational diving operations—Standard operational practice) for work of the kind to be carried out by the person.

Note 1 AS/NZS 2299.1:2015 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

Note 2 See the Act, s 44.

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Chapter 5 Plant and structures

Part 5.1 General duties for plant and structures

Note This part extends to plant outside the workplace as provided for in the Act, sch 1 (Application of Act to dangerous goods and high risk plant).

Division 5.1.1 Preliminary

185 Application—pt 5.1 to plant

(1) Subject to this section, this part applies to all plant.

(2) Subject to subsection (3), this part does not apply to plant that—

(a) relies exclusively on manual power for its operation; and

(b) is designed to be primarily supported by hand.

(3) This part applies to explosive power tools that are designed to be supported by hand.

186 Application—pt 5.1 to structures

This part applies to structures as provided in this part.

Division 5.1.2 Duties of persons conducting businesses or undertakings that design plant

187 Provision of information to manufacturer

A designer of plant must ensure, when the design of the plant is made available to the manufacturer of the plant, that the manufacturer is provided with—

(a) information to enable the plant to be manufactured in accordance with the design specifications; and

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(b) if applicable, information about—

(i) the installation, commissioning, decommissioning, use, handling, storage and, if the plant is capable of being dismantled, dismantling of the plant; and

(ii) the hazards and risks associated with the use of the plant that the designer has identified; and

(iii) testing or inspections to be carried out on the plant; and

(iv) the systems of work and competency of operators that are necessary for the safe use of the plant; and

(v) the emergency procedures (if any) that are required to be implemented if there is a malfunction of the plant.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 A designer also has duties under the Act, s 22 (Duties of persons conducting businesses or undertakings that design plant, substances or structures).

188 Hazard identified in design during manufacture

If a manufacturer of plant informs the designer of the plant that there is a hazard in the design of plant for which the designer has not provided a control measure, the designer must—

(a) revise the information originally supplied to the manufacturer to ensure that—

(i) the risk is eliminated so far as is reasonably practicable; or

(ii) if it is not reasonably practicable to eliminate the risk, the risk is minimised so far as is reasonably practicable; or

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(b) notify the manufacturer, in writing, that the designer is of the opinion that it is not necessary to revise the information originally supplied to the manufacturer to ensure compliance with this part.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 A designer also has duties under the Act, s 22 (Duties of persons conducting businesses or undertakings that design plant, substances or structures).

189 Guarding

(1) This section applies if a designer of plant uses guarding as a control measure.

(2) The designer must ensure, so far as is reasonably practicable, that the guarding designed for that purpose will prevent access to the danger point or danger area of the plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The designer must ensure that—

(a) if access to the area of the plant requiring guarding is not necessary during operation, maintenance or cleaning of the plant—the guarding is a permanently fixed physical barrier; or

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(b) if access to the area of the plant requiring guarding is necessary during operation, maintenance or cleaning of the plant—the guarding is an interlocked physical barrier that allows access to the area being guarded at times when that area does not present a risk and prevents access to that area at any other time; or

(c) if it is not reasonably practicable to use guarding mentioned in paragraph (a) or (b)—the guarding used is a physical barrier that can only be altered or removed by the use of tools; or

(d) if it is not reasonably practicable to use guarding mentioned in paragraph (a), (b) or (c)—the design includes a presence-sensing safeguarding system that eliminates any risk arising from the area of the plant requiring guarding while a person or any part of a person is in the area being guarded.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The designer must ensure that the guarding is designed—

(a) to be of solid construction and securely mounted so as to resist impact or shock; and

(b) to make bypassing or disabling of the guarding, whether deliberately or by accident, as difficult as is reasonably practicable; and

(c) so as not to cause a risk in itself.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(5) If the plant to be guarded contains moving parts and those parts may break or cause workpieces to be ejected from the plant, the designer must ensure, so far as is reasonably practicable, that the guarding will control any risk from those broken or ejected parts and workpieces.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(6) Despite anything to the contrary in this section, the designer must ensure—

(a) that the guarding is of a kind that can be removed to allow maintenance and cleaning of the plant at any time that the plant is not in normal operation; and

(b) if the guarding is removed, that, so far as is reasonably practicable, the plant cannot be restarted unless the guarding is replaced.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

190 Operational controls

(1) A designer of plant must ensure that the design provides for any operator's controls for the plant to be—

(a) identified on the plant so as to indicate their nature and function and direction of operation; and

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

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

(d) able to be locked into the 'off' position to enable the disconnection of all motive power.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If the need for plant to be operated during maintenance or cleaning cannot be eliminated, the designer of the plant must ensure that the design provides for operator's controls that—

(a) permit operation of the plant while a person is undertaking the maintenance or cleaning of the plant; and

(b) while the plant is being maintained or cleaned, cannot be operated by any person other than the person who is carrying out the maintenance or cleaning of the plant; and

(c) will allow operation of the plant in such a way that any risk associated with the activities in relation to any person who is carrying out the maintenance or cleaning—

(i) is eliminated so far as is reasonably practicable; or

(ii) if it is not reasonably practicable to eliminate the risk, is minimised so far as is reasonably practicable.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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191 Emergency stop controls

(1) If plant is designed to be operated or attended by more than 1 person and more than 1 emergency stop control is fitted, the designer of the plant must ensure that the design provides for the multiple emergency stop controls to be of the 'stop and lock-off' type so that the plant cannot be restarted after an emergency stop control has been used unless that emergency stop control is reset.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If the design of the plant includes an emergency stop control for the plant, the designer of the plant must ensure that the design provides—

(a) for the stop control to be prominent, clearly and durably marked and immediately accessible to each operator of the plant; and

(b) for any handle, bar or push button associated with the stop control to be coloured red; and

(c) that the stop control cannot be adversely affected by electrical or electronic circuit malfunction.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

192 Warning devices

(1) This section applies if the design of plant includes an emergency warning device or it is necessary to include an emergency warning device to minimise risk.

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(2) The designer of the plant must ensure that the design provides for the device to be positioned on the plant to ensure the device will work to best effect.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 5.1.3 Duties of persons conducting businesses or undertakings that manufacture plant

193 Control of risk—Act, s 23

(1) A manufacturer of plant must ensure the following:

(a) that the plant is manufactured and inspected having regard to the information provided to the manufacturer by the designer of the plant under the Act and this regulation;

(b) if the information provided to the manufacturer by the designer of the plant under the Act and this regulation requires the plant to be tested—that the plant is tested in accordance with that information;

(c) if, during the manufacturing process, any hazard is identified in the design of the plant for which the designer has not provided a control measure—

(i) that the hazard is not incorporated into the manufacture of the plant; and

(ii) that the designer of the plant is given written notice of the hazard as soon as practicable; and

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(iii) that all reasonable steps are taken to consult with the designer of the plant in relation to the alteration of the design to rectify the hazard.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A manufacturer of plant must ensure that, if it is not possible to inform the designer about the hazard in accordance with subsection (1)—

(a) the risk is eliminated, so far as is reasonably practicable; or

(b) if it is not reasonably practicable to eliminate the risk, the risk is minimised so far as is reasonably practicable.

Note WHS Act—s 23 (see s 9).

(3) A manufacturer to whom subsection (1) (c) applies must not manufacture the plant until—

(a) the designer gives the manufacturer the revised information or written instruction under section 188 (Hazard identified in design during manufacture); or

(b) the manufacturer eliminates or minimises the risk under subsection (2).

Note WHS Act—s 23 (see s 9).

(4) If the designer notifies a manufacturer of plant under section 188, the manufacturer may proceed in accordance with the designer's original information.

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194 Guarding

(1) A manufacturer of plant must ensure that guarding used as a control measure is of solid construction and securely mounted so as to resist impact or shock.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A manufacturer of plant must ensure—

(a) that any guarding used as a control measure in relation to plant is of a kind that can be removed to allow maintenance and cleaning of the plant at any time that the plant is not in normal operation; and

(b) if the guarding is removed—that, so far as is reasonably practicable, the plant cannot be restarted unless the guarding is replaced.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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195 Information must be obtained and provided

A manufacturer of plant must—

(a) take all reasonable steps to obtain the information required to be provided to the manufacturer by the designer of the plant under—

(i) the Act, section 22 (4) (a) and (c) (Duties of persons conducting businesses or undertakings that design plant, substances or structures); and

(ii) section 187 (Provision of information to manufacturer); and

(iii) section 188 (Hazard identified in design during manufacture); and

(b) ensure that a person to whom the manufacturer supplies the plant is, at the time of supply, provided with the information provided to the manufacturer by the designer under the Act, section 22 (4) (a) and (c) and section 187; and

(c) if the manufacturer acts in accordance with section 193 (1) (c) (Control of risk—Act, s 23)—ensure that a person to whom the manufacturer supplies the plant is provided with the information, applicable to the plant, that is required to be provided by the designer under the Act, section 22 (4) (a) and (c) and section 188.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Division 5.1.4 Duties of persons conducting businesses or undertakings that import plant

196 Information to be obtained and provided by importer

An importer of plant must—

(a) take all reasonable steps to obtain—

(i) the information that would be required to be provided by a manufacturer under the Act, section 23 (4) (a) and (c) (Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures); and

(ii) the information that would be required to be provided by the designer of the plant to the manufacturer under section 187 (Provision of information to manufacturer) and section 188 (Hazard identified in design during manufacture); and

(b) give that information to any person to whom the importer supplies the plant.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

197 Control of risk

An importer of plant must—

(a) ensure that the plant is inspected having regard to the information provided by the manufacturer; and

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(b) if the information provided by the manufacturer requires the plant to be tested—ensure that the plant is tested in accordance with that information; and

(c) if any hazards are identified—

(i) ensure that the plant is not supplied until the risks have been eliminated so far as is reasonably practicable; and

(ii) if it is not reasonably practicable to eliminate the risks, inform the person to whom the plant is supplied about the risks; and

(d) take all reasonable steps to ensure that the designer and manufacturer of the plant are consulted in relation to any alteration made to the plant to control the risk.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 5.1.5 Duties of persons conducting businesses or undertakings that supply plant

198 Information to be obtained and provided by supplier

A supplier of plant must—

(a) take all reasonable steps to obtain the information required to be provided by the manufacturer under the Act, section 23 (4) (a) and (c) (Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures) and this regulation; and

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(b) ensure that, when the plant is supplied, the person to whom the plant is supplied is given the information obtained by the supplier under paragraph (a).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

199 Supply of second-hand plant—duties of supplier

(1) A supplier of second-hand plant must ensure, so far as is reasonably practicable, that any faults in the plant are identified.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A supplier of second-hand plant must ensure that the person to whom the plant is supplied is, before the plant is supplied, given written notice—

(a) of the condition of the plant; and

(b) of any faults identified under subsection (1); and

(c) if appropriate, that the plant should not be used until the faults are rectified.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) This section does not apply to plant to be used for scrap or spare parts.

200 Second-hand plant to be used for scrap or spare parts

A supplier of plant to be used for scrap or spare parts must, before the plant is supplied, inform the person to whom the plant is supplied, either in writing or by marking the plant, that the plant is being supplied for scrap or spare parts and that the plant in its current form is not to be used as plant.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 5.1.6 Duties of persons conducting businesses or undertakings that install, construct or commission plant or structures

201 Duties of persons conducting businesses or undertakings that install, construct or commission plant

(1) This section applies to a person who conducts a business or undertaking that installs, constructs or commissions plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace.

(2) The person must ensure that the plant is installed, constructed or commissioned having regard to—

(a) the information provided by the designer, manufacturer, importer or supplier of the plant under the Act and this regulation; or

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(b) the instructions provided by a competent person to the extent that those instructions relate to health and safety.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

202 Duties of persons conducting businesses or undertakings that install, construct or commission structures

(1) This section applies to a person who conducts a business or undertaking that installs, constructs or commissions a structure that is to be used, or could reasonably be expected to be used, as or at, a workplace.

(2) The person must ensure that the structure is installed, constructed or commissioned having regard to—

(a) the information provided by the designer, manufacturer, importer or supplier of the structure under the Act and this regulation; or

(b) the instructions provided by a competent person to the extent that those instructions relate to health and safety.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Division 5.1.7 General duties of a person conducting a business or undertaking involving the management or control of plant

Note A person with management or control of plant at a workplace is the person conducting a business or undertaking at the workplace to the extent that the business or undertaking involves the management or control of plant in whole or in part at the workplace. See the dictionary, definition of ***person with management or control of plant at a workplace*** and the Act, s 21.

Subdivision 5.1.7.1 Management of risks

203 Management of risks to health and safety—Act, s 21

A person with management or control of plant at a workplace must manage risks to health and safety associated with plant, in accordance with part 3.1 (Managing risks to health and safety).

Note WHS Act—s 21 (see s 9).

Subdivision 5.1.7.2 Additional control measures for general plant

204 Control of risks arising from installation or commissioning

(1) A person with management or control of plant at a workplace must not commission the plant unless the person has established that the plant is, so far as is reasonably practicable, without risks to the health and safety of any person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) A person with management or control of plant at a workplace must not decommission or dismantle the plant unless the decommissioning or dismantling can be carried out, so far as is reasonably practicable, without risks to the health and safety of any person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) A person with management or control of plant at a workplace must ensure that a person who installs, assembles, constructs, commissions or decommissions or dismantles the plant is a competent person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) A person with management or control of plant at a workplace must ensure that a person who installs, assembles, constructs, commissions or decommissions or dismantles the plant is provided with the available information for eliminating or minimising risks to health or safety.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(5) A person with management or control of plant at a workplace must ensure that the processes for the installation, construction, commissioning, decommissioning and dismantling of plant include inspections that ensure, so far as is reasonably practicable, that risks associated with these activities are monitored.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

205 Preventing unauthorised alterations to or interference with plant

The person with management or control of plant at a workplace must, so far as is reasonably practicable, prevent alterations to or interference with the plant that are not authorised by the person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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206 Proper use of plant and controls

(1) The person with management or control of plant at a workplace must take all reasonable steps to ensure that plant is used only for the purpose for which it was designed, unless the person has determined that the proposed use does not increase the risk to health or safety.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) In determining whether or not a proposed use of plant increases the risk to health or safety, the person with management or control of the plant must ensure that the risk associated with the proposed use is assessed by a competent person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) The person with management or control of plant at a workplace must take all reasonable steps to ensure that all health and safety features and warning devices (including guarding, operational controls, emergency stops and warning devices) are used in accordance with the instructions and information provided by that person under section 39 (Provision of information, training and instruction—Act, s 19).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

207 Plant not in use

The person with management or control of plant at a workplace must ensure, so far as is reasonably practicable, that plant that is not in use is left in a state that does not create a risk to the health or safety of any person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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208 Guarding

(1) This section applies if guarding is used as a control measure in relation to plant at a workplace.

(2) The person with management or control of the plant must ensure that—

(a) if access to the area of the plant requiring guarding is not necessary during operation, maintenance or cleaning of the plant, the guarding is a permanently fixed physical barrier; or

(b) if access to the area of the plant requiring guarding is necessary during operation, maintenance or cleaning of the plant, the guarding is an interlocked physical barrier that allows access to the area being guarded at times when that area does not present a risk and prevents access to that area at any other time; or

(c) if it is not reasonably practicable to use guarding mentioned in paragraph (a) or (b), the guarding used is a physical barrier that can only be altered or removed by the use of tools; or

(d) if it is not reasonably practicable to use guarding mentioned in paragraph (a), (b) or (c), the guarding includes a presence-sensing safeguarding system that eliminates any risk arising from the area of the plant requiring guarding while a person or any part of a person is in the area being guarded.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person with management or control of the plant must ensure that the guarding—

(a) is of solid construction and securely mounted so as to resist impact or shock; and

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(b) makes bypassing or disabling of the guarding, whether deliberately or by accident, as difficult as is reasonably practicable; and

(c) does not create a risk in itself; and

(d) is properly maintained.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) If the plant to be guarded contains moving parts that may break or cause workpieces to be ejected from the plant, the person with management or control of the plant must ensure, so far as is reasonably practicable, that the guarding will control any risk from those broken or ejected parts and workpieces.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) Despite anything to the contrary in this section, the person with management or control of the plant must ensure—

(a) that the guarding is of a kind that can be removed to allow maintenance and cleaning of the plant at any time that the plant is not in normal operation; and

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(b) if guarding is removed, that, so far as is reasonably practicable, the plant cannot be restarted unless the guarding is replaced.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

209 Guarding and insulation from heat and cold

The person with management or control of plant at a workplace must ensure, so far as is reasonably practicable, that any pipe or other part of the plant associated with heat or cold is guarded or insulated so that the plant is without risks to the health and safety of any person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

210 Operational controls

(1) The person with management or control of plant at a workplace must ensure that any operator's controls are—

(a) identified on the plant so as to indicate their nature and function and direction of operation; and

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

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

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(d) able to be locked into the 'off' position to enable the disconnection of all motive power.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If the need for plant to be operated during maintenance or cleaning cannot be eliminated, the person with management or control of the plant at a workplace must ensure that the operator's controls—

(a) permit operation of the plant while a person is undertaking the maintenance or cleaning of the plant; and

(b) while the plant is being maintained or cleaned, either—

(i) cannot be operated by any person other than the person who is carrying out the maintenance or cleaning of the plant; or

(ii) if subparagraph (i) cannot be complied with because the plant must be operated by a person other than the person who is carrying out the maintenance or cleaning of the plant—cannot be operated except by a person authorised by the person with management or control of the plant for that purpose; and

(c) will allow operation of the plant in such a way that any risk associated with the activities in relation to any person who is carrying out the maintenance or cleaning—

(i) is eliminated so far as is reasonably practicable; or

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(ii) if it is not reasonably practicable to eliminate the risk, is minimised so far as is reasonably practicable.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

211 Emergency stops

(1) If plant at a workplace is designed to be operated or attended by more than 1 person and more than 1 emergency stop control is fitted, the person with management or control of plant at the workplace must ensure that the multiple emergency stop controls are of the 'stop and lock-off' type so that the plant cannot be restarted after an emergency stop control has been used unless that emergency stop control is reset.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If the design of plant at a workplace includes an emergency stop control, the person with management or control of the plant at the workplace must ensure that—

(a) the stop control is prominent, clearly and durably marked and immediately accessible to each operator of the plant; and

(b) any handle, bar or push button associated with the stop control is coloured red; and

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(c) the stop control cannot be adversely affected by electrical or electronic circuit malfunction.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

212 Warning devices

(1) This section applies if the design of plant includes an emergency warning device or it is necessary to include an emergency warning device to minimise risk.

(2) The person with management or control of the plant must ensure that the device is positioned on the plant to ensure that the device will work to best effect.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

213 Maintenance and inspection of plant

(1) The person with management or control of plant at a workplace must ensure that the maintenance, inspection and, if necessary, testing of the plant is carried out by a competent person.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The maintenance, inspection and testing must be carried out—

(a) in accordance with the manufacturer's recommendations, if any; or

(b) if there are no manufacturer's recommendations, in accordance with the recommendations of a competent person; or

(c) in relation to inspection, if it is not reasonably practicable to comply with paragraph (a) or (b), annually.

Subdivision 5.1.7.3 Additional control measures for certain plant

Note The person with management or control of plant at a workplace is the person conducting a business or undertaking at a workplace to the extent that the business or undertaking involves the management or control of plant in whole or in part at the workplace. See the dictionary, definition of ***person with management or control of plant at a workplace*** and the Act, s 21.

214 Powered mobile plant—general control of risk—Act, s 21

The person with management or control of powered mobile plant at a workplace must in accordance with part 3.1 (Managing risks to health and safety), manage risks to health and safety associated with the following:

(a) the plant overturning;

(b) things falling on the operator of the plant;

(c) the operator being ejected from the plant;

(d) the plant colliding with any person or thing;

(e) mechanical failure of pressurised elements of plant that may release fluids that pose a risk to health and safety.

Note WHS Act—s 21 (see s 9).

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215 Powered mobile plant—specific control measures

(1) This section applies to a person with management or control of powered mobile plant at a workplace.

(2) The person must ensure, so far as is reasonably practicable, that a suitable combination of operator protective devices for the plant is provided, maintained and used.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure, so far as is reasonably practicable, that no person other than the operator rides on the plant unless the person is provided with a level of protection that is equivalent to that provided to the operator.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person must ensure that the plant does not collide with pedestrians or other powered mobile plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(5) Without limiting subsection (4), if there is a possibility of the plant colliding with pedestrians or other powered mobile plant, the person must ensure that the plant has a warning device that will warn persons who may be at risk from the movement of the plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

216 Roll-over protection on tractors

(1) The person with management or control of a tractor at a workplace must ensure that the tractor is not used unless it is securely fitted with a roll-over protective structure.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If a tractor is used in a place that is too low for the tractor to work while it is fitted with a roll-over protective structure, the structure may be lowered or removed for the period during which the tractor is used in such a situation (but only if other measures to minimise the risk of roll-over are in place).

(3) This section does not apply if the tractor is—

(a) installed in a fixed position, and in a manner which would no longer permit it to be used as powered mobile plant; or

(b) a tractor with a mass of less than 560kg or a mass of 15 000kg or more; or

(c) being used for a historical purpose or activity.

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(4) In this section:

historical purpose or activity, in relation to the use of a tractor, includes an activity ancillary to a historical activity.

Examples

1 *Historical activity*—a historical display, parade, demonstration or re-enactment.

2 *Activity ancillary to a historical activity*— restoring, maintaining, modifying or housing a tractor used, or to be used, for a historical activity.

roll-over protective structure means a structure designed to protect a tractor operator from injury if the tractor rolls over in any direction.

Note Section 214 and s 215 also apply to a tractor.

218 Industrial lift trucks

(1) The person with management or control of an industrial lift truck at a workplace must ensure that the truck is—

(a) equipped with lifting attachments that are suitable for the load to be lifted or moved by the truck; and

(b) operated in a manner that ensures that the risks to the operator of the truck and other persons at or near the workplace that arise from systems of work and the environment in which the truck is used—

(i) are eliminated so far as is reasonably practicable; or

(ii) if it is not reasonably practicable to eliminate the risks—are minimised so far as is reasonably practicable.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The person with management or control of an industrial lift truck at a workplace must ensure that the truck is not used to carry a passenger unless—

(a) the truck is designed to carry a seated passenger; and

(b) the passenger seat is—

(i) fitted with suitable seat restraints; and

(ii) located within the zone of protection that is provided by the operator protective device required to be fitted to the industrial lift truck.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person with management or control of an industrial lift truck at a workplace must take all reasonable steps to ensure that a passenger in an industrial lift truck is seated in a seat that complies with subsection (2) (b).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 Section 214 and s 215 also apply to an industrial lift truck.

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219 Plant that lifts or suspends loads

(1) This section applies in relation to plant that is used to lift or suspend persons or things.

(2) The person with management or control of plant at a workplace must ensure, so far as is reasonably practicable, that the plant used is specifically designed to lift or suspend the load.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) If it is not reasonably practicable to use plant that is specifically designed to lift or suspend the load, the person must ensure that—

(a) the plant does not cause a greater risk to health and safety than if specifically designed plant were used; and

(b) if the plant is lifting or suspending persons, the use of the plant complies with section 220.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person must ensure that the lifting and suspending is carried out—

(a) with lifting attachments that are suitable for the load being lifted or suspended; and

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(b) within the safe working limits of the plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) The person must ensure, so far as is reasonably practicable, that no loads are suspended or travel over a person unless the plant is specifically designed for that purpose.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(6) The person must ensure, so far as is reasonably practicable, that loads are lifted or suspended in a way that ensures that the load remains under control during the activity.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(7) The person must ensure, so far as is reasonably practicable, that no load is lifted simultaneously by more than 1 item of plant unless the method of lifting ensures that the load placed on each item of plant does not exceed the design capacity of the plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

220 Exception—plant not specifically designed to lift or suspend a person

(1) For the purposes of section 219 (3) (b), the person with management or control of the plant at a workplace must ensure that—

(a) the persons are lifted or suspended in a work box that is securely attached to the plant; and

(b) the persons in the work box remain substantially within the work box while they are being lifted or suspended; and

(c) if there is a risk of a person falling from a height, a safety harness is provided and worn by the person in order to prevent, so far as is reasonably practicable, injury to the person as a result of the fall; and

(d) means are provided by which the persons being lifted or suspended can safely exit from the plant in the event of a failure in its normal operation.

(2) This section does not apply to plant used in connection with—

(a) the performance of stunt work; or

(b) the performance of acrobatics; or

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(c) theatrical performances.

Note Pt 4.4 (except s 79) applies to the matters in s (2).

221 Plant used in connection with tree lopping

(1) Section 220 (1) (a) and (b) do not apply in connection with tree lopping if—

(a) a risk assessment shows that lifting or suspending a person in a harness with a crane to place the person in a tree to carry out tree lopping does not create a greater risk to health or safety than using plant specifically designed to lift a person or climb a tree; and

(b) the tree lopping is carried out by a person who is a competent person in the use of the harness mentioned in paragraph (a); and

(c) a crane is used to put the competent person in the tree to lop it; and

(d) the crane has safety mechanisms that would prevent the competent person from inadvertently falling; and

(e) while attached to the crane, the competent person is in visual, audio or radio communication with the crane operator.

(2) In this section:

harness means a work positioning harness that is designed and certified, in accordance with AS/NZS 1891.1:2007 (Industrial fall-arrest systems and devices—Harnesses and ancillary equipment), for the purpose of lifting and suspending a person.

Note AS/NZS 1891.1:2007 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

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222 Industrial robots

(1) This section applies to a person with management or control of an industrial robot or other remotely or automatically energised plant at a workplace.

(2) The person must not direct or allow a worker to work in the immediate vicinity of the plant if it could start without warning and cause a hazard, unless suitable control measures are in place to control the risks to health and safety.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) If the remote or automatic energising of the plant could lead to risks to health and safety, the person must ensure that access to the area in the immediate vicinity of the plant is controlled at all times—

(a) by isolating the area; or

(b) by—

(i) providing interlocked guards; or

(ii) if a risk remains, providing presence-sensing devices; or

(iii) if a risk then remains, providing permit to work systems.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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223 Lasers

(1) This section applies to the person with management or control, at a workplace, of laser equipment that may create a risk to health and safety.

(2) The person must ensure that laser equipment intended for use on plant is designed, constructed and installed so as to prevent accidental irradiation of any person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure that laser equipment on plant is protected so that any operator of the plant or other person is not exposed to direct radiation, radiation produced by reflection or diffusion or secondary radiation.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person must ensure that the visual equipment used for the observation or adjustment of laser equipment on plant does not create a risk to health or safety from laser rays.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(5) The person must ensure that the workers operating the laser equipment are trained in the proper operation of the equipment.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(6) The person must ensure that Class 3B and Class 4 lasers (within the meaning of AS 2397:2015—Safe use of lasers in the building and construction industry) are not used in construction work.

Note AS 2397:2015 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

224 Pressure equipment

(1) The person with management or control of pressure equipment at a workplace must ensure that—

(a) the equipment is inspected on a regular basis by a competent person; and

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(b) any gas cylinder that is inspected is marked with a current inspection mark showing the date of the most recent inspection.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person with management or control of gas cylinders at a workplace that is a gas cylinder filling station must ensure that—

(a) a gas cylinder is not filled with gas unless it bears a current inspection mark; and

(b) a gas cylinder is only filled with gas for which that cylinder is designed.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

225 Scaffolds

(1) This section applies in relation to—

(a) a suspended scaffold; and

(b) a cantilevered scaffold; and

(c) a spur scaffold; and

(d) a hung scaffold; and

(e) any other scaffold from which a person or thing could fall more than 4m.

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(2) The person with management or control of a scaffold at a workplace must ensure that the scaffold is not used unless the person receives written confirmation from a competent person, who has inspected the scaffold, that construction of the scaffold has been completed.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person with management or control of a scaffold at a workplace must ensure that the scaffold and its supporting structure are inspected by a competent person—

(a) before use of the scaffold is resumed after an incident occurs that may reasonably be expected to affect the stability of the scaffold; and

(b) before use of the scaffold is resumed after repairs; and

(c) at least every 30 days.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) If an inspection indicates that a scaffold at a workplace or its supporting structure creates a risk to health or safety, the person with management or control of the scaffold must ensure that—

(a) any necessary repairs, alterations and additions are made or carried out; and

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(b) the scaffold and its supporting structure are inspected again by a competent person before use of the scaffold is resumed.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) The person with management or control of a scaffold at a workplace must ensure that unauthorised access to the scaffold is prevented while the scaffold is incomplete or unattended.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

226 Plant with presence-sensing safeguarding system—records

(1) The person with management or control of plant with a presence-sensing safeguarding system at a workplace must keep a record of safety integrity tests, inspections, maintenance, commissioning, decommissioning, dismantling and alterations of the plant for the period set out in subsection (2).

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The record must be kept for—

(a) 5 years unless paragraph (b) applies; or

(b) the life of the plant or until the person relinquishes control of the plant if the plant is registered plant or has been altered.

(3) The person must keep the record available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person must make the record available to any person to whom the person relinquishes control of the plant.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Part 5.2 Additional duties relating to registered plant and plant designs

Note 1 The person with management or control of plant at a workplace is the person conducting a business or undertaking at a workplace to the extent that the business or undertaking involves the management or control of plant in whole or in part at the workplace. See the dictionary, definition of ***person with management or control of plant at a workplace*** and the Act, s 21.

Note 2 This part applies in addition to pt 5.1.

Note 3 In this part, ***plant*** includes a structure (see dict).

Division 5.2.1 Application—pt 5.2

227 Application—pt 5.2

This part applies to—

(a) plant that is required to be registered under part 5.3 (Registration of plant designs and items of plant); or

(b) plant the design of which is required to be registered under part 5.3.

Division 5.2.2 Duty of person conducting a business or undertaking who designs plant to record plant design

228 Records and information

If the design of plant is required to be registered under part 5.3 (Registration of plant designs and items of plant), the designer of that plant must make a record that contains—

(a) the method used to determine the control measures for the plant and the control measures that result from that determination; and

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(b) a copy of the information provided to a manufacturer under the Act, section 22 (Duties of persons conducting businesses or undertakings that design plant, substances or structures) in relation to that plant; and

(c) a copy of the information provided to a manufacturer under section 187 (Provision of information to manufacturer) in relation to that plant; and

(d) if applicable, a copy of the information provided to a manufacturer under section 188 (Hazard identified in design during manufacture) in relation to that plant.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

229 Record of standards or engineering principles used

(1) If the design of plant is required to be registered under part 5.3 (Registration of plant designs and items of plant), the designer of the plant must record any published technical standard, including any part of a published technical standard, that was used to design the plant.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) If the designer of the plant has not used published technical standards to design the plant, the designer must record any engineering principles used to design the plant.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

230 Records to be available for inspection

(1) A designer of plant must ensure that the records made under section 228 and section 229 are kept available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A designer of plant must ensure that the records made under section 228 and section 229 are made available for inspection by the design verifier of the plant design.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) A designer of plant must keep the records made under section 228 and section 229 for the design life of the plant.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 5.2.3 Duties of a person conducting a business or undertaking

231 Duty of persons conducting businesses or undertakings that manufacture plant

A manufacturer must not supply plant stated in schedule 5, part 5.1 (Plant requiring registration of design), unless the design of that plant is registered under part 5.3 (Registration of plant designs and items of plant).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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232 Duty of persons conducting businesses or undertakings that import plant

An importer must not supply plant stated in schedule 5, part 5.1 (Plant requiring registration of design), unless the design of that plant is registered under part 5.3 (Registration of plant designs and items of plant).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

233 Duty of persons conducting businesses or undertakings that supply plant

A supplier must not supply plant stated in schedule 5, part 5.1 (Plant requiring registration of design), unless the design of that plant is registered under part 5.3 (Registration of plant designs and items of plant).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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234 Duty of persons conducting businesses or undertakings that commission plant

(1) This section applies to a person who conducts a business or undertaking that commissions plant.

(2) The person must not commission an item of plant that is stated in schedule 5, part 5.2 (Items of plant requiring registration) for use in a workplace unless that item of plant is registered under part 5.3 (Registration of plant designs and items of plant).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) Nothing in subsection (2) prevents a person from performing any necessary adjustments, tests or inspections as part of the commissioning process before the plant is commissioned at a workplace.

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Division 5.2.4 Duties of a person conducting a business or undertaking involving the management or control of plant

Subdivision 5.2.4.1 Control measures for registered plant

235 Major inspection of registered mobile cranes and tower cranes

(1) This section applies to the person with management or control of a registered mobile crane or tower crane at a workplace.

(2) The person must ensure that a major inspection of the crane is carried out by, or under the supervision of, a competent person—

(a) at the end of the design life recommended by the manufacturer for the crane; or

(b) if there are no manufacturer's recommendations—in accordance with the recommendations of a competent person; or

(c) if it is not reasonably practicable to comply with paragraph (a) or (b)—every 10 years from the date that the crane was first commissioned or first registered, whichever occurred first.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) A major inspection carried out under and in accordance with an equivalent provision of a corresponding WHS law is taken to be a major inspection for the purposes of this section.

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(4) In this section:

competent person means a person who—

(a) has acquired through training, qualification or experience the knowledge and skills to carry out a major inspection of the plant; or

(b) is determined by the regulator to be a competent person.

(5) The regulator may, on the application of a person, make a determination in relation to the person for the purposes of subsection (4) (b) if the regulator considers that exceptional circumstances exist.

(6) In this section:

major inspection means—

(a) an examination of all critical components of the crane, if necessary by stripping down the crane and removing paint, grease and corrosion to allow a thorough examination of each critical component; and

(b) a check of the effective and safe operation of the crane.

236 Lifts

(1) The person with management or control of a lift at a workplace (including a person with management or control of maintenance of a lift) must ensure that—

(a) if there is a risk of a person falling down a lift well—

(i) secure barriers are provided to prevent access to openings into the lift well by someone other than a person who is performing work in the lift well; and

(ii) secure working platforms or equivalent arrangements are provided for a person who is working in the lift well to prevent a fall from height; and

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(b) if there is a risk to a person working in a lift well from objects falling onto that person—a secure barrier is provided to prevent, so far as is reasonably practicable, falling objects from striking the person or otherwise causing a risk.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure that there is a safe means of entry to and exit from the base of the lift well.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure that there is fixed, in a prominent place in the lift, a sign that states the safe working load stated in the design of the lift.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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237 Records of plant

(1) This section applies in relation to plant that is required to be registered under part 5.3 (Registration of plant designs and items of plant).

(2) The person with management or control of the plant at a workplace must keep a record of all tests, inspections, maintenance, commissioning, decommissioning, dismantling and alterations of the plant for the period set out in subsection (3).

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The record must be kept for the period that the plant is used or until the person relinquishes control of the plant.

(4) The person must keep the record available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) The person must make the record available to any person to whom the person relinquishes control of the plant.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Subdivision 5.2.4.2 Control measures for amusement devices and passenger ropeways

238 Operation of amusement devices and passenger ropeways

(1) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that the device or ropeway is operated only by a person who has been provided with instruction and training in its proper operation.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that—

(a) the amusement device or passenger ropeway is checked before it is operated on each day on which it is to be operated; and

(b) the amusement device or passenger ropeway is operated without passengers before it is operated with passengers on each day on which it is to be operated; and

(c) the daily checks and operation of the amusement device or passenger ropeway without passengers are properly and accurately recorded in a log book for the device or ropeway.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) The reference in subsection (1) to instruction and training in the proper operation of a device or ropeway includes a reference to instruction and training in carrying out the checks and operation required under subsection (2) (a) and (b).

239 Storage of amusement devices and passenger ropeways

(1) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that the device or ropeway is stored so as to be without risk to health and safety.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that a person who stores the device or ropeway is a competent person or is under the supervision of a competent person.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

240 Maintenance, inspection and testing of amusement devices and passenger ropeways

(1) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that the maintenance, inspection and, if necessary, testing of the device or ropeway is carried out—

(a) by a competent person; and

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(b) in accordance with—

(i) the recommendations of the designer or manufacturer or designer and manufacturer; or

(ii) if a maintenance manual for the device or ropeway has been prepared by a competent person—the requirements of the maintenance manual.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A person is not a competent person to carry out a detailed inspection of an amusement device or passenger ropeway that includes an electrical installation unless the person is qualified, or is assisted by a person who is qualified, to inspect electrical installations.

241 Annual inspection of amusement devices and passenger ropeways

(1) The person with management or control of an amusement device or passenger ropeway at a workplace must ensure that a detailed inspection of the device or ropeway is carried out at least once every 12 months by a competent person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) An annual inspection must include the following:

(a) a check of information about the operational history of the amusement device or passenger ropeway since the last detailed inspection;

(b) a check of the log book for the amusement device or passenger ropeway;

(c) a check that maintenance and inspections of the amusement device or passenger ropeway have been undertaken under section 240;

(d) a check that any required tests have been carried out, and that appropriate records have been maintained;

(e) a detailed inspection of the amusement device or passenger ropeway to ensure compliance with the Act and this regulation (including a specific inspection of the critical components of the amusement device or passenger ropeway).

(3) The regulator may extend the date for an inspection by up to 35 days if an inspection is scheduled to coincide with the same event each year.

(4) If the date is extended under subsection (3), the new date is the date from which future annual inspections of the amusement device or passenger ropeway are determined.

(5) In this section:

competent person means a person who—

(a) in the case of an inflatable device (continuously blown) with a platform height less than 9m—has acquired through training, qualification or experience the knowledge and skills to inspect the device; or

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(b) in the case of any other amusement device or a passenger ropeway—

(i) has acquired through training, qualification or experience the knowledge and skills to inspect the plant; or

(ii) is determined by the regulator to be a competent person.

(6) The regulator may, on the application of a person, make a determination in relation to the person for the purposes of subsection (5), definition of ***competent person***, paragraph (b) (ii) if the regulator considers that exceptional circumstances exist.

(7) An annual inspection carried out under and in accordance with an equivalent provision of a corresponding WHS law is taken to be an annual inspection for the purposes of this section.

242 Log book and manuals for amusement device

(1) The person with management or control of an amusement device at a workplace, in addition to complying with the record-keeping requirements of section 237 (Records of plant), must ensure that—

(a) the log book for the amusement device records the details required under subsection (1A); and

(b) the log book and operating and maintenance manuals for the amusement device are kept with the amusement device.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(1A) The log book for an amusement device must record—

(a) for each time the device is erected—details (including the date) of the erection; and

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(b) for each time the device is stored—details of the storage; and

(c) details of the maintenance of the device; and

(d) for each day the device is operated—the number of hours it is operated; and

(e) the total number of hours the device has ever been operated; and

(f) details of any faults, or other matters relevant to the safety of the device, identified during its operation; and

(g) the following details for each person operating the device:

(i) the person's name;

(ii) whether the person has been provided with instruction and training in the proper operation of the device;

(iii) for each time instruction or training in the proper operation of the device is provided to the person—

(A) the date of the instruction or training; and

(B) a summary of the instruction or training; and

(C) the name and qualifications of the instructor or trainer; and

(h) details of each statutory notice issued in relation to the device, including—

(i) the date the notice was issued; and

(ii) the reasons for issuing the notice; and

(iii) any action taken in response to the notice; and

(iv) for a notice given under a corresponding WHS law—the location of the device when the notice was issued.

Note See also s 238 (2) (c).

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(2) The person with management or control of an amusement device at a workplace must ensure that persons involved in the commissioning, installation, use, storage and testing, and the decommissioning, dismantling and disposal, of an amusement device are given—

(a) the log book for the amusement device; and

(b) the operating and maintenance manuals for the amusement device.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person with management or control of an amusement device at a workplace must make the log book for the device available to any person to whom the person relinquishes control of the device.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) In this section:

statutory notice means—

(a) an improvement notice, prohibition notice or infringement notice; or

(b) an improvement notice, prohibition notice or infringement notice under a corresponding WHS law.

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Part 5.3 Registration of plant designs and items of plant

Note In this part, ***plant*** includes a structure (see dict).

Division 5.3.1 Plant designs to be registered

243 Plant design to be registered—Act, s 42

The design of an item of plant stated in schedule 5, part 5.1 (Plant requiring registration of design) must be registered under this part.

Note See the Act, s 42.

244 Altered plant designs to be registered—Act, s 42

(1) If the design of an item of plant stated in schedule 5, part 5.1 (Plant requiring registration of design) that is registered under this part is altered, the altered design must be registered under this part.

Note See the Act, s 42.

(2) In this section, a reference to the alteration of a design is a reference to an alteration that may affect health or safety.

(3) This section does not apply in relation to a tower crane or a gantry crane if—

(a) the crane is relocated for use in a different workplace; and

(b) the design of the supporting structure or foundations of the crane is altered in accordance with a site-specific design prepared for the purpose of the safe operation of the crane at the new location; and

(c) the design of the crane is not altered in any other way.

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245 Recognition of designs registered by corresponding regulator

(1) A design of an item of plant is not required to be registered under this part if the design is registered under a corresponding WHS law.

(2) A design mentioned in subsection (1) that is altered is not required to be registered under this part if the altered design is registered by the corresponding regulator that registered the original design.

Division 5.3.2 Items of plant to be registered

246 Items of plant to be registered—Act, s 42

(1) An item of plant stated in schedule 5, part 5.2 (Items of plant requiring registration) must be registered under this part.

Note See the Act, s 42.

(2) The purpose of registering an item of plant is to ensure that it is inspected by a competent person and is safe to operate.

247 Recognition of plant registered by corresponding regulator

An item of plant is not required to be registered under this part if the plant is registered under a corresponding WHS law.

Division 5.3.3 Registration process for plant designs

248 Application—div 5.3.3

This division applies to the registration of a design of an item of plant stated in schedule 5, part 5.1 (Plant requiring registration of design).

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249 Who can apply to register a plant design

(1) A person conducting a business or undertaking that designs an item of plant may apply to the regulator for the registration of the design of that item of plant.

(2) A person with management or control of an item of plant may apply to the regulator for the registration of the design of that item of plant.

250 Application for registration

(1) This section applies to an application for registration of the design of an item of plant.

(2) The application must include the following information:

(a) the applicant's name;

(b) whether or not the applicant is a body corporate;

(c) if the applicant conducts the business or undertaking under a business name—that business name and a certificate or other written evidence of the registration of the business name;

(d) any other evidence of the applicant's identity required by the regulator;

(e) a statement signed by the designer of the item of plant—

(i) stating that the designer has complied with the designer's obligations under the Act, section 22 (Duties of persons conducting businesses or undertakings that design plant, substances or structures) in relation to the design; and

(ii) stating the published technical standards and engineering principles used in the design;

(f) a design verification statement that accords with section 251;

(g) representational drawings of the design;

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(h) a declaration that the applicant does not hold an equivalent registration under a corresponding WHS law.

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(3) Any drawings or other documents provided with the application must be capable of being kept in an electronic form.

251 Design verification statement

The design verification statement must—

(a) be written and signed by a person who is eligible to be a design verifier for the design; and

(b) state that the design was produced in accordance with published technical standards or engineering principles stated in the statement; and

(c) include—

(i) the name, business address and qualifications (if applicable) of the design verifier; and

(ii) if applicable, the name and business address of the organisation for which the design verifier works.

252 Who can be the design verifier

(1) A person is eligible to be a design verifier for the design of an item of plant if the person is a competent person.

(2) Despite subsection (1), a person is not eligible to be a design verifier for the design of an item of plant if the person was involved in the production of the design.

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253 Duty of design verifier

A design verifier of the design of an item of plant stated in schedule 5, part 5.1 (Plant requiring registration of design) must document the design verification process carried out by that person and the results of that process.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

254 Design verification statements not to be made in certain circumstances

A person must not make a design verification statement for the design of an item of plant stated in schedule 5, part 5.1 (Plant requiring registration of design) if the person—

(a) is not eligible to be a design verifier for that design; or

(b) has not carried out a verification of the design.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

255 Additional information

(1) If an application for registration of a design of an item of plant does not contain enough information to enable the regulator to make a decision whether or not to grant the registration, the regulator may ask the applicant to provide additional information.

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(2) A request for additional information must—

(a) state the date (being not less than 28 days after the request) by which the additional information is to be given; and

(b) be confirmed in writing.

(3) If an applicant does not provide the additional information by the date stated, the application is taken to have been withdrawn.

(4) The regulator may make more than 1 request for additional information under this section.

256 Decision on application

(1) Subject to subsection (3), the regulator must grant the registration if satisfied about the matters mentioned in subsection (2).

(2) The regulator must be satisfied about the following:

(a) the application has been made in accordance with this division;

(b) the design is not registered under a corresponding WHS law;

(c) if the applicant is an individual, the applicant—

(i) resides in the ACT; or

(ii) resides outside the ACT and circumstances exist that justify the grant of the registration;

(d) if the applicant is a body corporate, the applicant's registered office—

(i) is located in the ACT; or

(ii) is located outside the ACT and circumstances exist that justify the grant of the registration;

(e) the applicant is able to ensure compliance with any conditions that will apply to the registration.

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(3) The regulator must refuse to grant a registration if satisfied that, in making the application, the applicant has—

(a) given information that is false or misleading in a material particular; or

(b) failed to give any material information that should have been given.

(4) If the regulator decides to grant the registration, it must notify the applicant within 14 days after making the decision.

(5) If the regulator does not make a decision within 120 days after receiving the application or the additional information requested under section 255, the regulator is taken to have refused to grant the registration applied for.

Note A refusal to grant a registration (including under s (5)) is a reviewable decision (see s 676).

257 Refusal of registration—process

(1) If the regulator proposes to refuse to grant a registration, the regulator must give the applicant a written notice—

(a) informing the applicant of the reasons for the proposed refusal; and

(b) advising the applicant that the applicant may, by a stated date (being not less than 28 days after giving the notice), make a submission to the regulator in relation to the proposed refusal.

(2) After the date stated in a notice under subsection (1), the regulator must—

(a) if the applicant has made a submission in relation to the proposed refusal to grant the registration—consider that submission; and

(b) whether or not the applicant has made a submission—decide whether to grant or refuse to grant the registration; and

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(c) within 14 days after making that decision, give the applicant written notice of the decision, including the reasons for the decision.

Note A refusal to grant a registration is a reviewable decision (see s 676).

258 Conditions of registration

(1) The regulator may impose any conditions it considers appropriate on the registration of a plant design.

(2) Without limiting subsection (1), the regulator may impose conditions in relation to 1 or more of the following:

(a) the use and maintenance of plant manufactured to the design;

(b) the recording or keeping of information;

(c) the provision of information to the regulator.

Note 1 A person must comply with the conditions of registration (see Act, s 45).

Note 2 A decision to impose a condition on a registration is a reviewable decision (see s 676).

259 Duration of registration of plant design

A registration of a plant design takes effect on the day it is granted and is granted for an unlimited duration.

260 Plant design registration number

(1) This section applies if the regulator registers a design of an item of plant.

(2) The regulator must issue a plant design registration number for the design to the applicant.

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(3) The person to whom the plant design registration number is issued must give the registration number to the manufacturer, importer or supplier of plant manufactured to that design.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The manufacturer, supplier or importer of plant to whom a plant design registration number is given under this section must give that number to the person with management or control of the plant—

(a) manufactured to that design; or

(b) supplied to that person by the manufacturer, supplier or importer.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) The person with management or control of plant at a workplace for which a plant design is registered must ensure that the design registration number is kept readily accessible in the vicinity of the plant at all times.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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261 Registration document

(1) If the regulator registers a design of an item of plant, the regulator must issue to the applicant a registration document in the form determined by the regulator.

(2) The registration document must include the following:

(a) the name of the registration holder;

(b) if the registration holder conducts the business or undertaking under a business name, that business name;

(c) the registration number of the plant design;

(d) any conditions imposed on the registration by the regulator;

(e) the date on which the registration was granted.

262 Registration document to be available

(1) A registration holder must keep the registration document available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Subsection (1) does not apply if the registration document is not in the registration holder's possession because—

(a) it has been returned to the regulator under section 287 (Registration holder to return registration document); or

(b) the registration holder has applied for, but has not received, a replacement registration document under section 288 (Replacement registration document).

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263 Disclosure of design information

(1) Subject to this section, the regulator must not disclose to any person any confidential information provided by an applicant for registration of a design of an item of plant.

(2) The regulator may disclose information about a plant design in either of the following circumstances:

(a) to a corresponding regulator or an authorised officer of a corresponding regulator, at the request of the corresponding regulator;

(b) to any person authorised by the applicant for the registration of the design.

(3) The regulator may give a copy of the design verification statement to—

(a) workers engaged by the person with management or control at a workplace of plant manufactured to the design; or

(b) a health and safety representative of those workers.

(4) The regulator may provide the person with management or control of plant with the minimum information about the plant design that is necessary for the safe operation of the plant if the registration holder for the design of the plant cannot be located or no longer exists.

Division 5.3.4 Registration process for an item of plant

264 Application—div 5.3.4

This division applies in relation to the registration of an item of plant stated in schedule 5, part 5.2 (Items of plant requiring registration) as requiring registration.

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265 Who can apply to register an item of plant

A person with management or control of an item of plant may apply to the regulator for the registration of that item of plant.

266 Application for registration

(1) This section applies to an application for registration of an item of plant.

(2) The application must include the following information:

(a) the applicant's name;

(b) whether or not the applicant is a body corporate;

(c) if the applicant conducts the business or undertaking under a business name—that business name and a certificate or other written evidence of the registration of the business name;

(d) any other evidence of the applicant's identity required by the regulator;

(e) sufficient information to clearly identify the item of plant;

(g) if the design of the item of plant was also required to be registered under this part, details of—

(i) the plant design registration number; and

(ii) the regulator or corresponding regulator that registered the design;

(h) a statement that the item of plant has been inspected by a competent person and assessed by that person as being safe to operate;

(i) the date that the item of plant was first commissioned or was first registered, if known, whichever occurred first;

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(j) a declaration that the applicant does not hold an equivalent registration under a corresponding WHS law.

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

267 When is a person competent to inspect plant

A person is a competent person to inspect an item of plant for registration if the person has—

(a) educational or vocational qualifications in an engineering discipline relevant to the plant to be inspected; or

(b) knowledge of the technical standards relevant to the plant to be inspected.

268 Additional information

(1) If an application for registration of an item of plant does not contain enough information to enable the regulator to make a decision whether or not to grant the registration, the regulator may ask the applicant to provide additional information.

(2) A request for additional information must—

(a) state the date (being not less than 28 days after the request) by which the additional information is to be given; and

(b) be confirmed in writing.

(3) If an applicant does not provide the additional information by the date stated, the application is taken to have been withdrawn.

(4) The regulator may make more than 1 request for additional information under this section.

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269 Decision on application

(1) Subject to subsection (3), the regulator must grant the registration if satisfied about the matters mentioned in subsection (2).

(2) The regulator must be satisfied about the following:

(a) the application has been made in accordance with this division;

(b) the item of plant is not registered under a corresponding WHS law;

(c) the item of plant is—

(i) located in the ACT; or

(ii) located outside the ACT and circumstances exist that justify the grant of the registration;

(d) if the applicant is an individual, the applicant—

(i) resides in the ACT; or

(ii) resides outside the ACT and circumstances exist that justify the grant of the registration;

(e) if the applicant is a body corporate, the applicant's registered office—

(i) is located in the ACT; or

(ii) is located outside the ACT and circumstances exist that justify the grant of the registration;

(f) the applicant is able to ensure compliance with any conditions that will apply to the registration.

(3) The regulator must refuse to grant a registration if satisfied that, in making the application, the applicant has—

(a) given information that is false or misleading in a material particular; or

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(b) failed to give any material information that should have been given.

(4) If the regulator decides to grant the registration, it must notify the applicant within 14 days after making the decision.

(5) If the regulator does not make a decision within 120 days after receiving the application or additional information requested under section 268, the regulator is taken to have refused to grant the registration applied for.

Note A refusal to grant a registration (including under s (5)) is a reviewable decision (see s 676).

270 Refusal of registration—process

(1) If the regulator proposes to refuse to grant a registration, the regulator must give the applicant a written notice—

(a) informing the applicant of the reasons for the proposed refusal; and

(b) advising the applicant that the applicant may, by a stated date, (being not less than 28 days after giving the notice) make a submission to the regulator in relation to the proposed refusal.

(2) After the date stated in a notice under subsection (1), the regulator must—

(a) if the applicant has made a submission in relation to the proposed refusal to grant the registration—consider that submission; and

(b) whether or not the applicant has made a submission—decide whether to grant or refuse to grant the registration; and

(c) within 14 days after making that decision, give the applicant written notice of the decision, including the reasons for the decision.

Note A refusal to grant a registration is a reviewable decision (see s 676).

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271 Conditions of registration

(1) The regulator may impose any conditions it considers appropriate on the registration of an item of plant.

(2) Without limiting subsection (1), the regulator may impose conditions in relation to 1 or more of the following:

(a) the use and maintenance of the item of plant;

(b) the recording or keeping of information;

(c) the provision of information to the regulator.

Note 1 A person must comply with the conditions of registration (see Act, s 45).

Note 2 A decision to impose a condition on a registration is a reviewable decision (see s 676).

272 Duration of registration

A registration of an item of plant takes effect on the day it is granted and expires 5 years after that day.

273 Plant registration number

(1) This section applies if the regulator registers an item of plant.

(2) The regulator must issue a plant registration number for the plant to the registration holder within 14 days after that registration.

(3) The registration holder must give the plant registration number to the person with management or control of the plant at a workplace as soon as practicable after being issued with the number under subsection (2).

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) The person with management or control of the plant at a workplace must ensure that the plant registration number is marked on the item of plant.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

274 Registration document

(1) If the regulator registers an item of plant, the regulator must issue to the applicant within 14 days a registration document in the form determined by the regulator.

(2) The registration document must include the following:

(a) the name of the registration holder;

(b) if the registration holder conducts the business or undertaking under a business name, that business name;

(c) the registration number for the item of plant;

(d) any conditions imposed on the registration by the regulator;

(e) the date on which the plant was first commissioned or first registered, whichever occurred first;

(f) the date on which the registration was granted;

(g) the expiry date of the registration.

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275 Registration document to be available

(1) The holder of the registration of an item of plant must keep the registration document available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Subsection (1) does not apply if the registration document is not in the registration holder's possession because—

(a) it has been returned to the regulator under section 287 (Registration holder to return registration document); or

(b) the registration holder has applied for, but has not received, a replacement registration document under section 288 (Replacement registration document).

276 Regulator may renew registration

The regulator may, on application, renew the registration of an item of plant.

277 Application for renewal

(1) This section applies to an application for renewal of a registration of an item of plant.

(2) The application must include the following information:

(a) the applicant's name;

(b) any evidence of identity required by the regulator;

(c) if the applicant conducts the business or undertaking under a business name, that business name and a certificate or other written evidence of the registration of the business name;

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(d) the registration number of the item of plant;

(e) a declaration that the item of plant has been maintained, inspected and tested in accordance with section 213 (Maintenance and inspection of plant).

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(3) The application must be made before the expiry of the registration.

278 Registration continues in force until application is decided

If a registration holder applies under section 277 for the renewal of a registration, the registration is taken to continue in force from the day it would, apart from this section, have ended until the registration holder is given notice of the decision on the application.

279 Decision on application

(1) The regulator must renew the registration of an item of plant if the regulator is satisfied that—

(a) the application for renewal has been made in accordance with this division; and

(b) the plant has been maintained, inspected and tested in accordance with section 213 (Maintenance and inspection of plant).

(2) For the purposes of this division—

(a) section 268 (Additional information) applies as if a reference in that section to an application for registration were a reference to an application to renew registration; and

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(b) section 269 (except subsection (5)) (Decision on application), section 271 (Conditions of registration) and section 272 (Duration of registration) apply as if a reference in those sections to the grant of a registration were a reference to the renewal of a registration; and

(c) section 270 (Refusal of registration—process) applies as if a reference in that section to a refusal to grant a registration were a reference to a refusal to renew a registration.

Note A refusal to renew a registration is a reviewable decision (see s 676).

280 Status of registration during review

(1) If the regulator gives the registration holder written notice of a decision to refuse to renew the registration, the registration continues to have effect in accordance with this section.

(2) If the registration holder does not apply for internal review, the registration continues to have effect until the last of the following events:

(a) the expiry of the registration;

(b) the end of the period for applying for an internal review.

(3) If the registration holder applies for an internal review, the registration continues to have effect until the earlier of the following events:

(a) the registration holder withdraws the application for review;

(b) the regulator makes a decision on the review.

(4) If the registration holder does not apply for an external review, the registration continues to have effect until the end of the time for applying for an external review.

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(5) If the registration holder applies for an external review, the registration continues to have effect until the earlier of the following events:

(a) the registration holder withdraws the application for review;

(b) the ACAT makes a decision on the review.

(6) The registration continues to have effect under this section even if its expiry date passes.

Division 5.3.5 Changes to registration and registration documents

281 Application—div 5.3.5

This division applies to—

(a) the registration of a design of an item of plant; and

(b) the registration of an item of plant.

282 Changes to information

(1) A registration holder must give the regulator written notice of any change to—

(a) the registration holder's name; or

(b) any of the information mentioned in section 250 (Application for registration), section 255 (1) (Additional information), section 266 (Application for registration) or section 268 (1) (Additional information) within 14 days after the registration holder becomes aware of the change.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) Subsection (1) applies whether the information was given in the application for grant of the registration or in any other circumstance.

(3) Without limiting subsection (1), a registration holder for an item of plant must give written notice to the regulator if—

(a) the item of plant is altered to an extent or in a way that requires the plant to be subject to new control measures; or

(b) the item of plant is usually fixed and is relocated; or

(c) the registration holder no longer has management or control of the item of plant.

283 Amendment of registration imposed by regulator

(1) The regulator may, on its own initiative, amend a registration, including by amending the registration to—

(a) vary or delete a condition of the registration; or

(b) impose a new condition on the registration.

(2) Before amending a registration, the regulator must give the registration holder written notice—

(a) setting out the proposed amendment and the reasons for it; and

(b) advising the registration holder that the registration holder may make a submission to the regulator in relation to the proposed amendment within a stated period (being not less than 28 days from the date of the notice).

(3) After the date stated in a notice under subsection (2), the regulator must—

(a) if the registration holder has made a submission in relation to the proposed amendment—consider that submission; and

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(b) whether or not the registration holder has made a submission—decide—

(i) to make the proposed amendment; or

(ii) not to make any amendment; or

(iii) to make a different amendment that results from consideration of any submission made by the registration holder; and

(c) within 14 days after making that decision, give the registration holder written notice that—

(i) sets out the amendment, if any, or states that no amendment is to be made; and

(ii) if a submission was made in relation to the proposed amendment—sets out the regulator's reasons for making the amendment; and

(iii) states the date (being not less than the 28 days after the registration holder is given the notice) on which the amendment, if any, takes effect.

Note A decision to amend a registration is a reviewable decision (see s 676).

284 Amendment on application by registration holder

(1) The regulator, on application by the registration holder, may amend a registration, including by amending the registration to vary or delete a condition of the registration.

(2) If the regulator proposes to refuse to amend the registration, the regulator must give the registration holder a written notice—

(a) informing the registration holder of the proposed refusal to amend the registration and the reasons for the proposed refusal; and

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(b) advising the registration holder that the registration holder may, by a stated date (being not less than 28 days after giving the notice), make a submission to the regulator in relation to the proposed refusal.

(3) After the date stated in a notice under subsection (2), the regulator must—

(a) if the registration holder has made a submission in relation to the proposed refusal—consider that submission; and

(b) whether or not the registration holder has made a submission—decide;

(i) to make the amendment applied for; or

(ii) not to make any amendment; or

(iii) to make a different amendment that results from consideration of any submission made by the registration holder; and

(c) within 14 days after making that decision, give the registration holder written notice of the decision in accordance with this section.

(4) If the regulator makes the amendment applied for, the notice under subsection (3) (c) must state the date (being not less than 28 days after the registration holder is given the notice) on which the amendment takes effect.

(5) If the regulator refuses to make the amendment or makes a different amendment, the notice under subsection (3) (c) must—

(a) if a submission was made in relation to the proposed refusal of the amendment applied for—set out the reasons for the regulator's decision; and

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(b) if the regulator makes a different amendment—

(i) set out the amendment; and

(ii) state the date (being not less than 28 days after the licence-holder is given the notice) on which the amendment takes effect.

Note A refusal to make the amendment applied for, or a decision to make a different amendment, is a reviewable decision (see s 676).

285 Minor corrections to registration

The regulator may make minor amendments to a registration, including an amendment—

(a) to correct an obvious error; or

(b) to change an address; or

(c) that does not impose a significant burden on the registration holder.

286 Regulator to give amended registration document

If the regulator amends a registration and considers that the registration document requires amendment, the regulator must give the registration holder an amended registration document within 14 days after making the decision to amend the registration.

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287 Registration holder to return registration document

A registration holder must return the registration document to the regulator for amendment at the written request of the regulator within the time stated in the request.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

288 Replacement registration document

(1) A registration holder must notify the regulator as soon as practicable if the registration document is lost, stolen or destroyed.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If a registration document is lost, stolen or destroyed, the registration holder may apply to the regulator for a replacement document.

Note A registration holder is required to keep a registration document available for inspection (see s 275).

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(4) An application for a replacement registration document must include a declaration describing the circumstances in which the original document was lost, stolen or destroyed.

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(5) The regulator must issue a replacement registration document if satisfied that the original document was lost, stolen or destroyed.

(6) If the regulator refuses to issue a replacement registration document, it must give the registration holder written notice of this decision, including the reasons for the decision within 14 days of making the decision.

Note A refusal to issue a replacement registration document is a reviewable decision (see s 676).

Division 5.3.6 Cancellation of registration

288A Application—div 5.3.6

This division applies to—

(a) the registration of a design of an item of plant; and

(b) the registration of an item of plant.

288B Regulator may cancel registration

The regulator may cancel a registration if satisfied that—

(a) the registration holder, in applying for the registration—

(i) gave information that was false or misleading in a material particular; or

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(ii) failed to give any material information that should have been given; or

(b) the design of the item of plant, or the item of plant (as applicable), is unsafe.

Note A decision to cancel a registration is a reviewable decision (see s 676).

288C Cancellation process

(1) Before cancelling a registration, the regulator must give the registration holder written notice—

(a) setting out the proposal to cancel the registration and the reasons for it; and

(b) advising the registration holder that the registration holder may make a submission to the regulator in relation to the proposed cancellation within a stated period (being not less than 28 days from the date of the notice).

(2) After the date stated in a notice under subsection (1), the regulator must—

(a) if the registration holder has made a submission in relation to the proposed cancellation—consider that submission; and

(b) whether or not the registration holder has made a submission, decide—

(i) to cancel the registration; or

(ii) not to cancel the registration; and

(c) within 14 days after making that decision, give the registration holder written notice that—

(i) states whether or not the registration is cancelled; and

(ii) if a submission was made in relation to the proposed cancellation—sets out the regulator's reasons for cancelling the registration; and

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(iii) states the date on which the cancellation, if any, takes effect.

Note A decision to cancel a registration is a reviewable decision (see s 676).

288D Registration holder to return registration document

A registration holder who receives a cancellation notice under section 288C must return the registration document to the regulator at the written request of the regulator within the time stated in the request.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Chapter 6 Construction work

Part 6.1 Preliminary

289 Meaning of *construction work*—ch 6

In this chapter:

construction work—

(a) means any work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance, refurbishment, demolition, decommissioning or dismantling of a structure; and

(b) includes the following:

(i) any installation or testing carried out in connection with an activity mentioned in paragraph (a);

(ii) the removal from the workplace of any product or waste resulting from demolition;

(iii) the prefabrication or testing of elements, at a place specifically established for the construction work, for use in construction work;

(iv) the assembly of prefabricated elements to form a structure, or the disassembly of prefabricated elements forming part of a structure;

(v) the installation, testing or maintenance of an essential service in relation to a structure;

(vi) any work connected with an excavation;

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(vii) any work connected with any preparatory work or site preparation (including landscaping as part of site preparation) carried out in connection with an activity mentioned in paragraph (a);

(viii) an activity mentioned in paragraph (a), that is carried out on, under or near water, including work on buoys and obstructions to navigation; but

(c) does not include any of the following:

(i) the manufacture of plant;

(ii) the prefabrication of elements, other than at a place specifically established for the construction work, for use in construction work;

(iii) the construction or assembly of a structure that once constructed or assembled is intended to be transported to another place;

(iv) testing, maintenance or repair work of a minor nature carried out in connection with a structure;

(v) mining or the exploration for or extraction of minerals.

290 Meaning of *structure*—ch 6

(1) In this chapter, ***structure*** has the same meaning as it has in the Act.

Examples

1 a roadway or pathway

2 a ship or submarine

3 foundations, earth retention works and other earthworks, including river works and sea defence works

4 formwork, falsework or any other structure designed or used to provide support, access or containment during construction work

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5 an airfield

6 a dock, harbour, channel, bridge, viaduct, lagoon or dam

7 a sewer or sewerage or drainage works

Note Terms used in this regulation have the same meaning that they have in the *Work Health and Safety Act 2011* (see Legislation Act, s 148). See also the dictionary, note 3.

(2) This chapter does not apply to plant unless—

(a) the plant is—

(i) a ship or submarine; or

(ii) a pipe or pipeline; or

(iii) an underground tank; or

(iv) designed or used to provide support, access or containment during work in connection with construction work; or

(b) work on the plant relates to work that is carried out in connection with construction work; or

(c) the plant is fixed plant on which outage work or overhaul work that involves or may involve work being carried out by 5 or more persons conducting businesses or undertakings at any point in time.

Note This chapter does not apply to the manufacture of plant (see s 289 (c) (i)).

291 Meaning of *high risk construction work*—ch 6

(1) In this chapter:

high risk construction work means construction work that—

(a) involves a risk of a person falling more than 2m; or

(b) is carried out on a telecommunication tower; or

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(c) involves demolition of an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure; or

(d) involves, or is likely to involve, the disturbance of asbestos; or

(e) involves structural alterations or repairs that require temporary support to prevent collapse; or

(f) is carried out in or near a confined space; or

(g) is carried out in or near—

(i) a shaft or trench with an excavated depth greater than 1.5m; or

(ii) a tunnel; or

(h) involves the use of explosives; or

(i) is carried out on or near pressurised gas distribution mains or piping; or

(j) is carried out on or near chemical, fuel or refrigerant lines; or

(k) is carried out on or near energised electrical installations or services; or

(l) is carried out in an area that may have a contaminated or flammable atmosphere; or

(m) involves tilt-up or precast concrete; or

(n) is carried out on, in or adjacent to a road, railway (including light rail), shipping lane or other traffic corridor that is in use by traffic other than pedestrians; or

(o) is carried out in an area at a workplace in which there is any movement of powered mobile plant; or

(p) is carried out in an area in which there are artificial extremes of temperature; or

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(q) is carried out in or near water or other liquid that involves a risk of drowning; or

(r) involves diving work; or

(s) involves the cutting of crystalline silica material using a power tool or another mechanical process.

(2) In this section:

crystalline silica material—see section 418A (1).

cut, crystalline silica material—see section 418A (1).

light rail—see the *Road Transport (General) Act 1999*, dictionary.

mechanical process—see section 418A (1).

292 Meaning of *construction project*—ch 6

(1) In this chapter:

construction project means a project—

(a) that involves construction work; and

(b) where—

(i) the cost of the construction work is $250 000 or more; or

(ii) the construction work involves the demolition or refurbishment of a structure containing loose-fill asbestos insulation.

(2) In this section:

loose-fill asbestos insulation—see the *Dangerous Substances Act 2004*, section 47I.

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293 Meaning of *principal contractor*—ch 6

(1) In this chapter, a person conducting a business or undertaking that commissions a construction project is, subject to this section, the ***principal contractor*** for the project.

(2) If the person mentioned in subsection (1) engages another person conducting a business or undertaking as principal contractor for the construction project and authorises the person to have management or control of the workplace and to discharge the duties of a principal contractor under this chapter, the person so engaged is the ***principal contractor*** for the project.

(3) If the owner of residential premises is an individual who directly or indirectly engages a person conducting a business or undertaking to undertake a construction project in relation to the premises, the person so engaged is the ***principal contractor*** for the project if the person has management or control of the workplace.

(4) A construction project has only 1 principal contractor at any specific time.

Note A person with management or control of a workplace must comply with the Act, s 20.

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Part 6.2 Duties of designer of structure and person who commissions construction work

294 Person who commissions work must consult with designer

(1) A person conducting a business or undertaking that commissions construction work in relation to a structure must, so far as is reasonably practicable, consult with the designer of the whole or any part of the structure about how to ensure that risks to health and safety arising from the design during the construction work are—

(a) eliminated, so far as is reasonably practicable; or

(b) if it is not reasonably practicable to eliminate the risks, minimised so far as is reasonably practicable.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Consultation must include giving the designer any information that the person who commissions the construction work has in relation to the hazards and risks at the workplace where the construction work is to be carried out.

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295 Designer must give safety report to person who commissions design

(1) The designer of a structure or any part of a structure that is to be constructed must give the person conducting a business or undertaking who commissioned the design a written report that states the hazards relating to the design of the structure that, so far as the designer is reasonably aware—

(a) create a risk to the health or safety of persons who are to carry out any construction work on the structure or part; and

(b) are associated only with the particular design and not with other designs of the same type of structure.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If the person conducting a business or undertaking who commissions a construction project did not commission the design of the construction project, the person must take all reasonable steps to obtain a copy of the written report mentioned in subsection (1) in relation to that design.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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296 Person who commissions project must give information to principal contractor

If a person conducting a business or undertaking that commissions a construction project engages a principal contractor for the project, the person must give the principal contractor any information the person has in relation to hazards and risks at or in the vicinity of the workplace where the construction work is to be carried out.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Part 6.3 Duties of person conducting business or undertaking

Note As a principal contractor is a person conducting a business or undertaking, this part also applies to a principal contractor.

Division 6.3.1 General

297 Management of risks to health and safety—Act, s 19

A person conducting a business or undertaking must manage risks associated with the carrying out of construction work in accordance with part 3.1 (Managing risks to health and safety).

Note WHS Act—s 19 (see s 9).

298 Security of workplace

(1) A person with management or control of a workplace at which construction work is carried out must ensure, so far as is reasonably practicable, that the workplace is secured from unauthorised access.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) In complying with subsection (1), the person must have regard to all relevant matters, including—

(a) risks to health and safety arising from unauthorised access to the workplace; and

(b) the likelihood of unauthorised access occurring; and

Example

the proximity of the workplace to places frequented by children, including schools, parks and shopping precincts

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(c) to the extent that unauthorised access to the workplace cannot be prevented—how to isolate hazards within the workplace.

Division 6.3.2 High risk construction work—safe work method statements

299 Safe work method statement required for high risk construction work

(1) A person conducting a business or undertaking that includes the carrying out of high risk construction work must, before high risk construction work commences, ensure that a safe work method statement for the proposed work—

(a) is prepared; or

(b) has already been prepared by another person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A safe work method statement must—

(a) identify the work that is high risk construction work; and

(b) state hazards relating to the high risk construction work and risks to health and safety associated with those hazards; and

(c) describe the measures to be implemented to control the risks; and

(d) describe how the control measures are to be implemented, monitored and reviewed.

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(3) A safe work method statement must—

(a) be prepared taking into account all relevant matters, including—

(i) circumstances at the workplace that may affect the way in which the high risk construction work is carried out; and

(ii) if the high risk construction work is carried out in connection with a construction project—the WHS management plan that has been prepared for the workplace; and

(b) be set out and expressed in a way that is readily accessible and understandable to persons who use it.

300 Compliance with safe work method statement

(1) A person conducting a business or undertaking that includes the carrying out of high risk construction work must put in place arrangements for ensuring that high risk construction work is carried out in accordance with the safe work method statement for the work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If high risk construction work is not carried out in accordance with the safe work method statement for the work, the person must ensure that the work—

(a) is stopped immediately or as soon as it is safe to do so; and

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(b) resumed only in accordance with the statement.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

301 Safe work method statement—copy to be given to principal contractor

A person conducting a business or undertaking that includes carrying out high risk construction work in connection with a construction project must, before the high risk construction work commences, ensure that a copy of the safe work method statement for the work is given to the principal contractor.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

302 Review of safe work method statement

A person conducting a business or undertaking must ensure that a safe work method statement is reviewed and as necessary revised if relevant control measures are revised under section 38 (Review of control measures).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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303 Safe work method statement must be kept

(1) Subject to subsection (2), a person conducting a business or undertaking must keep a copy of the safe work method statement until the high risk construction work to which it relates is completed.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If a notifiable incident occurs in connection with the high risk construction work to which the statement relates, the person must keep the statement for at least 2 years after the incident occurs.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure that for the period for which the statement must be kept under this section, a copy is readily accessible to any worker engaged by the person to carry out the high risk construction work.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) The person must ensure that for the period for which the statement must be kept under this section, a copy is available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 6.3.3 Excavation Work

304 Excavation work—underground essential services information

(1) This section applies in relation to a part of a workplace where excavation work is being carried out and any adjacent areas.

(2) A person with management or control of the workplace must take all reasonable steps to obtain current underground essential services information about the areas mentioned in subsection (1) before directing or allowing the excavation work to commence.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) The person with management or control of the workplace must provide the information obtained under subsection (2) to any person engaged by the person to carry out the excavation work.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person with management or control of the workplace and any person conducting a business or undertaking who is given information under subsection (3) must have regard to the information mentioned in subsection (2) in carrying out or directing or allowing the carrying out of the excavation work.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note Legislation relating to the essential services may also impose duties on the person conducting the business or undertaking and the persons carrying out the work.

(5) The person with control or management of the workplace must ensure that the information mentioned in subsection (2) is available for inspection under the Act for the period stated in subsection (6).

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(6) The information must be available—

(a) if a notifiable incident occurs in connection with the excavation work to which the information relates—for at least 2 years after the incident occurs; and

(b) in every other case—until the excavation work is completed.

(7) In this section:

underground essential services means essential services that use pipes, cables or other associated plant located underground.

underground essential services information, in relation to proposed excavation work, means the following information about underground essential services that may be affected by the excavation:

(a) the essential services that may be affected;

(b) the location, including the depth, of any pipes, cables or other plant associated with the affected essential services;

(c) any conditions on the proposed excavation work.

305 Management of risks to health and safety associated with excavation work—Act, s 19

(1) A person conducting a business or undertaking must manage risks to health and safety associated with excavation work, in accordance with part 3.1 (Managing risks to health and safety).

Note WHS Act—s 19 (see s 9).

(2) The risks this section applies to include the following:

(a) a person falling into an excavation;

(b) a person being trapped by the collapse of an excavation;

(c) a person working in an excavation being struck by a falling thing;

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(d) a person working in an excavation being exposed to an airborne contaminant.

(3) In complying with subsection (1), the person must have regard to all relevant matters, including the following:

(a) the nature of the excavation;

(b) the nature of the excavation work, including the range of possible methods of carrying out the work;

(c) the means of entry into and exit from the excavation, if applicable.

306 Additional controls—trenches

(1) A person conducting a business or undertaking, who proposes to excavate a trench at least 1.5m deep must ensure, so far as is reasonably practicable, that the work area is secured from unauthorised access (including inadvertent entry).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) In complying with subsection (1), the person must have regard to all relevant matters, including—

(a) risks to health and safety arising from unauthorised access to the work area; and

(b) the likelihood of unauthorised access occurring.

(3) In addition, the person must minimise the risk to any person arising from the collapse of the trench by ensuring that all sides of the trench are adequately supported by doing 1 or more of the following:

(a) shoring by shielding or other comparable means;

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(b) benching;

(c) battering.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) Subsection (3) does not apply if the person receives written advice from a geotechnical engineer that all sides of the trench are safe from collapse.

(5) An advice under subsection (4)—

(a) may be subject to a condition that stated natural occurrences may create a risk of collapse; and

(b) must state the period of time to which the advice applies.

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Part 6.4 Additional duties of principal contractor

307 Application—pt 6.4

This part—

(a) applies in relation to a construction project; and

(b) imposes duties on the principal contractor for the project that are additional to the duties imposed under part 6.3 (Duties of person conducting business or undertaking).

Note As a principal contractor has management or control of a workplace, the principal contractor is also subject to duties imposed by the Act and this regulation on a person with management or control of a workplace.

308 Specific control measure—signage identifying principal contractor

The principal contractor for a construction project must ensure that signs are installed, that—

(a) show the principal contractor's name and telephone contact numbers (including an after hours telephone number); and

(b) show the location of the site office for the project, if any; and

(c) are clearly visible from outside the workplace, or the work area of the workplace, where the construction project is being undertaken.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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309 WHS management plan—preparation

(1) The principal contractor for a construction project must prepare a written WHS management plan for the workplace before work on the project commences.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A WHS management plan must include the following:

(a) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the project;

(b) the arrangements in place, between any persons conducting a business or undertaking at the workplace where the construction project is being undertaken, for consultation, co-operation and the co-ordination of activities in relation to compliance with their duties under the Act and this regulation;

(c) the arrangements in place for managing any work health and safety incidents that occur;

(d) any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;

(e) the arrangements for the collection and any assessment, monitoring and review of safe work method statements at the workplace.

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310 WHS management plan—duty to inform

The principal contractor for a construction project must ensure, so far as is reasonably practicable, that each person who is to carry out construction work in connection with the project is, before commencing work, made aware of—

(a) the content of the WHS management plan for the workplace; and

(b) the person's right to inspect the WHS management plan under section 313 (Copy of WHS management plan must be kept).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

311 WHS management plan—review

(1) The principal contractor for a construction project must review and as necessary revise the WHS management plan to ensure that it remains up-to-date.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The principal contractor for a construction project must ensure, so far as is reasonably practicable, that each person carrying out construction work in connection with the project is made aware of any revision to the WHS management plan.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

312 High risk construction work—safe work method statements

The principal contractor for a construction project must take all reasonable steps to obtain a copy of the safe work method statement relating to high risk construction work before the high risk construction work commences.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 The WHS management plan contains arrangements for co-operation between persons conducting a business or undertaking at the construction project workplace, including in relation to the preparation of safe work method statements (see s 309 (2) (b) and (e)).

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313 Copy of WHS management plan must be kept

(1) Subject to subsection (2), the principal contractor for a construction project must ensure that a copy of the WHS management plan for the project is kept until the project to which it relates is completed.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If a notifiable incident occurs in connection with the construction project to which the statement relates, the person must keep the WHS management plan for at least 2 years after the incident occurs.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure that, for the period for which the WHS management plan must be kept under this section, a copy is readily accessible to any person who is to carry out construction work in connection with the construction project.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) The person must ensure that for the period for which the WHS management plan must be kept under this section, a copy is available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) In this section:

WHS management plan means the initial plan and all revised versions of the plan.

314 Further health and safety duties—specific regulations

The principal contractor for a construction project must put in place arrangements for ensuring compliance at the workplace with the following:

(a) division 3.2.2 (General working environment);

(b) division 3.2.3 (First-aid);

(c) division 3.2.4 (Emergency plans);

(d) division 3.2.5 (Personal protective equipment);

(e) division 3.2.7 (Managing risks from airborne contaminants);

(f) division 3.2.8 (Hazardous atmospheres);

(g) division 3.2.9 (Storage of flammable or combustible substances);

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(h) division 3.2.10 (Falling objects);

(i) part 4.4 (Falls).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 All persons conducting a business or undertaking at the construction project workplace have these same duties (see pt 3.2 and Act, s 19). The Act, s 16 provides for situations in which more than 1 person has the same duty.

315 Further health and safety duties—specific risks—Act, s 20

The principal contractor for a construction project must in accordance with part 3.1 (Managing risks to health and safety) manage risks to health and safety associated with the following:

(a) the storage, movement and disposal of construction materials and waste at the workplace;

(b) the storage at the workplace of plant that is not in use;

(c) traffic in the vicinity of the workplace that may be affected by construction work carried out in connection with the construction project;

(d) essential services at the workplace.

Note WHS Act—s 20 (see s 9).

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Part 6.5 General construction induction training

Division 6.5.1 General construction induction training requirements

316 Duty to provide general construction induction training

A person conducting a business or undertaking must ensure that general construction induction training is provided to a worker engaged by the person who is to carry out construction work, if the worker—

(a) has not successfully completed general construction induction training; or

(b) successfully completed general construction induction training more than 2 years previously and has not carried out construction work in the preceding 2 years.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

317 Duty to ensure worker has been trained

(1) A person conducting a business or undertaking must not direct or allow a worker to carry out construction work unless—

(a) the worker has successfully completed general construction induction training; and

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(b) if the worker completed the training more than 2 years previously—the worker has carried out construction work in the preceding 2 years.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person conducting the business or undertaking must ensure that—

(a) the worker holds a general construction induction training card; or

(b) if the worker has applied for but not yet been issued with a general construction induction training card, the worker holds a general construction induction training certification, issued within the preceding 60 days.

318 Recognition of general construction induction training cards issued in other jurisdictions

(1) In this part (other than division 6.5.2), a reference to a general construction induction training card includes a reference to a similar card issued under a corresponding WHS law.

(2) Subsection (1) does not apply to a card that is cancelled in the corresponding jurisdiction.

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Division 6.5.2 General construction induction training cards

319 Issue of card

(1) A person who has successfully completed general construction induction training in the ACT may apply to the regulator for a general construction induction training card.

(3) The application must include the following information:

(a) the applicant's name and any other evidence of the applicant's identity required by the regulator;

(b) either—

(i) a general construction induction training certification issued to the applicant; or

(ii) a written declaration by the person who provided the general construction induction training on behalf of the relevant RTO that the applicant has successfully completed general construction induction training.

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(4) The application must be made—

(a) within 60 days after the issue of the general construction induction training certification; or

(b) if the application is accompanied by a declaration mentioned in subsection (3) (b) (ii), at any time after completion of the general construction induction training.

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(5) The regulator must issue a general construction induction training card to the applicant if—

(a) the application has been made in accordance with this section; and

(b) the regulator is satisfied that the applicant has successfully completed general construction induction training.

(6) The regulator must make a decision on the application as soon as practicable.

(7) If the regulator has not decided on the application within 60 days, the applicant is taken to hold a general construction induction training card until a decision is made.

320 Content of card

A general construction induction training card must—

(a) state the following:

(i) that the card-holder has completed general construction induction training;

(ii) the name of the card-holder;

(iii) the date on which the card was issued;

(iv) a unique identifying number;

(v) that the card was issued in the ACT; and

(b) contain the card-holder's signature.

321 Replacement card

(1) If a general construction induction training card issued by the regulator is lost, stolen or destroyed, the card-holder may apply to the regulator for a replacement card.

Note A card-holder is required to keep the card available for inspection under s 326.

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(3) An application for a replacement general construction induction training card must include a declaration about the circumstances in which the card was lost, stolen or destroyed.

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(4) The regulator may issue a replacement card if satisfied that the original general construction induction training card has been lost, stolen or destroyed.

322 Refusal to issue or replace card

The regulator may refuse to issue a general construction induction training card or a replacement general construction induction training card if satisfied that the applicant—

(a) gave information that was false or misleading in a material particular; or

(b) failed to give information that should have been given; or

(c) produced a general construction induction training certification that had been obtained on the basis of the giving of false or misleading information by any person or body.

Note A decision to refuse to issue or replace a general construction induction training card is a reviewable decision (see s 676).

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323 Cancellation of card—grounds

The regulator may cancel a general construction induction training card issued by the regulator if satisfied that the card-holder, when applying for the card—

(a) gave information that was false or misleading in a material particular; or

(b) failed to give information that should have been given; or

(c) produced a general construction induction training certification that had been obtained on the basis of the giving of false or misleading information by any person or body.

Note A decision to cancel a general construction induction training card is a reviewable decision (see s 676).

324 Cancellation of card—process

(1) The regulator must, before cancelling a general construction induction training card, give the card-holder—

(a) written notice of the proposed cancellation that outlines all relevant allegations, facts and circumstances known to the regulator; and

(b) a reasonable opportunity to make submissions to the regulator in relation to the proposed cancellation.

(2) On cancelling a general induction card, the regulator must give the card-holder a written notice of its decision, stating—

(a) when the cancellation takes effect; and

(b) the reasons for the cancellation; and

(c) when the card must be returned to the regulator.

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Division 6.5.3 Duties of workers

326 Duties of workers

(1) A worker carrying out construction work must keep available for inspection under the Act—

(a) his or her general construction induction training card; or

(b) in the circumstances set out in section 319 (5) (Issue of card), a general induction training certification held by the worker, until a decision is made on the application for the general construction induction training card.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A card-holder, on receiving a cancellation notice under section 324 (2) (Cancellation of card—process), must return the card in accordance with the notice.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) Subsection (1) (a) does not apply if the card is not in the possession of the worker (***card-holder***) because—

(a) it has been lost, stolen or destroyed; and

(b) the card-holder has applied for, but has not received, a replacement card under section 321 (Replacement card).

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327 Alteration of general construction induction training card

A person who holds a general construction induction training card must not intentionally or recklessly alter the card.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Chapter 7 Hazardous chemicals

Part 7.1 Hazardous chemicals

Note Most of the obligations in this part apply to persons conducting businesses or undertakings at a workplace. However, some obligations apply to persons in different capacities, for example importers and suppliers of hazardous chemicals.

Division 7.1.1 Application—pt 7.1

328 Application—pt 7.1

(1) This part applies to—

(a) the use, handling and storage of hazardous chemicals at a workplace and the generation of hazardous substances at a workplace; and

(b) a pipeline used to convey a hazardous chemical.

(1A) This part applies to the handling or storage of dangerous goods mentioned in table 328, column 2, other than at a workplace, only if the quantity of the dangerous goods is more than the threshold quantity mentioned in table 328, column 3 for the dangerous good.

Note The Act, sch 1, applies the Act to the storage and handling of prescribed dangerous goods even if they are not at a workplace or for use in carrying out work (see also s 10 and s 10A).

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Table 328

column 1 item	column 2 dangerous goods	column 3 threshold quantities
1	liquefied petroleum gas (LP gas) (dangerous goods class 2.1)	if the LP gas is stored in packages outside a building, and connected by piping to appliances within the building that contain the gas—500L (water capacity)
2	compressed gas of class 2.1 (excluding LP gas), class 2.2 or compressed oxygen	(a) if the dangerous goods as a whole form part of a welding set or are used or intended to be used with a portable flame torch and each dangerous good is in 1 or more containers—50L (aggregate capacity of the containers); or (b) if the compressed oxygen or gas is used or intended to be used for medical purposes—nil
3	dangerous goods class 3	250L
4	pool chlorine and spa sanitising agents	100kg or L
5	sodium hypochlorite designated by UN number 1791	100L
6	dangerous goods class 9	100kg or L
7	dangerous goods packing group 1	5kg or L
8	C1 combustible liquids	1 000L
9	dangerous goods class 2.3	nil
10	any dangerous goods other than those stated above	100kg or L

(2) This part does not apply to a pipeline that is regulated under the *Gas Safety Act 2000* or the *Utilities (Technical Regulation) Act 2014*.

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(3) This part does not apply to hazardous chemicals and explosives being transported by road, rail, sea or air if the transport is regulated under the following:

(a) the *Dangerous Goods (Road Transport) Act 2009*;

Note The *Technical Instructions for the Safe Transport of Dangerous Goods by Air* does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The Instructions are available at www.icao.int.

(b) The *Technical Instructions for the Safe Transport of Dangerous Goods by Air*, published by the International Civil Aviation Organisation;

Note The *Technical Instructions for the Safe Transport of Dangerous Goods by Air* do not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The Instructions are available at www.icao.int.

(c) the *Dangerous Goods Regulations*, published by the International Air Transport Association.

Note The *Dangerous Goods Regulations* do not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The Regulations are available at www.iata.org.

(4) This part does not apply to the following hazardous chemicals in the circumstances described:

(a) hazardous chemicals in batteries when incorporated in plant;

(b) fuel, oils or coolants in a container fitted to a vehicle, vessel, aircraft, mobile plant, appliance or other device, if the fuel, oil or coolant is intended for use in the operation of the device;

(c) fuel in the fuel container of a domestic or portable fuel burning appliance, if the quantity of fuel does not exceed 25kg or 25L;

(d) hazardous chemicals in portable firefighting or medical equipment for use in a workplace;

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(e) hazardous chemicals that form part of the integrated refrigeration system of refrigerated freight containers;

(f) potable liquids that are consumer products at retail premises.

(5) This part, other than the following sections and schedule 7 (Safety data sheets), does not apply to substances, mixtures or articles categorised only as explosives under the GHS:

(a) section 329 (Classification of hazardous chemicals);

(b) section 330 (Manufacturer or importer to prepare and provide safety data sheets);

(c) section 339 (Supplier to provide safety data sheets);

(d) section 344 (Person conducting business or undertaking to obtain and give access to safety data sheets);

(e) section 345 (Changes to safety data sheets).

Note Explosives are regulated under the *Dangerous Substances (Explosives) Regulation 2004*.

(6) This part does not apply to the following:

(a) food and beverages within the meaning of the *Australia New Zealand Food Standards Code* that are in a package and form intended for human consumption;

Note The *Australia New Zealand Food Standards Code* does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The Code is available at www.legislation.gov.au.

(b) tobacco, or products made of tobacco;

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(c) therapeutic goods within the meaning of the *Therapeutic Goods Act 1989* (Cwlth) at the point of intentional intake by or administration to humans;

Note The *Therapeutic Goods Act 1989* (Cwlth) does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The Act is available at www.legislation.gov.au.

(d) veterinary chemical products within the meaning of the Agvet Code at the point of intentional administration to animals.

(7) In this section:

Australia New Zealand Food Standards Code—see the *Food Standards Australia New Zealand Act 1991* (Cwlth), section 4.

Division 7.1.2 Obligations relating to safety data sheets and other matters

Subdivision 7.1.2.1 Obligations of manufacturers and importers

Note 1 A manufacturer or importer of hazardous chemicals may also be a person conducting a business or undertaking at a workplace.

Note 2 A manufacturer or importer is defined in the Act, s 23 or s 24 as a person conducting a business or undertaking of manufacturing or importing.

329 Classification of hazardous chemicals

The manufacturer or importer of a substance, mixture or article must, before first supplying it to a workplace—

(a) determine whether the substance, mixture or article is a hazardous chemical; and

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(b) if the substance, mixture or article is a hazardous chemical—ensure that the hazardous chemical is correctly classified in accordance with schedule 9, part 9.1 (Correct classification).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

330 Manufacturer or importer to prepare and provide safety data sheets

(1) A manufacturer or importer of a hazardous chemical must prepare a safety data sheet for the hazardous chemical—

(a) before first manufacturing or importing the hazardous chemical; or

(b) if that is not practicable—as soon as practicable after first manufacturing or importing the hazardous chemical and before first supplying it to a workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The safety data sheet must comply with schedule 7, section 7.1 (Safety data sheets—content) unless section 331 applies.

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(3) The manufacturer or importer of the hazardous chemical must—

(a) review the safety data sheet at least once every 5 years; and

(b) amend the safety data sheet whenever necessary to ensure that it contains correct, current information.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The manufacturer or importer of the hazardous chemical must provide the current safety data sheet for the hazardous chemical to any person, if the person—

(a) is likely to be affected by the hazardous chemical; and

(b) asks for the safety data sheet.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) Subsections (3) and (4) do not apply to a manufacturer or importer of a hazardous chemical who has not manufactured or imported the hazardous chemical in the past 5 years.

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331 Safety data sheets—research chemical, waste product or sample for analysis

(1) This section applies if—

(a) a hazardous chemical is a research chemical, waste product or sample for analysis; and

(b) it is not reasonably practicable for a manufacturer or importer of the hazardous chemical to comply with schedule 7, section 7.1 (Safety data sheets—content).

(2) The manufacturer or importer must prepare a safety data sheet for the hazardous chemical that complies with schedule 7, section 7.2 (Safety data sheets—research chemical, waste product or sample for analysis).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

332 Emergency disclosure of chemical identities to registered medical practitioner

(1) This section applies if a registered medical practitioner—

(a) reasonably believes that knowing the chemical identity of an ingredient of a hazardous chemical may help to treat a patient; and

(b) requests the manufacturer or importer of the hazardous chemical to give the registered medical practitioner the chemical identity of the ingredient; and

(c) gives an undertaking to the manufacturer or importer that the chemical identity of the ingredient will be used only to help treat the patient; and

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(d) gives an undertaking to the manufacturer or importer to give the manufacturer or importer as soon as practicable a written statement about the need to obtain the chemical identity of the ingredient.

(2) The manufacturer or importer of a hazardous chemical must give the registered medical practitioner the chemical identity of an ingredient of the hazardous chemical as soon as practicable.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

333 Emergency disclosure of chemical identities to emergency service worker

The manufacturer or importer of a hazardous chemical must give an emergency service worker the chemical identity of an ingredient of the hazardous chemical as soon as practicable after the worker requests it.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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334 Packing hazardous chemicals

The manufacturer or importer of a hazardous chemical must ensure that the hazardous chemical is correctly packed, in accordance with schedule 9, part 9.2 (Correctly packing hazardous chemicals) as soon as practicable after manufacturing or importing the hazardous chemical.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

335 Labelling hazardous chemicals

(1) The manufacturer or importer of a hazardous chemical must ensure that the hazardous chemical is correctly labelled as soon as practicable after manufacturing or importing the hazardous chemical.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A hazardous chemical is ***correctly labelled*** if—

(a) the selection and use of label elements is in accordance with the GHS and it complies with schedule 9, part 9.3 (Correct labelling); or

(b) the label includes content that complies with another labelling requirement imposed by this regulation, any other territory law or Commonwealth law and the content is the same, or substantially the same, as the content that is required by schedule 9, part 9.3.

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(3) This section does not apply to a hazardous chemical if—

(a) the hazardous chemical is a consumer product that is labelled in accordance with the Standard for the Uniform Scheduling of Medicines and Poisons, as in force or remade from time to time; and

Note The Standard for the Uniform Scheduling of Medicines and Poisons does not need to be notified under the Legislation Act because s 47 (6) does not apply (see s 15 and Legislation Act, s 47 (7)). The Standard is available at www.legislation.gov.au.

(b) the container for the hazardous chemical has its original label; and

(c) it is reasonably foreseeable that the hazardous chemical will be used in a workplace only in—

(i) a quantity that is consistent with household use; and

(ii) a way that is consistent with household use; and

(iii) a way that is incidental to the nature of the work carried out by a worker using the hazardous chemical.

(4) This section does not apply to hazardous chemicals in transit.

(5) This section does not apply to a hazardous chemical that is—

(a) therapeutic goods within the meaning of the *Therapeutic Goods Act 1989* (Cwlth); and

Note The *Therapeutic Goods Act 1989* (Cwlth) does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The Act is available at www.legislation.gov.au.

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(b) in a form intended for human consumption, for administration to or by a person or use by a person for therapeutic purposes; and

(c) labelled in accordance with that Act or an order made under that Act.

(6) This section does not apply to cosmetics and toiletries.

(7) This section does not apply to a hazardous chemical that is—

(a) a veterinary chemical product within the meaning of the Agvet Code; and

(b) listed in—

(i) the Standard for the Uniform Scheduling of Medicines and Poisons, part 4, schedule 4, if the chemical product is packaged and supplied in a form intended for direct administration to an animal for therapeutic purposes; or

(ii) the Standard for the Uniform Scheduling of Medicines and Poisons, part 4, schedule 8.

(8) This section does not apply to a substance seized by a police officer under the *Drugs of Dependence Act 1989*.

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Subdivision 7.1.2.2 Obligations of suppliers

Note 1 A supplier of hazardous chemicals may also be a person conducting a business or undertaking at a workplace.

Note 2 A supplier is defined in the Act, s 25 as a person who conducts a business or undertaking of supplying.

Note 3 An operator of a major hazard facility is required to notify certain quantities of hazardous chemicals under pt 9.2.

336 Restriction on age of person who can supply hazardous chemicals

A person conducting a business or undertaking must not direct or allow a worker to supply a hazardous chemical that is a flammable gas or flammable liquid to another person into any container or vehicle provided by that other person unless the worker is at least 16 years of age.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Examples

1 decanting fuel into a fuel container

2 refuelling a car

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337 Retailer or supplier packing hazardous chemicals

(1) The supplier of a hazardous chemical must not supply the hazardous chemical for use at another workplace if the supplier knows or ought reasonably to know that the hazardous chemical is not correctly packed.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A retailer who supplies a hazardous chemical in a container provided by the person supplied with the chemical must ensure that the hazardous chemical is correctly packed.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

338 Supplier labelling hazardous chemicals

(1) The supplier of a hazardous chemical must not supply the hazardous chemical to another workplace if the supplier knows or ought reasonably to know that the hazardous chemical is not correctly labelled in accordance with section 335 (Labelling hazardous chemicals).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) Subsection (1) does not apply to a hazardous chemical manufactured or imported before 1 January 2023 that was, at the time it was manufactured or imported, labelled in accordance with GHS 3.

339 Supplier to provide safety data sheets

(1) The supplier of a hazardous chemical to a workplace must ensure that the current safety data sheet for the hazardous chemical is provided with the hazardous chemical—

(a) when the hazardous chemical is first supplied to the workplace; and

(b) if the safety data sheet for the hazardous chemical is amended—when the hazardous chemical is first supplied to the workplace after the safety data sheet is amended.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A hazardous chemical is taken to be ***first supplied*** to a workplace if the supply is the first supply of the hazardous chemical to the workplace within 5 years.

(3) The supplier of a hazardous chemical to a workplace must ensure that the current safety data sheet for the hazardous chemical is provided to a person at the workplace if the person asks for the safety data sheet.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) This section does not apply to a supplier of a hazardous chemical if—

(a) the hazardous chemical is a consumer product; or

(b) the supplier is a retailer.

Note A manufacturer or importer is required to prepare a safety data sheet under s 330.

340 Supply of prohibited and restricted carcinogens

(1) The supplier of a prohibited carcinogen referred to in an item in schedule 10, table 10.1 (Prohibited carcinogens) must not supply the substance unless the person to be supplied with the substance gives the supplier evidence that—

(a) the substance is to be used, handled or stored for genuine research or analysis; and

(b) either—

(i) the regulator has authorised the person to use, handle or store the substance under section 384 (Authorisation to use, handle or store prohibited carcinogens and restricted carcinogens); or

(ii) the regulator has granted an exemption under part 11.2 (Exemptions) to the person to use, handle or store the substance.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The supplier of a restricted carcinogen referred to in an item in schedule 10, table 10.2 (Restricted carcinogens), column 2 must not supply the substance for a use referred to in column 3 for the item unless the person to be supplied with the substance gives the supplier evidence that—

(a) the regulator has authorised the person to use, handle or store the substance under section 384; or

(b) the regulator has granted an exemption to the person under part 11.2 to use, handle or store the substance.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) A supplier under subsection (1) or (2) must keep a record of—

(a) the name of the person supplied; and

(b) the name and quantity of the substance supplied.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The supplier must keep the record for 5 years after the substance was last supplied to the person.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Subdivision 7.1.2.3 Obligations of persons conducting businesses or undertakings

341 Labelling hazardous chemicals—general requirement

(1) A person conducting a business or undertaking at a workplace must ensure that a hazardous chemical used, handled or stored at the workplace is correctly labelled in accordance with section 335 (Labelling hazardous chemicals).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 ***Handling***—see the Act, dictionary.

(2) Subsection (1) does not apply to a hazardous chemical—

(a) supplied before 1 January 2017 that was, at the time it was supplied, labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* as in force at that time; or

(b) supplied before 1 January 2023 that was, at the time it was supplied, labelled in accordance with GHS 3; or

(c) manufactured or imported before 1 January 2023 that was, at the time it was manufactured or imported, labelled in accordance with GHS 3.

Note 1 Section 338 applies if the chemical is being supplied to another workplace.

Note 2 The *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The National Code of Practice is available at www.safeworkaustralia.gov.au.

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342 Labelling hazardous chemicals—containers

(1) A person conducting a business or undertaking at a workplace must ensure that a hazardous chemical is correctly labelled in accordance with section 335 (Labelling hazardous chemicals) if the hazardous chemical is—

(a) manufactured at the workplace; or

(b) transferred or decanted from its original container at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(1A) Subsection (1) does not apply to a hazardous chemical—

(a) manufactured at the workplace, or transferred or decanted from its original container at the workplace, before 1 January 2017 that was, at the time it was manufactured, or transferred or decanted from its original container, labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* as in force at that time; or

(b) manufactured at the workplace before 1 January 2023 that was, at the time it was manufactured, labelled in accordance with GHS 3; or

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(c) transferred or decanted from its original container at the workplace that was—

(i) manufactured or imported before 1 January 2023; and

(ii) at the time it was manufactured or imported, labelled in accordance with GHS 3.

Note 1 Section 338 applies if the chemical is being supplied to another workplace.

Note 2 The *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The National Code of Practice is available at www.safeworkaustralia.gov.au.

(2) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that a container that stores a hazardous chemical is correctly labelled in accordance with section 335 while the container contains the hazardous chemical.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2A) Subsection (2) does not apply to a container—

(a) supplied before 1 January 2017 that was, at the time it was supplied, labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* as in force at that time; or

(b) supplied before 1 January 2023 that was, at the time it was supplied, labelled in accordance with GHS 3; or

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(c) manufactured or imported before 1 January 2023 that was, at the time it was manufactured or imported, labelled in accordance with GHS 3.

Note 1 Section 338 applies if the chemical if in the container is being supplied to another workplace.

Note 2 The *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The National Code of Practice is available at www.safeworkaustralia.gov.au.

(3) A person conducting a business or undertaking at a workplace must ensure that a container labelled for a hazardous chemical is used only for the use, handling or storage of the hazardous chemical.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) This section does not apply to a container if—

(a) the hazardous chemical in the container is used immediately after it is put in the container; and

(b) the container is thoroughly cleaned immediately after the hazardous chemical is used, handled or stored so that the container is in the condition it would be in if it had never contained the hazardous chemical.

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343 Labelling hazardous chemicals—pipe work

A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that a hazardous chemical in pipe work is identified by a label, sign or another way on, or near, the pipe work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

344 Person conducting business or undertaking to obtain and give access to safety data sheets

(1) A person conducting a business or undertaking at a workplace must obtain the current safety data sheet for a hazardous chemical prepared in accordance with this regulation from the manufacturer, importer or supplier of the hazardous chemical in the following circumstances:

(a) either—

(i) not later than when the hazardous chemical is first supplied for use at the workplace; or

(ii) if the person is not able to obtain the safety data sheet under subparagraph (i)—as soon as practicable after the hazardous chemical is first supplied to the workplace but before the hazardous chemical is used at the workplace;

(b) if the safety data sheet for the hazardous chemical is amended—either—

(i) not later than when the hazardous chemical is first supplied to the workplace after the safety data sheet is amended; or

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(ii) if the person is not able to obtain the amended safety data sheet under subparagraph (i)—as soon as practicable after the hazardous chemical is first supplied to the workplace after the safety data sheet is amended and before the hazardous chemical supplied is used at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The hazardous chemical is taken to be ***first supplied*** to a workplace if the supply is the first supply of the hazardous chemical to the workplace within 5 years.

(3) The person must ensure that the current safety data sheet for the hazardous chemical is readily accessible to—

(a) a worker who is involved in using, handling or storing the hazardous chemical at the workplace; and

(b) an emergency service worker, or anyone else, who is likely to be exposed to the hazardous chemical at the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Example—readily accessible

available in electronic form at the workplace

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) Subsections (1) and (3) do not apply to a hazardous chemical that—

(a) is in transit; or

(b) if the person conducting the business or undertaking at the workplace is a retailer, is—

(i) a consumer product; and

(ii) intended for supply to other premises; or

(c) is a consumer product and it is reasonably foreseeable that the hazardous chemical will be used at the workplace only in—

(i) quantities that are consistent with household use; and

(ii) a way that is consistent with household use; and

(iii) a way that is incidental to the nature of the work carried out by a worker using the hazardous chemical.

(5) In the circumstances referred to in subsection (4), the person must ensure that sufficient information about the safe use, handling and storage of the hazardous chemical is readily accessible to—

(a) a worker at the workplace; and

(b) an emergency service worker, or anyone else, who is likely to be exposed to the hazardous chemical at the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(6) The person must ensure that the current safety data sheet for the hazardous chemical is readily accessible to a person at the workplace if the person—

(a) is likely to be affected by the hazardous chemical; and

(b) asks for the safety data sheet.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

345 Changes to safety data sheets

A person conducting a business or undertaking at a workplace may change a safety data sheet for a hazardous chemical only if—

(a) the person—

(i) is an importer or manufacturer of the hazardous chemical; and

(ii) changes the safety data sheet in a way that is consistent with the duties of the importer or manufacturer under section 330 (Manufacturer or importer to prepare and provide safety data sheets); or

(b) the change is only the attachment of a translation of the safety data sheet, and clearly states that the translation is not part of the original safety data sheet.

Maximum penalty:

(a) in the case of an individual—$6 000; or

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(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 The manufacturer or importer of a hazardous chemical must amend a safety data sheet as necessary to ensure the information is correct and current (see s 330 (3) (b)).

Division 7.1.3 Register and manifest of hazardous chemicals

Subdivision 7.1.3.1 Hazardous chemicals register

346 Hazardous chemicals register

(1) A person conducting a business or undertaking at a workplace must ensure that—

(a) a register of hazardous chemicals used, handled or stored at the workplace is prepared and kept at the workplace; and

(b) the register is maintained to ensure the information in the register is up to date.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The register must include—

(a) a list of hazardous chemicals used, handled or stored; and

(b) the current safety data sheet for each hazardous chemical listed.

(3) The person must ensure that the register is readily accessible to—

(a) a worker involved in using, handling or storing a hazardous chemical; and

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(b) anyone else who is likely to be affected by a hazardous chemical at the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) This section does not apply to a hazardous chemical if—

(a) the hazardous chemical is in transit, unless there is a significant or frequent presence of the hazardous chemical in transit at the workplace; or

(b) the hazardous chemical is a consumer product and the person is not required to obtain a safety data sheet for the hazardous chemical under section 344 (Person conducting business or undertaking to obtain and give access to safety data sheets).

Subdivision 7.1.3.2 Manifest of Schedule 11 hazardous chemicals

Note Section 361 requires an emergency plan to be prepared if the quantity of hazardous chemicals used, handled or stored at a workplace exceeds the manifest quantity for that hazardous chemical.

347 Manifest of hazardous chemicals

(1) A person conducting a business or undertaking at a workplace must, if the quantity of a Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals used, handled or stored at the workplace exceeds the manifest quantity for the Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals—

(a) prepare a manifest of Schedule 11 hazardous chemicals; and

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(b) amend the manifest as soon as practicable if—

(i) the type or quantity of Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals that must be listed in the manifest changes; or

(ii) there is a significant change in the information required to be recorded in the manifest.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A manifest of Schedule 11 hazardous chemicals must comply with schedule 12 (Manifest requirements).

(3) The person must keep the manifest—

(a) in a place determined in agreement with the primary emergency service organisation; and

(b) available for inspection under the Act; and

(c) readily accessible to the emergency service organisation.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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348 Regulator must be notified if manifest quantities to be exceeded

(1) A person conducting a business or undertaking at a workplace must ensure that the regulator is given written notice if a quantity of a Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals that exceeds the manifest quantity is used, handled or stored, or is to be used, handled or stored, at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The notice under subsection (1) must be given—

(a) immediately after the person knows that the Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals is to be first used, handled or stored at the workplace or at least 14 days before that first use handling or storage (whichever is earlier); and

(b) immediately after the person knows that there will be a significant change in the risk of using, handling or storing the Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals at the workplace or at least 14 days before that change (whichever is earlier).

(3) The notice under subsection (1) must include the following:

(a) the name and ABN of the person conducting the business or undertaking;

(b) the type of business or undertaking conducted;

(c) if the workplace was previously occupied by someone else—the name of the most recent previous occupier, if known;

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(d) the activities of the business or undertaking that involve using, handling or storing Schedule 11 hazardous chemicals;

(e) the manifest prepared by the person conducting the business or undertaking under section 347;

(f) in the case of a notice under subsection (2) (b)—details of the changes to the manifest.

(4) A person conducting a business or undertaking at a workplace must ensure that the regulator is given written notice as soon as practicable after the Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals ceases to be used, handled or stored at the workplace if it is not likely to be used, handled or stored at the workplace in the future.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) The notice under subsection (4) must include the information referred to in subsection (3) (a), (b) and (d).

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(6) If the regulator asks for any further information about the manifest quantity of a Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals, the person must ensure that the information is given to the regulator.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 A fee may be determined under the Act, s 278 for this provision.

Note 3 An amount owing under a law may be recovered as a debt in a court of competent jurisdiction or the ACAT (see Legislation Act, s 177).

Division 7.1.4 Placards

349 Outer warning placards—requirement to display

(1) A person conducting a business or undertaking at a workplace must ensure that an outer warning placard is prominently displayed at the workplace if the total quantity of a Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals used, handled or stored at the workplace exceeds the placard quantity for the Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) An outer warning placard must comply with schedule 13 (Placard requirements).

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(3) This section does not apply to a workplace if—

(a) the workplace is a retail outlet; and

(b) the Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals is used to refuel a vehicle, and is either—

(i) a flammable gas; or

(ii) a flammable liquid.

350 Placard—requirement to display

(1) A person conducting a business or undertaking at a workplace must ensure that a placard is prominently displayed at the workplace if the total quantity of a Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals stored at the workplace exceeds the placard quantity for the Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A placard must comply with schedule 13 (Placard requirements).

(3) This section does not apply to a Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals if—

(a) the Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals is in bulk in a container, including an IBC, that is intended for transport and a placard is displayed on the container in accordance with the ADG Code; or

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(b) the Schedule 11 hazardous chemical or group of Schedule 11 hazardous chemicals is a flammable liquid stored in an underground tank at a retail outlet and used to refuel a vehicle.

Note ***IBC***—see the dictionary.

Division 7.1.5 Control of risk—obligations of persons conducting businesses or undertakings

Subdivision 7.1.5.1 General obligations relating to management of risk

351 Management of risks to health or safety—Act, s 19

(1) A person conducting a business or undertaking must manage, in accordance with part 3.1 (Managing risks to health and safety), risks to health and safety associated with using, handling, generating or storing a hazardous chemical at a workplace.

Note WHS Act—s 19 (see s 9).

(2) In managing risks, the person must have regard to the following:

(a) the hazardous properties of the hazardous chemical;

(b) any potentially hazardous chemical or physical reaction between the hazardous chemical and another substance or mixture, including a substance that may be generated by the reaction;

(c) the nature of the work to be carried out with the hazardous chemical;

(d) any structure, plant or system of work—

(i) that is used in the use, handling, generation or storage of the hazardous chemical; or

(ii) that could interact with the hazardous chemical at the workplace.

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352 Review of control measures

In addition to the circumstances in section 38 (Review of control measures), a person conducting a business or undertaking at a workplace must ensure that any measures implemented to control risks in relation to a hazardous chemical at the workplace are reviewed and, as necessary, revised in any of the following circumstances:

(a) after any change to the safety data sheet for the hazardous chemical or the register of hazardous chemicals;

(b) if the person obtains a health monitoring report for a worker under division 7.1.6 (Health monitoring) that contains—

(i) test results that indicate that the worker has been exposed to the hazardous chemical and has an elevated level of metabolites in their body for that hazardous chemical; or

(ii) any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the work using, handling, generating or storing the hazardous chemical that triggered the requirement for health monitoring; or

(iii) any recommendation that the person conducting the business or undertaking take remedial measures, including whether the worker can continue to carry out the work using, handling, generating or storing the hazardous chemical that triggered the requirement for health monitoring;

(c) if monitoring carried out under section 50 (Monitoring airborne contaminant levels) determines that the airborne concentration of the hazardous chemical at the workplace exceeds the relevant exposure standard;

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(d) at least once every 5 years.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

353 Safety signs

(1) This section applies if a safety sign is required to control an identified risk in relation to using, handling, generating or storing hazardous chemicals at a workplace.

(2) A person conducting a business or undertaking at the workplace must display a safety sign at the workplace to—

(a) warn of a particular hazard associated with the hazardous chemicals; or

(b) state the responsibilities of a particular person in relation to the hazardous chemicals.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure that the safety sign is—

(a) located next to the hazard; and

(b) clearly visible to a person approaching the hazard.

(4) In this section:

safety sign does not include a placard.

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354 Identification of risk of physical or chemical reaction

(1) A person conducting a business or undertaking at a workplace must identify any risk of a physical or chemical reaction in relation to a hazardous chemical used, handled, generated or stored at a workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Subsection (1) does not apply if the hazardous chemical undergoes the physical or chemical reaction in a manufacturing process or as part of a deliberate process or activity at the workplace.

(3) A person conducting a business or undertaking at a workplace must take all reasonable steps to ensure that a hazardous chemical is used, handled, generated or stored so as not to contaminate food, food packaging or personal use products.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Examples—personal use products

1 cosmetics

2 face washer

(4) Subsection (3) does not apply to the use of a hazardous chemical for agricultural purposes when used in accordance with the *Environment Protection Regulation 2005*.

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355 Specific control—fire and explosion

A person conducting a business or undertaking at a workplace must, if there is a possibility of fire or explosion in a hazardous area being caused by an ignition source being introduced into the area, ensure that the ignition source is not introduced into the area (from outside or within the space).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

356 Keeping hazardous chemicals stable

(1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that a hazardous chemical used, handled or stored at the workplace does not become unstable, decompose or change so as to—

(a) create a hazard that is different from the hazard originally created by the hazardous chemical; or

(b) significantly increase the risk associated with any hazard in relation to the hazardous chemical.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) A person conducting a business or undertaking at a workplace must ensure that—

(a) if the stability of a hazardous chemical used, handled or stored at the workplace is dependent on the maintenance of the proportions of the ingredients of the hazardous chemical—the proportions are maintained as stated in the safety data sheet for the chemical or by the manufacturer of the hazardous chemical; and

(b) if a hazardous chemical used, handled or stored at the workplace is known to be unstable above a particular temperature—the hazardous chemical is used, handled or stored at or below that temperature.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) This section does not apply if—

(a) the hazardous chemical is changed or allowed to become unstable, without risk to health or safety, as part of a deliberate process or activity at the workplace; or

(b) the hazardous chemical undergoes a chemical reaction in a manufacturing process or as part of a deliberate process or activity at the workplace.

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Subdivision 7.1.5.2 Spills and damage

357 Containing and managing spills

(1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that where there is a risk from a spill or leak of a hazardous chemical in a solid or liquid form, provision is made in each part of the workplace where the hazardous chemical is used, handled, generated or stored for a spill containment system that contains within the workplace any part of the hazardous chemical that spills or leaks, and any resulting effluent.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure that the spill containment system does not create a hazard by bringing together different hazardous chemicals that are not compatible.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) The person must ensure that the spill containment system provides for the cleanup and disposal of a hazardous chemical that spills or leaks, and any resulting effluent.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) In this section:

compatible, for 2 or more substances, mixtures or items, means that the substances, mixtures or items do not react together to cause a fire, explosion, harmful reaction or evolution of flammable, toxic or corrosive vapour.

358 Protecting hazardous chemicals from damage

A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that containers of hazardous chemicals and any associated pipe work or attachments are protected against damage caused by an impact or excessive loads.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Subdivision 7.1.5.3 Emergency plans and safety equipment

359 Fire protection and firefighting equipment

(1) A person conducting a business or undertaking at a workplace must ensure the following:

(a) the workplace is provided with fire protection and firefighting equipment that is designed and built for the types of hazardous chemicals at the workplace in the quantities in which they are used, handled, generated or stored at the workplace, and the conditions under which they are used, handled, generated or stored, having regard to—

(i) the fire load of the hazardous chemicals; and

(ii) the fire load from other sources; and

(iii) the compatibility of the hazardous chemicals with other substances and mixtures at the workplace;

(b) the fire protection and firefighting equipment is compatible with firefighting equipment used by the primary emergency service organisation;

(c) the fire protection and firefighting equipment is properly installed, tested and maintained;

(d) a dated record is kept of the latest testing results and maintenance until the next test is conducted.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) If a part of the fire protection and firefighting equipment provided at the workplace becomes unserviceable or inoperative, the person must ensure that—

(a) the implications of the equipment being unserviceable or inoperative are assessed; and

(b) for risks that were controlled by the equipment when functioning fully, alternative measures are taken to manage the risks.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure that the fire protection and firefighting equipment is returned to full operation as soon as practicable.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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360 Emergency equipment

A person conducting a business or undertaking at a workplace that uses, handles, generates or stores hazardous chemicals must ensure that equipment is always available at the workplace for use in an emergency.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 A person conducting a business or undertaking must comply with div 3.2.4.

361 Emergency plans

(1) This section applies if the quantity of a Schedule 11 hazardous chemical used, handled, generated or stored at a workplace exceeds the manifest quantity for that hazardous chemical.

(2) A person conducting a business or undertaking at the workplace must give a copy of the emergency plan prepared under division 3.2.4 (Emergency plans) for the workplace to the primary emergency service organisation.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) If the primary emergency service organisation gives the person a written recommendation about the content or effectiveness of the emergency plan, the person must revise the plan in accordance with the recommendation.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

362 Safety equipment

(1) This section applies if safety equipment is required to control an identified risk in relation to using, handling, generating or storing hazardous chemicals at a workplace.

(2) A person conducting a business or undertaking at the workplace must ensure that the safety equipment is provided, maintained and readily accessible to persons at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Subdivision 7.1.5.4 Storage and handling systems

363 Control of risks from storage or handling systems

(1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that a system used at the workplace for the use, handling or storage of hazardous chemicals—

(a) is used only for a purpose for which it was designed, manufactured, modified, supplied or installed; and

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(b) is operated, tested, maintained, installed, repaired and decommissioned having regard to the health and safety of workers and other persons at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure that sufficient information, training and instruction is given to a person who operates, tests, maintains or decommissions a system used at a workplace for the use, handling or storage of hazardous chemicals for the activity to be carried out safely.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Example

information provided at a training course

364 Containers for hazardous chemicals used, handled or stored in bulk

A person conducting a business or undertaking at a workplace must ensure that a container in which a hazardous chemical is used, handled or stored in bulk and any associated pipe work or attachments—

(a) have stable foundations and supports; and

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(b) are secured to the foundations and supports to prevent any movement between the container and the associated pipe work or attachments to prevent—

(i) damage to the container, the associated pipe work or attachments; and

(ii) a notifiable incident.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

365 Stopping use and disposing of handling systems

(1) This section applies to a system used at a workplace for the use, handling or storage of hazardous chemicals if a person conducting a business or undertaking at the workplace intends that the system no longer be used for the use, handling or storage of the hazardous chemicals or be disposed of.

(2) The person must ensure, so far as is reasonably practicable, that the system is free of the hazardous chemicals when the system stops being used for the use, handling or storage of the hazardous chemicals, or is disposed of.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) If it is not reasonably practicable to remove the hazardous chemicals from the system, the person must correctly label the system.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 For correctly labelling hazardous chemicals, see subdiv 7.1.2.3.

366 Stopping use of underground storage and handling systems

(1) This section applies in relation to a system used at a workplace for the use, handling or storage of hazardous chemicals underground if a person conducting a business or undertaking at the workplace intends that the system no longer be used for the use, handling or storage of the hazardous chemicals or be disposed of.

(2) The person must ensure, so far as is reasonably practicable, that the system is removed.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) If it is not reasonably practicable to remove the system, the person must ensure, so far as is reasonably practicable, that the system is without risks to health and safety.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

367 Notification of abandoned tank

(1) This section applies to a person conducting a business or undertaking at a workplace if—

(a) the person controls or manages a tank at the workplace that is underground, partially underground or fully mounded; and

(b) the tank was used to store flammable gases or flammable liquids.

(2) The tank is taken to be abandoned if—

(a) the tank has not been used to store flammable gases or flammable liquids for 2 years; or

(b) the person does not intend to use the tank to store flammable gases or flammable liquids again.

(3) The person must notify the regulator of the abandonment of the tank as soon as practicable after the tank is abandoned.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) In this section:

tank means a container, other than an IBC, designed to use, handle or store hazardous chemicals in bulk and includes fittings, closures and other equipment attached to the container.

Division 7.1.6 Health monitoring

368 Duty to provide health monitoring

A person conducting a business or undertaking must ensure that health monitoring is provided to a worker carrying out work for the business or undertaking if—

(a) the worker is carrying out ongoing work at a workplace using, handling, generating or storing hazardous chemicals and there is a significant risk to the worker's health because of exposure to a hazardous chemical referred to in schedule 14, table 14.1, column 2; or

(b) the person identifies that because of ongoing work carried out by a worker using, handling, generating or storing hazardous chemicals there is a significant risk that the worker will be exposed to a hazardous chemical (other than a hazardous chemical referred to in schedule 14, table 14.1, column 2) and either—

(i) valid techniques are available to detect the effect on the worker's health; or

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(ii) a valid way of determining biological exposure to the hazardous chemical is available and it is uncertain, on reasonable grounds, whether the exposure to the hazardous chemical has resulted in the biological exposure standard being exceeded.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 ***Exposure standard***—see the dictionary.

369 Duty to inform of health monitoring

A person conducting a business or undertaking who is required to provide health monitoring to a worker must give information about the health monitoring requirements to—

(a) a person who is likely to be engaged to carry out work using, handling, generating or storing a hazardous chemical; and

(b) a worker for the business or undertaking, before the worker commences work using, handling, generating or storing a hazardous chemical.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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370 Duty to ensure that appropriate health monitoring is provided

A person conducting a business or undertaking must ensure that health monitoring of a worker referred to in section 368 (Duty to provide health monitoring) includes health monitoring of a type referred to in an item in schedule 14, table 14.1, column 3 in relation to a hazardous chemical referred to in column 2 for the item, unless—

(a) an equal or better type of health monitoring is available; and

(b) the use of that other type of monitoring is recommended by a registered medical practitioner with experience in health monitoring.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

371 Duty to ensure health monitoring is supervised by registered medical practitioner with experience

(1) A person conducting a business or undertaking must ensure that the health monitoring of a worker referred to in section 368 (Duty to provide health monitoring) is carried out by or under the supervision of a registered medical practitioner with experience in health monitoring.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The person must consult the worker in relation to the selection of the registered medical practitioner.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

372 Duty to pay costs of health monitoring

(1) A person conducting a business or undertaking must pay all expenses relating to health monitoring referred to in section 368 (Duty to provide health monitoring).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If 2 or more persons conducting businesses or undertakings have a duty to provide health monitoring for a worker and have arranged for 1 of them to commission the health monitoring, the costs of the health monitoring for which any of those persons is liable must be apportioned equally between each of those persons unless they agree otherwise.

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373 Information that must be provided to registered medical practitioner

A person conducting a business or undertaking who commissions health monitoring for a worker must provide the following information to the registered medical practitioner carrying out or supervising the health monitoring:

(a) the name and address of the person conducting the business or undertaking;

(b) the name and date of birth of the worker;

(c) the work that the worker is, or will be, carrying out that has triggered the requirement for health monitoring;

(d) if the worker has started that work—how long the worker has been carrying out that work.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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374 Duty to obtain health monitoring report

(1) A person conducting a business or undertaking who commissions health monitoring referred to in section 368 (Duty to provide health monitoring) must take all reasonable steps to obtain a health monitoring report from the registered medical practitioner who carried out or supervised the monitoring as soon as practicable after the monitoring is carried out in relation to a worker.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The health monitoring report must include the following:

(a) the name and date of birth of the worker;

(b) the name and registration number of the registered medical practitioner;

(c) the name and address of the person conducting the business or undertaking who commissioned the health monitoring;

(d) the date of the health monitoring;

(e) any test results that indicate whether or not the worker has been exposed to a hazardous chemical;

(f) any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the work that triggered the requirement for health monitoring;

(g) any recommendation that the person conducting the business or undertaking take remedial measures, including whether the worker can continue to carry out the type of work that triggered the requirement for health monitoring;

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(h) whether medical counselling is required for the worker in relation to the work that triggered the requirement for health monitoring.

375 Duty to give health monitoring report to worker

The person conducting a business or undertaking who commissioned health monitoring for a worker must give a copy of the health monitoring report to the worker as soon as practicable after the person obtains the report.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

376 Duty to give health monitoring report to regulator

A person conducting a business or undertaking for whom a worker is carrying out work for which health monitoring is required must give a copy of the health monitoring report relating to a worker to the regulator as soon as practicable after obtaining the report if the report contains—

(a) any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the work using, handling, generating or storing hazardous chemicals that triggered the requirement for health monitoring; or

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(b) any recommendation that the person conducting the business or undertaking take remedial measures, including whether the worker can continue to carry out the work using, handling, generating or storing hazardous chemicals that triggered the requirement for health monitoring.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

377 Duty to give health monitoring report to relevant persons conducting businesses or undertakings

The person who commissioned health monitoring for a worker under section 368 (Duty to provide health monitoring) must give a copy of the health monitoring report to all other persons conducting businesses or undertakings who have a duty to provide health monitoring for the worker as soon as practicable after obtaining the report.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

378 Health monitoring records

(1) A person conducting a business or undertaking must ensure that health monitoring reports in relation to a worker carrying out work for the business or undertaking are kept as a confidential record—

(a) identified as a record in relation to the worker; and

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(b) for at least 30 years after the record is made.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure that the health monitoring report and results of a worker are not disclosed to another person without the worker's written consent.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) Subsection (2) does not apply if the record is disclosed under section 376 (Duty to give health monitoring report to regulator) or section 377 (Duty to give health monitoring report to relevant persons conducting businesses or undertakings) or to a person who must keep the record confidential under a duty of professional confidentiality.

Division 7.1.7 Induction, information, training and supervision

379 Duty to provide supervision

(1) A person conducting a business or undertaking at a workplace must provide any supervision to a worker that is necessary to protect the worker from risks to the worker's health and safety arising from the work if, at the workplace, the worker—

(a) uses, handles, generates or stores a hazardous chemical; or

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(b) operates, tests, maintains, repairs or decommissions a storage or handling system for a hazardous chemical; or

(c) is likely to be exposed to a hazardous chemical.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure that the supervision of the worker is suitable and adequate having regard to—

(a) the nature of the risks associated with the hazardous chemical; and

(b) the information, training and instruction required under section 39 (Provision of information, training and instruction—Act, s 19).

Note In addition, the Act, s 19 (3) (f) requires the provision of information, training, instruction and supervision.

Division 7.1.8 Prohibition, authorisation and restricted use

380 Using, handling and storing prohibited carcinogens

A person conducting a business or undertaking at a workplace must not use, handle or store, or direct or allow a worker at the workplace to use, handle or store, a prohibited carcinogen referred to in schedule 10, table 10.1, column 2 unless—

(a) the prohibited carcinogen is used, handled or stored for genuine research or analysis; and

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(b) the regulator has authorised the use, handling or storage of the prohibited carcinogen under section 384 (Authorisation to use, handle or store prohibited carcinogens and restricted carcinogens).

Note See the Act, s 43 (Requirements for authorisation of work).

381 Using, handling and storing restricted carcinogens

A person conducting a business or undertaking at a workplace must not use, handle or store, or direct or allow a worker at the workplace to use, handle or store, a restricted carcinogen referred to in an item in schedule 10, table 10.2, column 2 for a purpose referred to in column 3 for the item unless the regulator has authorised the use, handling or storage of the restricted carcinogen under section 384 (Authorisation to use, handle or store prohibited carcinogens and restricted carcinogens).

Note See the Act, s 43 (Requirements for authorisation of work).

382 Using, handling and storing restricted hazardous chemicals

(1) A person conducting a business or undertaking at a workplace must not use, handle or store, or direct or allow a worker at the workplace to use, handle or store, a restricted hazardous chemical referred to in an item in schedule 10, table 10.3, column 2 for a purpose referred to in column 3 for the item.

Note See the Act, s 43 (Requirements for authorisation of work).

(2) A person conducting a business or undertaking at a workplace must not use, handle or store, or direct or allow a worker at the workplace to use, handle or store, polychlorinated biphenyls (***PCBs***) unless the use, handling or storage is—

(a) in relation to existing electrical equipment or construction material; or

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(b) for disposal purposes; or

(c) for genuine research and analysis.

Note See the Act, s 43 (Requirements for authorisation of work).

383 Application for authorisation to use, handle or store prohibited and restricted carcinogens

(1) A person conducting a business or undertaking at a workplace may apply in writing to the regulator for authorisation to use, handle or store a prohibited carcinogen or restricted carcinogen referred to in schedule 10 (Prohibited carcinogens, restricted carcinogens and restricted hazardous chemicals) at the workplace.

(2) The application must include the following information:

(a) the applicant's name and business address;

(b) if the applicant conducts the business or undertaking under a business name—that business name;

(c) the name and address of the supplier of the carcinogen;

(d) the address where the carcinogen will be used, handled or stored;

(e) the name of the carcinogen;

(f) the quantity of the carcinogen to be used, handled or stored at the workplace each year;

(g) the purpose and activity for which the carcinogen will be used, handled or stored;

(h) the number of workers that may be exposed to the carcinogen;

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(i) information about how the person will manage risks to health and safety, including a summary of the steps taken, or to be taken, by the person in relation to the following:

(i) hazard identification;

(ii) control measures;

(iii) if elimination or substitution of the carcinogen is not reasonably practicable—why the elimination or substitution is not reasonably practicable;

(j) any other information requested by the regulator.

384 Authorisation to use, handle or store prohibited carcinogens and restricted carcinogens

(1) If a person applies under section 383, the regulator may grant an authorisation to use, handle or store a prohibited carcinogen or restricted carcinogen under this section.

(2) The regulator may authorise the person to use, handle or store a prohibited carcinogen referred to in an item in schedule 10, table 10.1 at the workplace only if the carcinogen will be used, handled or stored only for genuine research or analysis.

(3) The regulator may authorise the person to use, handle or store a restricted carcinogen referred to in an item in schedule 10, table 10.2 at the workplace only if the carcinogen will be used, handled or stored only for a use referred to in column 3 for the item.

(4) The regulator may impose any conditions on the authorisation that the regulator considers necessary to achieve the objectives of the Act or this regulation.

(5) The regulator must refuse to authorise the use, handling or storage of the carcinogen for a use not referred to in this section.

Note A decision to refuse an authorisation is a reviewable decision (see s 676).

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385 Changes to information in application to be reported

A person who applies under section 383 for authorisation to use, handle or store a prohibited carcinogen or restricted carcinogen must give the regulator written notice of any change in the information given in the application before the change or as soon as practicable after the person becomes aware of the change.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

386 Regulator may cancel authorisation

The regulator may cancel an authorisation to use, handle or store a prohibited carcinogen or restricted carcinogen given under section 384 if satisfied that—

(a) the person granted the authorisation has not complied with a condition on the authorisation; or

(b) the risk to the health or safety of a worker that may be affected by using, handling or storing the carcinogen has changed since the authorisation was granted.

Note A decision to cancel an authorisation is a reviewable decision (see s 676).

387 Statement of exposure to be given to workers

(1) This section applies if—

(a) a person conducting a business or undertaking at a workplace is authorised under section 384 to use, handle or store a prohibited carcinogen or restricted carcinogen at the workplace; and

(b) a worker uses, handles or stores the prohibited carcinogen or restricted carcinogen at the workplace.

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(2) The person must give to the worker, at the end of the worker's engagement by the person, a written statement of the following:

(a) the name of the prohibited or restricted carcinogen to which the worker may have been exposed during the engagement;

(b) the time the worker may have been exposed;

(c) how and where the worker may obtain records of the possible exposure;

(d) whether the worker should undertake regular health assessments, and the relevant tests to undertake.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

388 Records to be kept

(1) This section applies if a person conducting a business or undertaking at a workplace is authorised under section 384 to use, handle or store a prohibited carcinogen or restricted carcinogen at the workplace.

(2) The person must—

(a) record the full name, date of birth and address of each worker likely to be exposed to the prohibited carcinogen or restricted carcinogen during the period of authorisation; and

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(b) keep a copy of each authorisation given to the person including any conditions imposed on the authorisation.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must keep the records for 30 years after the authorisation ends.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 7.1.9 Pipelines

389 Management of risk by pipeline owner

(1) The owner of a pipeline used to transfer hazardous chemicals must manage risks associated with the transfer of the hazardous chemicals through that pipeline.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Example

risks associated with the testing, installation, commissioning, operation, maintenance and decommissioning of the pipeline

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(2) The owner of a pipeline used to transfer hazardous chemicals must ensure, so far as is reasonably practicable, that an activity, structure, equipment or substance that is not part of the pipeline does not affect the hazardous chemicals or the pipeline in a way that increases risk.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

390 Pipeline builder's duties

(1) This section applies to a person who intends to build a pipeline that will—

(a) cross into a public place; and

(b) be used to transfer a Schedule 11 hazardous chemical.

(2) The person must ensure that, before the building of the pipeline commences, the regulator is given the following information:

(a) the name of the pipeline's intended owner and operator;

(b) the pipeline's specifications;

(c) the intended procedures for the operation, maintenance, renewal and relaying of the pipeline;

(d) any public place that the pipeline will cross;

(e) the intended emergency response procedures.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) The person must ensure that the regulator is given the information in the following circumstances:

(a) before the pipeline is commissioned;

(b) before the pipeline is likely to contain a hazardous chemical;

(c) if there is any change in the information given under subsection (2)—when the information changes;

(d) if part of the pipeline is to be repaired—before the pipeline is repaired;

(e) if part of the pipeline is removed, decommissioned, closed or abandoned—when the removal, decommissioning, closure or abandonment occurs.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

391 Management of risks to health and safety by pipeline operator—Act, s 19

(1) A person conducting a business or undertaking at a workplace who is the operator of a pipeline (the ***operator***) used to transfer hazardous chemicals must manage, in accordance with part 3.1 (Managing risks to health and safety), risks to health and safety associated with the transfer of the hazardous chemicals through the pipeline.

Note WHS Act—s 19 (see s 9).

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(2) The operator of a pipeline used to transfer a hazardous chemical must ensure, so far as is reasonably practicable, that the hazardous chemical transferred is identified by a label, sign or another way on or near the pipeline.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The operator of a pipeline that transfers a Schedule 11 hazardous chemical into a public place must ensure that the regulator is notified of—

(a) the supplier of the hazardous chemical; and

(b) the receiver of the hazardous chemical; and

(c) the correct classification of the hazardous chemical.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Part 7.2 Lead

Note In workplaces where lead processes are carried out, this part applies in addition to pt 7.1.

Division 7.2.1 Lead process

392 Meaning of *lead process*—pt 7.2

In this part, a ***lead process*** consists of any of the following carried out at a workplace:

(a) work that exposes a person to lead dust or lead fumes arising from the manufacture or handling of dry lead compounds;

(b) work in connection with the manufacture, assembly, handling or repair of, or parts of, batteries containing lead that involves the manipulation of dry lead compounds, or pasting or casting lead;

(c) breaking up or dismantling batteries containing lead, or sorting, packing and handling plates or other parts containing lead that are removed or recovered from the batteries;

(d) spraying molten lead metal or alloys containing more than 5% by weight of lead metal;

(e) melting or casting lead alloys containing more than 5% by weight of lead metal in which the temperature of the molten material exceeds 450°C;

(f) recovering lead from its ores, oxides or other compounds by thermal reduction process;

(g) dry machine grinding, discing, buffing or cutting by power tools alloys containing more than 5% by weight of lead metal;

(h) machine sanding or buffing surfaces coated with paint containing more than 1% by dry weight of lead;

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(i) a process by which electric arc, oxyacetylene, oxy gas, plasma arc or a flame is applied for welding, cutting or cleaning, to the surface of metal coated with lead or paint containing more than 1% by dry weight of lead metal;

(j) radiator repairs that may cause exposure to lead dust or lead fumes;

(k) fire assays if lead, lead compounds or lead alloys are used;

(l) hand grinding and finishing lead or alloys containing more than 50% by dry weight of lead;

(m) spray painting with lead paint containing more than 1% by dry weight of lead;

(n) melting lead metal or alloys containing more than 50% by weight of lead metal if the exposed surface area of the molten material exceeds 0.1 square metre and the temperature of the molten material does not exceed 450°C;

(o) using a power tool, including abrasive blasting and high pressure water jets, to remove a surface coated with paint containing more than 1% by dry weight of lead and handling waste containing lead resulting from the removal;

(p) a process that exposes a person to lead dust or lead fumes arising from manufacturing or testing detonators or other explosives that contain lead;

(q) a process that exposes a person to lead dust or lead fumes arising from firing weapons at an indoor firing range;

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(r) foundry processes involving—

(i) melting or casting lead alloys containing more than 1% by weight of lead metal in which the temperature of the molten material exceeds 450°C; or

(ii) dry machine grinding, discing, buffing or cutting by power tools lead alloys containing more than 1% by weight of lead metal;

(s) a process decided by the regulator to be a lead process under section 393.

393 Regulator may decide lead process

(1) The regulator may decide that a process to be carried out at a workplace is a lead process.

(2) The regulator must not decide that the process is a lead process unless the regulator is satisfied on reasonable grounds that the process creates a risk to the health of a worker at the workplace having regard to blood lead levels of workers, or airborne lead levels, at the workplace.

Note A decision that a process is a lead process is a reviewable decision (see s 676).

(3) The regulator must, within 14 days after the day a decision is made under subsection (1), give written notice of the decision to the person conducting a business or undertaking at the workplace.

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394 Meaning of *lead risk work*—pt 7.2

In this part:

lead risk work means work carried out in a lead process that is likely to cause the blood lead level of a worker carrying out the work to exceed—

(a) for a female of reproductive capacity—5µg/dL (0.24µmol/L); or

(b) in any other case—20µg/dL (0.97µmol/L).

395 Duty to give information about health risks of lead process

(1) A person conducting a business or undertaking that carries out a lead process must give information about the lead process to—

(a) a person who is likely to be engaged to carry out the lead process—before the person is engaged; and

(b) a worker for the business or undertaking—before the worker commences the lead process.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If work is identified as lead risk work after a worker commences the work, the person conducting a business or undertaking must give information about the lead process to the worker as soon as practicable after it is identified as lead risk work and before health monitoring of the worker is provided under division 7.2.4 (Health monitoring).

Maximum penalty:

(a) in the case of an individual—$6 000; or

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(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The information that must be given is—

(a) information about the health risks and toxic effects associated with exposure to lead; and

(b) if the lead process involves lead risk work—the need for, and details of, health monitoring under division 7.2.4.

Division 7.2.2 Control of risk

396 Containment of lead contamination

A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that contamination by lead is confined to a lead process area at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

397 Cleaning methods

(1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that a lead process area at the workplace is kept clean.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The person must ensure that the methods used to clean a lead process area—

(a) do not create a risk to the health of persons in the immediate vicinity of the area; and

(b) do not have the potential to spread the contamination of lead.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

398 Prohibition on eating, drinking and smoking

(1) A person conducting a business or undertaking at a workplace must take all reasonable steps to ensure that a person does not eat, drink, chew gum, smoke or carry materials used for smoking in a lead process area at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A person conducting a business or undertaking at a workplace must provide workers with an eating and drinking area that, so far as is reasonably practicable, cannot be contaminated with lead from a lead process.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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399 Provision of changing and washing facilities

(1) A person conducting a business or undertaking at a workplace must provide and maintain in good working order changing rooms and washing, showering and toilet facilities at the workplace so as to—

(a) minimise secondary lead exposure from contaminated clothing; and

(b) minimise ingestion of lead; and

(c) avoid the spread of lead contamination.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure, so far as is reasonably practicable, that workers at the workplace remove clothing and equipment that is or is likely to be contaminated with lead, and wash their hands and faces, before entering an eating or drinking area at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

400 Laundering, disposal and removal of personal protective equipment

(1) A person conducting a business or undertaking at a workplace must ensure that personal protective equipment that is likely to be contaminated with lead dust—

(a) is sealed in a container before being removed from the lead process area; and

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(b) so far as is reasonably practicable, is disposed of on the completion of the lead process work at a site equipped to accept lead-contaminated equipment; and

(c) if it is not reasonably practicable to dispose of the personal protective equipment that is clothing—

(i) is laundered at a laundry, whether on-site or off-site, equipped to launder lead-contaminated clothing; or

(ii) if it is not practicable to launder the clothing—is kept in the sealed container until it is re-used for lead process work; and

(d) if it is not reasonably practicable to dispose of the personal protective equipment that is not clothing—

(i) is decontaminated before it is removed from the lead process area; or

(ii) if it is not practicable to decontaminate the equipment in the lead process area—is kept in the sealed container until it is re-used for lead process work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Example—personal protective equipment

work boots

(2) The person must ensure that a sealed container referred to in subsection (1) is decontaminated before being removed from the lead process area.

Maximum penalty:

(a) in the case of an individual—$6 000; or

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(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 Section 335 also requires the container to be labelled to indicate the presence of lead.

(3) The person must take all reasonable steps to ensure that clothing contaminated with lead dust is not removed from the workplace unless it is to be—

(a) laundered in accordance with this section; or

(b) disposed of.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

401 Review of control measures

(1) A person conducting a business or undertaking at a workplace must ensure that any measures implemented to control health risks from exposure to lead at the workplace are reviewed and as necessary revised in the following circumstances:

(a) a worker is removed from carrying out lead risk work at the workplace under section 415 (Removal of worker from lead risk work);

(b) the person obtains a health monitoring report for a worker under division 7.2.4 (Health monitoring) that contains—

(i) test results that indicate that the worker has reached or exceeded the relevant blood lead level for that worker under section 415; or

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(ii) any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the lead risk work that triggered the requirement for health monitoring; or

(iii) any recommendation that the person conducting the business or undertaking take remedial measures, including a recommendation that the worker be removed from carrying out lead risk work at the workplace;

(c) the control measure does not control the risk it was implemented to control so far as is reasonably practicable;

Examples

1 results of any monitoring

2 a notifiable incident occurs because of the risk

(d) before a change at the workplace that is likely to give rise to a new or different risk to health or safety that the measure may not effectively control;

(e) a new relevant hazard or risk is identified;

(f) the results of consultation by the person under the Act or this regulation indicate that a review is necessary;

(g) a health and safety representative requests a review under subsection (3);

(h) the regulator requires the review;

(i) at least once every 5 years.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) Without limiting subsection (1) (d), a change at the workplace includes—

(a) a change to the workplace itself or any aspect of the work environment; or

(b) a change to a system of work, a process or a procedure.

(3) A health and safety representative for workers at a workplace may request a review of a control measure if the representative reasonably believes that—

(a) a circumstance referred to in subsection (1) (a) to (f) affects or may affect the health and safety of a member of the work group represented by the health and safety representative; and

(b) the duty holder has not adequately reviewed the control measure in response to the circumstance.

Division 7.2.3 Lead risk work

402 Identifying lead risk work

(1) A person conducting a business or undertaking at a workplace must assess each lead process carried out by the business or undertaking at the workplace to determine if lead risk work is carried out in the process.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) In assessing a lead process, the person must have regard to the following:

(a) past biological monitoring results of workers;

(b) airborne lead levels;

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(c) the form of lead used;

(d) the tasks and processes required to be undertaken with lead;

(e) the likely duration and frequency of exposure to lead;

(f) possible routes of exposure to lead;

(g) any information about incidents, illnesses or diseases in relation to the use of lead at the workplace.

(3) In assessing a lead process, the person must not have regard to the effect of using personal protective equipment on the health and safety of workers at the workplace.

(4) If a person conducting a business or undertaking at a workplace is unable to determine whether lead risk work is carried out in a lead process at the workplace, the process is taken to include lead risk work until the person determines that lead risk work is not carried out in the process.

403 Notification of lead risk work

(1) Subject to subsection (5), if a person conducting a business or undertaking at a workplace determines that work at the workplace is lead risk work, the person must give the regulator written notice within 7 days after the determination is made that the work is lead risk work.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A notice under this section must state the kind of lead process being carried out that includes the lead risk work.

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(3) The person must—

(a) keep a copy of the notice given to the regulator while the lead risk work is carried out at the workplace; and

(b) ensure that a copy of the notice is readily accessible to a worker who is likely to be exposed to lead, and the worker's health and safety representative.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) Subsection (5) applies to an emergency service organisation in relation to work carried out by an emergency service worker who, at the direction of the emergency service organisation, is—

(a) rescuing a person; or

(b) providing first aid to a person.

(5) The emergency service organisation must give notice under subsection (1) as soon as practicable after determining that the work is lead risk work.

404 Changes to information in notification of lead risk work

(1) A person conducting a business or undertaking at a workplace must give the regulator written notice of any change in the information given in a notice under section 403 before the change or as soon as practicable after the person becomes aware of the change.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The person must—

(a) keep a copy of the notice given to the regulator while the lead risk work is carried out at the workplace; and

(b) ensure that a copy of the notice is readily accessible to a worker who is likely to be exposed to lead, and the worker's health and safety representative.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 7.2.4 Health monitoring

405 Duty to provide health monitoring before first commencing lead risk work

(1) A person conducting a business or undertaking at a workplace must ensure that health monitoring is provided to a worker—

(a) before the worker first commences lead risk work for the person; and

(b) 1 month after the worker first commences lead risk work for the person.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) If work is identified as lead risk work after a worker commences the work, the person conducting the business or undertaking must ensure that health monitoring of the worker is provided—

(a) as soon as practicable after the lead risk work is identified; and

(b) 1 month after the first monitoring of the worker under paragraph (a).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

406 Duty to ensure that appropriate health monitoring is provided

Subject to section 407, a person conducting a business or undertaking must ensure that health monitoring of a worker referred to in section 405 includes health monitoring of a type referred to in an item in schedule 14, table 14.2 (Lead requiring health monitoring) unless—

(a) an equal or better type of health monitoring is available; and

(b) the use of that other type of monitoring is recommended by a registered medical practitioner with experience in health monitoring.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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407 Frequency of biological monitoring

(1) A person conducting a business or undertaking at a workplace must arrange for biological monitoring of each worker who carries out lead risk work for the person to be carried out at the following times:

(a) for females not of reproductive capacity and males—

(i) if the last monitoring shows a blood lead level of less than 10µg/dL (0.48µmol/L)—6 months after the last biological monitoring of the worker; or

(ii) if the last monitoring shows a blood lead level of 10µg/dL (0.48µmol/L) or more but less than 20µg/dL (0.97µmol/L)—3 months after the last biological monitoring of the worker; or

(iii) if the last monitoring shows a blood lead level of 20µg/dL (0.97µmol/L) or more—6 weeks after the last biological monitoring of the worker;

(b) for females of reproductive capacity—

(i) if the last monitoring shows a blood lead level of less than 5µg/dL (0.24µmol/L)—3 months after the last biological monitoring of the worker; or

(ii) if the last monitoring shows a blood lead level of 5µg/dL (0.24µmol/L) or more but less than 10µg/dL (0.48µmol/L)—6 weeks after the last biological monitoring of the worker.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The person must increase the frequency of biological monitoring of a worker who carries out lead risk work if the worker carries out an activity that is likely to significantly change the nature or increase the duration or frequency of the worker's lead exposure.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The regulator may determine a different frequency for biological monitoring of workers at a workplace, or a class of workers, carrying out lead risk work having regard to—

(a) the nature of the work and the likely duration and frequency of the workers' lead exposure; and

(b) the likelihood that the blood lead level of the workers will significantly increase.

(4) The regulator must give a person conducting a business or undertaking written notice of a determination under subsection (3) within 14 days after making the determination.

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(5) The person conducting a business or undertaking at the workplace must arrange for biological monitoring to be carried out at the frequency stated in a determination notified to the person under subsection (4).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 A determination of a different frequency for biological monitoring is a reviewable decision (see s 676).

Note 3 ***Biological monitoring***, ***blood lead level***, ***lead risk work*** (see dict).

408 Duty to ensure health monitoring is supervised by registered medical practitioner with relevant experience

(1) A person conducting a business or undertaking must ensure that the health monitoring of a worker referred to in this division is carried out by, or under the supervision of, a registered medical practitioner with experience in health monitoring.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The person must consult the worker in relation to the selection of the registered medical practitioner.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

409 Duty to pay costs of health monitoring

(1) A person conducting a business or undertaking must pay all expenses relating to health monitoring referred to in this division.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If 2 or more persons conducting businesses or undertakings have a duty to provide health monitoring for a worker and have arranged for 1 of them to commission the health monitoring, the costs of the health monitoring for which any of those persons is liable must be apportioned equally between each of those persons unless they agree otherwise.

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410 Information that must be provided to registered medical practitioner

A person conducting a business or undertaking who commissions health monitoring for a worker must provide the following information to the registered medical practitioner carrying out or supervising the health monitoring:

(a) the name and address of the person conducting the business or undertaking;

(b) the name and date of birth of the worker;

(c) the lead risk work that the worker is, or will be, carrying out that has triggered the requirement for health monitoring;

(d) if the worker has started that work, how long the worker has been carrying out that work.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

411 Duty to obtain health monitoring report

(1) A person conducting a business or undertaking who commissioned health monitoring referred to in this division must take all reasonable steps to obtain a health monitoring report from the registered medical practitioner who carried out or supervised the monitoring as soon as practicable after the monitoring is carried out in relation to a worker.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The health monitoring report must include the following:

(a) the name and date of birth of the worker;

(b) the name and registration number of the registered medical practitioner;

(c) the name and address of the person conducting the business or undertaking who commissioned the health monitoring;

(d) the date of health monitoring;

(e) if a blood sample is taken—the date the blood sample is taken;

(f) the results of biological monitoring that indicate blood lead levels in the worker's body;

(g) the name of the pathology service used to carry out tests;

(h) any test results that indicate that the worker has reached or exceeded the relevant blood lead level for that worker under section 415 (Removal of worker from lead risk work);

(i) any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the lead risk work that triggered the requirement for health monitoring;

(j) any recommendation that the person conducting the business or undertaking take remedial measures, including whether the worker can continue to carry out the type of work that triggered the requirement for health monitoring;

Note The duty under s 415 to remove a worker from carrying out lead risk work applies even if there is no recommendation of a registered medical practitioner to do so.

(k) whether medical counselling is required for the worker in relation to the work that triggered the requirement for health monitoring.

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412 Duty to give health monitoring report to worker

A person conducting a business or undertaking who commissioned health monitoring for a worker must give a copy of the health monitoring report to the worker as soon as practicable after the person obtains the report.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

413 Duty to give health monitoring report to regulator

A person conducting a business or undertaking for which a worker is carrying out work for which health monitoring is required must give a copy of the health monitoring report relating to the worker to the regulator as soon as practicable after obtaining the report if the report contains—

(a) test results that indicate that the worker has reached or exceeded the relevant blood lead level for that person under section 415 (Removal of worker from lead risk work); or

(b) any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the work that triggered the requirement for health monitoring; or

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(c) any recommendation that the person conducting the business or undertaking take remedial measures, including whether the worker can continue to carry out the work that triggered the requirement for health monitoring.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

414 Duty to give health monitoring report to relevant persons conducting businesses or undertakings

A person conducting a business or undertaking who commissioned health monitoring for a worker under this division must give a copy of the health monitoring report to all other persons conducting businesses or undertakings who have a duty to provide health monitoring for the worker as soon as practicable after obtaining the report.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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415 Removal of worker from lead risk work

(1) A person conducting a business or undertaking for which a worker is carrying out work must immediately remove the worker from carrying out lead risk work if following health monitoring—

(a) biological monitoring of the worker shows that the worker's blood lead level is, or is more than—

(i) for females not of reproductive capacity and males—30µg/dL (1.45µmol/L); or

(ii) for females of reproductive capacity—10µg/dL (0.48µmol/L); or

(b) the registered medical practitioner who supervised the health monitoring recommends that the worker be removed from carrying out the lead risk work; or

(c) there is an indication that a risk control measure has failed and, as a result, the worker's blood lead level is likely to reach the relevant level for the worker referred to in paragraph (a).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must notify the regulator as soon as practicable if a worker is removed from carrying out lead risk work under subsection (1).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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416 Duty to ensure medical examination if worker removed from lead risk work

(1) This section applies if a worker is removed from carrying out lead risk work under section 415.

(2) The person conducting the business or undertaking who removes the worker from carrying out lead risk work must arrange for the worker to be medically examined by a registered medical practitioner with experience in health monitoring within 7 days after the day the worker is removed.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must consult the worker in the selection of the registered medical practitioner.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

417 Return to lead risk work after removal

(1) This section applies if—

(a) a worker is removed from carrying out lead risk work under section 415 (Removal of worker from lead risk work); and

(b) the person conducting a business or undertaking at the workplace who removed the worker expects the worker to return to carrying out lead risk work at the workplace.

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(2) The person conducting the business or undertaking must arrange for health monitoring under the supervision of a registered medical practitioner with experience in health monitoring at a frequency decided by the practitioner to determine whether the worker's blood lead level is low enough for the worker to return to carrying out lead risk work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person conducting the business or undertaking must ensure that the worker does not return to carrying out lead risk work until—

(a) the worker's blood lead level is less than—

(i) for females not of reproductive capacity and males—20µg/dL (0.97µmol/L); or

(ii) for females of reproductive capacity—5µg/dL (0.24µmol/L); and

(b) a registered medical practitioner with experience in health monitoring is satisfied that the worker is fit to return to carrying out lead risk work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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418 Health monitoring records

(1) A person conducting a business or undertaking must ensure that health monitoring reports in relation to a worker carrying out work for the business or undertaking are kept as a confidential record—

(a) identified as a record in relation to the worker; and

(b) for at least 30 years after the record is made.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure that the health monitoring report and results of a worker are not disclosed to another person without the worker's written consent.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) Subsection (2) does not apply if the record is disclosed under section 412 (Duty to give health monitoring report to worker), section 413 (Duty to give health monitoring report to regulator) or section 414 (Duty to give health monitoring report to relevant persons conducting businesses or undertakings) or to a person who must keep the record confidential under a duty of professional confidentiality.

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Chapter 7A Crystalline silica

418A Definitions—ch 7A

(1) In this chapter:

airborne crystalline silica means an airborne contaminant containing respirable crystalline silica.

Class H vacuum means a vacuum that complies with the requirements of Class H of AS/NZS 60335.2.69:2017 (Household and similar electrical appliances – Safety, Part 2.69: Particular requirements for wet and dry vacuum cleaners, including power brush, for commercial use), or requirements equivalent to the standard.

Class M vacuum means a vacuum that complies with the requirements of Class M of AS/NZS 60335.2.69:2017 (Household and similar electrical appliances – Safety, Part 2.69: Particular requirements for wet and dry vacuum cleaners, including power brush, for commercial use), or requirements equivalent to the standard.

Note AS/NZS 60335.2.69.2017 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

crystalline silica control measure—each of the following control measures is a ***crystalline silica control measure*** in relation to the cutting of engineered stone or other crystalline silica material:

(a) a water delivery system supplying a continuous feed of water over the cutting area is used to suppress airborne crystalline silica produced by the cutting;

(b) a wet dust suppression method;

(c) the attachment of a Class H vacuum to the tool used for cutting;

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(d) for other crystalline silica material containing less than 25% crystalline silica—the attachment of a Class M vacuum to the tool used for cutting;

(e) the use of a local exhaust ventilation system;

(f) the isolation of the place where the cutting occurs from other workers.

crystalline silica material means—

(a) engineered stone; or

(b) any cement, concrete, masonry, mortar or brick product containing crystalline silica; or

(c) natural stone containing crystalline silica.

cut includes crush, drill, grind, polish, sand and trim.

engineered stone means a stone that is artificially produced by combining natural stone that contains crystalline silica with other materials such as resin and pigment.

mechanical process does not include a process that involves plant or a tool—

(a) that relies exclusively on manual power for its operation; and

(b) is designed to be primarily supported by hand.

respiratory protective equipment means personal protective equipment that—

(a) is designed to protect the wearer from inhaling airborne crystalline silica; and

(b) complies with AS/NZS 1716:2012 (Respiratory protective devices) or requirements equivalent to the standard.

Note AS/NZS 1716:2012 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

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wet dust suppression method—

(a) means a method of suppressing airborne crystalline silica that involves the use of water or other suitable liquid, or a wetting agent; and

(b) includes using a continuous feed of water, or an emulsion, spray, curtain, mist or foam of water or other suitable liquid over the place where airborne crystalline silica is produced.

(2) In this section:

local exhaust ventilation system means an engineering control that reduces worker exposure to airborne crystalline silica in the workplace by capturing the emission of airborne crystalline silica at the source and transporting it to a safe emission point, filter or scrubber.

418B Uncontrolled dry cutting of engineered stone

A person conducting a business or undertaking at a workplace must not direct or allow a worker to cut engineered stone with a power tool or use another mechanical process to cut the material unless—

(a) a water delivery system supplying a continuous feed of water over the cutting area is used to suppress airborne crystalline silica produced by the cutting; and

(b) at least 1 other crystalline silica control measure is used.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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418BAA Uncontrolled dry cutting of other crystalline silica material

A person conducting a business or undertaking at a workplace must not direct or allow a worker to cut crystalline silica material other than engineered stone with a power tool or use another mechanical process to cut the material unless at least 1 crystalline silica control measure is used.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

418C Effective control measures for cutting engineered stone

A person conducting a business or undertaking at a workplace must ensure that the risk of cutting engineered stone with a power tool or using another mechanical process to cut the material is—

(a) eliminated so far as is reasonably practicable; or

(b) if it is not reasonably practicable to eliminate the risk—minimised so far as is reasonably practicable by—

(i) using a water delivery system supplying a continuous feed of water over the cutting area to suppress airborne crystalline silica produced by the cutting; and

(ii) using at least 1 other crystalline silica control measure; and

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(iii) ensuring that each worker at the workplace who may be exposed to airborne crystalline silica produced by the cutting wears respiratory protective equipment.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

418CAA Effective control measures for cutting other crystalline silica material

(1) A person conducting a business or undertaking at a workplace must ensure that the risk of cutting crystalline silica material other than engineered stone with a power tool or using another mechanical process to cut the material is—

(a) eliminated so far as is reasonably practicable; or

(b) if it is not reasonably practicable to eliminate the risk—minimised so far as is reasonably practicable by using the following:

(i) a water delivery system supplying a continuous feed of water over the cutting area to suppress airborne crystalline silica produced by the cutting and at least 1 other crystalline silica control measure;

(ii) if it is not reasonably practicable to use a control measure mentioned in subparagraph (i)—a wet dust suppression method and at least 1 other crystalline silica control measure;

(iii) if it is not reasonably practicable to use a control measure mentioned in subparagraph (ii)—attaching an approved vacuum to the tool used for cutting and at least 1 other crystalline silica control measure;

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(iv) if it is not reasonably practicable to use a control measure mentioned in subparagraph (iii)—a wet dust suppression method or attaching an approved vacuum to the tool used for cutting or a fully enclosed operator cabin fitted with a high efficiency air filtration system;

(v) if it is not reasonably practicable to use the control measure mentioned in subparagraph (iv)—at least 1 crystalline silica control measure and respiratory protective equipment.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) In this section:

approved vacuum means—

(a) a Class H vacuum; or

(b) for other crystalline silica material containing less than 25% crystalline silica—a Class M vacuum.

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Chapter 8 Asbestos

Part 8.1 Prohibitions and authorised conduct

419 Work involving asbestos or ACM—prohibitions and exceptions

(1) A person conducting a business or undertaking must not carry out, direct or allow a worker to carry out, work involving asbestos.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) In this section, work ***involves*** asbestos if the work involves manufacturing, supplying, transporting, importing, storing, removing, using, installing, handling, treating, disposing of or disturbing asbestos or ACM.

(3) Subsection (1) does not apply if the work involving asbestos is any of the following:

(a) genuine research and analysis;

(b) sampling and identification in accordance with this regulation;

(c) maintenance of, or service work on, non-friable asbestos or ACM, fixed or installed before 31 December 2003, in accordance with this regulation;

(d) removal or disposal of asbestos or ACM, including demolition, in accordance with this regulation;

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(e) the transport and disposal of asbestos or asbestos waste in accordance with the *Environment Protection Act 1997* and the *Dangerous Goods (Road Transport) Act 2009*;

(f) demonstrations, education or practical training in relation to asbestos or ACM;

(g) display, or preparation or maintenance for display, of an artefact or thing that is, or includes, asbestos or ACM;

(h) management in accordance with this regulation of in situ asbestos that was installed or fixed before 31 December 2003;

(i) work that disturbs asbestos during mining operations that involve the extraction of, or exploration for, a mineral other than asbestos;

(j) laundering asbestos-contaminated clothing in accordance with this regulation;

(ja) work that is being carried out in accordance with a prohibited asbestos notice issued under the Act, section 197B;

(k) minor or routine maintenance work, or other minor work, in accordance with this regulation.

(4) Subsection (1) does not apply if the regulator approves the method adopted for managing risk associated with asbestos.

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(5) Subsection (1) does not apply to the following:

(a) soil that a licensed asbestos assessor has determined—

(i) does not contain any visible ACM or friable asbestos; or

(ii) if friable asbestos is visible—does not contain more than trace levels of asbestos determined in accordance with AS 4964:2004 (Method for the qualitative identification of asbestos in bulk samples);

Note AS 4964:2004 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

(b) naturally occurring asbestos managed in accordance with an asbestos management plan prepared under section 432 (Naturally occurring asbestos—asbestos management plan).

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Part 8.2 General duty

420 Exposure to airborne asbestos at workplace—Act, s 19

(1) A person conducting a business or undertaking at a workplace must ensure that—

(a) exposure of a person at the workplace to airborne asbestos is eliminated so far as is reasonably practicable; and

(b) if it is not reasonably practicable to eliminate exposure to airborne asbestos—exposure is minimised so far as is reasonably practicable.

Note WHS Act—s 19 (see s 9).

(2) A person conducting a business or undertaking at a workplace must ensure that the exposure standard for asbestos is not exceeded at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) Subsections (1) (a) and (2) do not apply in relation to an asbestos removal area—

(a) that is enclosed to prevent the release of respirable asbestos fibres in accordance with section 477 (Removing friable asbestos); and

(b) in which negative pressure is used in accordance with that section.

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Part 8.3 Management of asbestos and associated risks

421 Application—pt 8.3

(1) This part does not apply to naturally occurring asbestos.

(2) Section 425 (Asbestos register), section 426 (Review of asbestos register), section 427 (Access to asbestos register), section 428 (Transfer of asbestos register by person relinquishing management or control), section 429 (Asbestos management plan) and section 430 (Review of asbestos management plan) do not apply to any part of residential premises that is used only for residential purposes.

422 Asbestos to be identified or assumed at workplace

(1) A person with management or control of a workplace must ensure, so far as is reasonably practicable, that all asbestos or ACM at the workplace is identified by a licensed asbestos assessor.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A person with management or control of a workplace must—

(a) if material at the workplace cannot be identified but a licensed asbestos assessor reasonably believes that the material is asbestos or ACM—assume that the material is asbestos; and

(b) if part of the workplace is inaccessible to workers and likely to contain asbestos or ACM—assume that asbestos is present in the part of the workplace; and

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(c) if the workplace is residential premises and an approved warning sign is displayed at the residential premises—assume that asbestos is present at the workplace.

(3) Subsection (1) does not apply if the person—

(a) assumes that asbestos or ACM is present; or

(b) has reasonable grounds to believe that asbestos or ACM is not present.

(4) If asbestos or ACM is assumed to be present at a workplace, it is taken to be identified at the workplace.

422A Asbestos risk assessment

(1) This section applies if friable asbestos is identified, or taken to be identified, at a workplace under section 422.

(2) A person with management or control of the workplace must ensure that—

(a) a written assessment (a ***risk assessment***) is made of the risk associated with the friable asbestos at the workplace; and

(b) the risk assessment is undertaken by a licensed asbestos assessor; and

(3) The risk assessment must—

(a) take account of the following:

(i) the condition of the friable asbestos;

(ii) the likelihood of anyone being exposed to the friable asbestos;

(iii) whether the nature or location of any work to be carried out is likely to disturb the friable asbestos;

(iv) the result of any air monitoring at the workplace; and

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(b) set out the control measures considered, or used, for control of the risks associated with the friable asbestos.

422B Asbestos risk assessment—review

(1) A person with management or control of a workplace must ensure that the risk assessment for the workplace is reviewed by a licensed asbestos assessor if any of the following apply:

(a) there is evidence of which the person is, or should be, aware that—

(i) the risk assessment is no longer valid or adequate; or

(ii) the control measures set out in the risk assessment are no longer valid or adequate;

(b) a significant change is proposed for the premises, or for work practices or procedures, relevant to the risk assessment;

(c) there is a change in the condition of the friable asbestos.

(2) A review of a risk assessment need not include more than a visual inspection of the friable asbestos if the licensed asbestos assessor considers that the inspection is sufficient to adequately assess the risk.

423 Analysis of sample

(1) A person with management or control of a workplace may identify asbestos or ACM by arranging for a sample of material at the workplace to be analysed for the presence of asbestos or ACM.

(2) If a person with management or control of a workplace arranges for an analysis, the person must ensure that the sample is analysed only by—

(a) a NATA-accredited laboratory accredited for the relevant test method; or

Note ***NATA***—see the dictionary.

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(b) a laboratory approved by the regulator in accordance with guidelines published by Safe Work Australia; or

(c) a laboratory operated by the regulator.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

424 Presence and location of asbestos to be indicated

A person with management or control of a workplace must ensure that—

(a) the presence and location of asbestos or ACM identified at the workplace under section 422 (Asbestos to be identified or assumed at workplace) is clearly indicated; and

(b) if it is reasonably practicable to do so, indicate the presence and location of the asbestos or ACM by a label.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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425 Asbestos register

(1) A person with management or control of a workplace must ensure that a register (an ***asbestos register***) is prepared and kept at the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure that the asbestos register is maintained to ensure the information in the register is up-to-date.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The asbestos register must—

(a) record any asbestos or ACM identified at the workplace under section 422 (Asbestos to be identified or assumed at workplace), or likely to be present at the workplace from time to time including—

(i) the date on which the asbestos or ACM was identified; and

(ii) details of any analysis confirming the presence of asbestos or ACM in material at the workplace; and

(iii) if asbestos or ACM is identified at the workplace by a licensed asbestos assessor—the name of the licensed asbestos assessor; and

(iv) the location, type and condition of the asbestos or ACM; or

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(b) state that no asbestos or ACM is identified at the workplace if the person knows that no asbestos or ACM is identified, or is likely to be present from time to time, at the workplace.

(3A) If a risk assessment is made of the workplace under section 422A, the asbestos register must include the risk assessment.

(4) The person is not required to prepare an asbestos register for a workplace if a register has already been prepared for that workplace.

(5) Subject to subsection (6), this section applies to buildings whenever constructed.

(6) This section does not apply to a workplace if—

(a) the workplace is a building that was constructed after 31 December 2003; and

(b) no asbestos has been identified at the workplace; and

(c) no asbestos is likely to be present at the workplace from time to time.

426 Review of asbestos register

(1) A person with management or control of a workplace where an asbestos register is kept must ensure that the register is reviewed and as necessary revised if—

(a) the asbestos management plan is reviewed under section 430 (Review of asbestos management plan); or

(b) further asbestos or ACM is identified at the workplace; or

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(c) asbestos is removed from, or disturbed, sealed or enclosed at, the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A person with management or control of a workplace where an asbestos register is kept must ensure that the register records—

(a) the date of each review; and

(b) the name of each person who conducted the review; and

(c) the review's findings and conclusions.

427 Access to asbestos register

(1) A person with management or control of a workplace where an asbestos register is kept must ensure that the asbestos register is readily accessible to—

(a) a worker who has carried out, carries out or intends to carry out, work at the workplace; and

(b) a health and safety representative who represents a worker mentioned in paragraph (a); and

(c) a person conducting a business or undertaking who has carried out, carries out or intends to carry out, work at the workplace; and

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(d) a person conducting a business or undertaking who has required, requires, or intends to require work to be carried out at the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If a person conducting a business or undertaking carries out, or intends to carry out, work at a workplace that involves a risk of exposure to airborne asbestos, the person with management or control of the workplace must ensure that the person is given a copy of the asbestos register.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

428 Transfer of asbestos register by person relinquishing management or control

If a person with management or control of a workplace plans to relinquish management or control of the workplace, the person must ensure, so far as is reasonably practicable, that the asbestos register is given to the person, if any, assuming management or control of the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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429 Asbestos management plan

(1) This section applies if asbestos or ACM is—

(a) identified at a workplace under section 422 (Asbestos to be identified or assumed at workplace); or

(b) likely to be present at a workplace from time to time.

(2) A person with management or control of the workplace must ensure that a written plan (an ***asbestos management plan***) for the workplace is prepared.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) A person with management or control of the workplace must ensure that the asbestos management plan is maintained to ensure the information in the plan is up-to-date.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) An asbestos management plan must include—

(a) if a risk assessment has been made of the workplace under section 422A—the risk assessment; and

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(b) information about the following:

(i) the identification of asbestos or ACM;

Example

a reference or link to the asbestos register for the workplace and signage and labelling

(ii) decisions, and reasons for decisions, about the management of asbestos at the workplace;

Example

safe work procedures and control measures

(iii) procedures for detailing incidents or emergencies involving asbestos or ACM at the workplace;

(iv) workers carrying out work involving asbestos.

Example

consultation, responsibilities, information and training

(5) A person with management or control of a workplace must ensure that a copy of the asbestos management plan for the workplace is readily accessible to—

(a) a worker who has carried out, carries out or intends to carry out, work at the workplace; and

(b) a health and safety representative who represents a worker mentioned in paragraph (a); and

(c) a person conducting a business or undertaking who has carried out, carries out or intends to carry out, work at the workplace; and

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(d) a person conducting a business or undertaking who has required, requires, or intends to require work to be carried out at the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

430 Review of asbestos management plan

(1) A person with management or control of a workplace that has an asbestos management plan must ensure that the plan is reviewed and as necessary revised in the following circumstances:

(a) there is a review of the asbestos register or a control measure;

(b) asbestos is removed from, or disturbed, sealed or enclosed at, the workplace;

(c) the plan is no longer adequate for managing asbestos or ACM at the workplace;

(d) a health and safety representative requests a review under subsection (2);

(e) at least once every 5 years.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) A health and safety representative for workers at a workplace may request a review of an asbestos management plan if the representative reasonably believes that—

(a) a circumstance mentioned in subsection (1) (a), (b) or (c) affects or may affect the health and safety of a member of the work group represented by the health and safety representative; and

(b) the person with management or control of the workplace has not adequately reviewed the asbestos management plan in response to the circumstance.

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Part 8.4 Management of naturally occurring asbestos

431 Naturally occurring asbestos—Act, s 20

The person with management or control of a workplace must manage, in accordance with part 3.1 (Managing risks to health and safety), risks to health and safety associated with naturally occurring asbestos at the workplace.

Note WHS Act—s 20 (see s 9).

432 Naturally occurring asbestos—asbestos management plan

(1) This section applies if naturally occurring asbestos is—

(a) identified at a workplace; or

(b) likely to be present at a workplace.

(2) A person with management or control of the workplace must ensure that a written plan (an ***asbestos management plan***) for the workplace is prepared in relation to the naturally occurring asbestos.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) A person with management or control of the workplace must ensure that the asbestos management plan is maintained to ensure the information in the plan is up-to-date.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) An asbestos management plan must include information about the following:

(a) the identification of naturally occurring asbestos;

(b) decisions, and reasons for decisions, about the management of naturally occurring asbestos at the workplace;

Example

safe work procedures and control measures

(c) procedures for detailing incidents or emergencies involving naturally occurring asbestos at the workplace;

(d) workers carrying out work involving naturally occurring asbestos.

Example

consultation, responsibilities, information and training

(5) A person with management or control of a workplace must ensure that a copy of the asbestos management plan for naturally occurring asbestos at the workplace is readily accessible to—

(a) a worker who has carried out, carries out or intends to carry out, work at the workplace; and

(b) a health and safety representative who represents a worker mentioned in paragraph (a); and

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(c) a person conducting a business or undertaking who has carried out, carries out or intends to carry out, work at the workplace; and

(d) a person conducting a business or undertaking who has required, requires, or intends to require work to be carried out at the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

433 Naturally occurring asbestos—review of asbestos management plan

A person with management or control of a workplace that has an asbestos management plan for naturally occurring asbestos must ensure that the plan is reviewed and as necessary revised if the plan is no longer adequate for managing naturally occurring asbestos at the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Example

a control measure is revised under s 38

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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434 Training in relation to naturally occurring asbestos

A person conducting a business or undertaking must ensure that the training required under section 445 (Duty to train workers about asbestos awareness) and section 445A (Duty to train workers about working with asbestos) includes training in the hazards and risks associated with naturally occurring asbestos for workers who carry out work where naturally occurring asbestos is likely to be found.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Part 8.5 Asbestos at the workplace

Division 8.5.1 Health monitoring

435 Duty to provide health monitoring

(1) A person conducting a business or undertaking must ensure that health monitoring is provided, in accordance with section 436, to a worker carrying out work for the business or undertaking if the worker is—

(a) carrying out licensed asbestos removal work at a workplace and is at risk of exposure to asbestos when carrying out the work; or

(b) is carrying out other ongoing asbestos removal work or asbestos-related work and is at risk of exposure to asbestos when carrying out the work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) For the purposes of subsection (1) (a), the person must ensure that the health monitoring of the worker commences before the worker carries out licensed asbestos removal work.

(3) The person must ensure that the worker is informed of any health monitoring requirements before the worker carries out any work that may expose the worker to asbestos.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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436 Duty to ensure appropriate health monitoring provided

A person conducting a business or undertaking must ensure that the health monitoring of a worker mentioned in section 435 includes—

(a) consideration of—

(i) the worker's demographic, medical and occupational history; and

(ii) records of the worker's personal exposure; and

(b) a physical examination of the worker;

unless another type of health monitoring is recommended by a registered medical practitioner.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

437 Duty to ensure health monitoring supervised by registered medical practitioner with relevant experience

(1) A person conducting a business or undertaking must ensure that the health monitoring of a worker mentioned in section 435 (Duty to provide health monitoring) is carried out by or under the supervision of a registered medical practitioner with experience in health monitoring.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The person must consult the worker in relation to the selection of the registered medical practitioner.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

438 Duty to pay costs of health monitoring

(1) A person conducting a business or undertaking must pay all expenses relating to health monitoring mentioned in section 435 (Duty to provide health monitoring).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If 2 or more persons conducting businesses or undertakings have a duty to provide health monitoring for a worker and have arranged for one of them to commission the health monitoring, the costs of the health monitoring for which any of those persons is liable must be apportioned equally between each of those persons unless they agree otherwise.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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439 Information that must be provided to registered medical practitioner

A person conducting a business or undertaking who commissions health monitoring for a worker must provide the following information to the registered medical practitioner carrying out or supervising the health monitoring:

(a) the name and address of the person conducting the business or undertaking;

(b) the name and date of birth of the worker;

(c) the work that the worker is, or will be, carrying out that has triggered the requirement for health monitoring;

(d) if the worker has started that work, how long the worker has been carrying out that work.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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440 Duty to obtain health monitoring report

(1) A person conducting a business or undertaking who commissioned health monitoring mentioned in section 435 (Duty to provide health monitoring) must take all reasonable steps to obtain a health monitoring report from the registered medical practitioner who carried out or supervised the monitoring as soon as practicable after the monitoring is carried out in relation to a worker.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The health monitoring report must include the following:

(a) the name and date of birth of the worker;

(b) the name and registration number of the registered medical practitioner;

(c) the name and address of the person conducting the business or undertaking who commissioned the health monitoring;

(d) the date of health monitoring;

(e) any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the work that triggered the requirement for health monitoring;

(f) any recommendation that the person conducting the business or undertaking take remedial measures, including whether the worker can continue to carry out the type of work that triggered the requirement for health monitoring;

(g) whether medical counselling is required for the worker in relation to the work that triggered the requirement for health monitoring.

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441 Duty to give health monitoring report to worker

A person conducting a business or undertaking who commissioned health monitoring for a worker must give a copy of the health monitoring report to the worker as soon as practicable after the person obtains the report.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

442 Duty to give health monitoring report to regulator

A person conducting a business or undertaking for which a worker is carrying out work for which health monitoring is required must give a copy of the health monitoring report relating to a worker to the regulator as soon as practicable after obtaining the report if the report contains—

(a) any advice that test results indicate that the worker may have contracted a disease, injury or illness as a result of carrying out the work that triggered the requirement for health monitoring; or

(b) any recommendation that the person conducting the business or undertaking take remedial measures, including whether the worker can continue to carry out the work mentioned in section 435 (Duty to provide health monitoring).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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443 Duty to give health monitoring report to relevant persons conducting businesses or undertakings

A person conducting a business or undertaking who commissioned health monitoring for a worker must give a copy of the health monitoring report to all other persons conducting businesses or undertakings who have a duty to provide health monitoring for the worker as soon as practicable after obtaining the report.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

444 Health monitoring records

(1) A person conducting a business or undertaking must ensure that health monitoring reports in relation to a worker carrying out work for the business or undertaking are kept as a confidential record—

(a) identified as a record in relation to the worker; and

(b) for at least 40 years after the record is made.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The person must ensure that the health monitoring report and results of a worker are not disclosed to another person without the worker's written consent.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) Subsection (2) does not apply if the record is disclosed under section 442 (Duty to give health monitoring report to regulator) or section 443 (Duty to give health monitoring report to relevant persons conducting businesses or undertakings) or to a person who must keep the record confidential under a duty of professional confidentiality.

Division 8.5.2 Training

445 Duty to train workers about asbestos awareness

(1) In addition to the training required by division 3.2.1 (Information, training and instruction), a person conducting a business or undertaking must ensure that the following people are trained in a course in asbestos awareness declared under subsection (1A) (a):

(a) a worker engaged by the person who the person reasonably believes will work with asbestos or ACM while the worker is carrying out work in the business or undertaking;

(b) a worker engaged by the person in an occupation declared under subsection (1A) (b).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(1A) The Minister may declare—

(a) a course in asbestos awareness; and

(b) an occupation for which training in a course in asbestos awareness is required.

(1B) A declaration is a notifiable instrument.

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

(2) This section does not apply in relation to a licensed asbestos removalist or a licensed asbestos assessor.

(3) The person must ensure that a record is kept of the training undertaken by the worker—

(a) while the worker is carrying out work in the business or undertaking; and

(b) for 5 years after the day the worker ceases working for the person.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person must keep the record available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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445A Duty to train workers about working with asbestos

(1) In addition to the training required by division 3.2.1 (Information, training and instruction), a person conducting a business or undertaking must ensure that a worker engaged by the person in an occupation declared under subsection (2) (a) is trained in a course in working safely with asbestos declared under subsection (2) (b).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The Minister may declare—

(a) an occupation for which training in a course in working safely with asbestos is required; and

(b) a course in working safely with asbestos.

(3) A declaration is a notifiable instrument.

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

(4) This section does not apply in relation to a licensed asbestos removalist or a licensed asbestos assessor.

(5) The person must ensure that a record is kept of the training undertaken by the worker—

(a) while the worker is carrying out work in the business or undertaking; and

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(b) for 5 years after the day the worker ceases working for the person.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(6) The person must keep the record available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Division 8.5.3 Control on use of certain equipment

446 Duty to limit use of equipment

(1) A person conducting a business or undertaking must not use, or direct or allow a worker to use, either of the following on asbestos or ACM:

(a) high-pressure water spray;

(b) compressed air.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) Subsection (1) (a) does not apply to the use of a high-pressure water spray for firefighting or fire protection purposes.

(3) A person conducting a business or undertaking must not use, or direct or allow a worker to use, any of the following equipment on asbestos or ACM unless the use of the equipment is controlled:

(a) power tools;

(b) brooms;

(c) any other implements that cause the release of airborne asbestos into the atmosphere.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) In this section:

controlled—the use of equipment is ***controlled*** if—

(a) the equipment is enclosed during its use; or

(b) the equipment is designed to capture or suppress airborne asbestos and is used in accordance with its design; or

(c) the equipment is used in a way that is designed to capture or suppress airborne asbestos safely; or

(d) any combination of paragraphs (a), (b) and (c) applies.

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Part 8.6 Demolition and refurbishment

447 Application—pt 8.6

(1) This part applies to the demolition or refurbishment of a structure or plant constructed or installed before 31 December 2003.

(2) In this section:

demolition or refurbishment does not include minor or routine maintenance work, or other minor work.

448 Review of asbestos register

The person with management or control of a workplace must ensure that, before demolition or refurbishment is carried out at the workplace, the asbestos register for the workplace is—

(a) reviewed; and

(b) if the register is inadequate having regard to the proposed demolition or refurbishment—revised.

Example

the register identifies an inaccessible area that is likely to contain asbestos and the area is likely to be accessible because of demolition

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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449 Duty to give asbestos register to person conducting business or undertaking of demolition or refurbishment

The person with management or control of a workplace must ensure that the person conducting a business or undertaking who carries out the demolition or refurbishment is given a copy of the asbestos register before the demolition or refurbishment is commenced.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

450 Duty to obtain asbestos register

A person conducting a business or undertaking who carries out demolition or refurbishment at a workplace must obtain a copy of the asbestos register from the person with management or control of the workplace, before the person commences the demolition or refurbishment.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

451 Determining presence of asbestos or ACM

(1) This section applies if—

(a) demolition or refurbishment is to be carried out at a workplace; and

(b) there is no asbestos register for the structure or plant to be demolished or refurbished at the workplace.

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(2) The person conducting a business or undertaking who is to carry out the demolition or refurbishment must not carry out the demolition or refurbishment until the structure or plant has been inspected to determine whether asbestos or ACM is fixed to or installed in the structure or plant.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person conducting a business or undertaking who is to carry out the demolition or refurbishment must ensure that the determination is undertaken by a licensed asbestos assessor.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person conducting a business or undertaking who is to carry out the demolition or refurbishment must assume that asbestos or ACM is fixed to or installed in the structure or plant if—

(a) the licensed asbestos assessor is, on reasonable grounds, uncertain whether or not asbestos is fixed to or installed in the structure or plant; or

(b) part of the structure or plant is inaccessible and likely to be disturbed; or

(c) the structure or plant is at residential premises and an approved warning sign is displayed at the residential premises.

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(5) If asbestos or ACM is determined or assumed to be fixed to or installed in the structure or plant, the person conducting a business or undertaking who is to carry out the demolition or refurbishment must inform—

(a) if the workplace is residential premises—

(i) the occupier of the premises; and

(ii) the owner of the premises; and

(b) in any other case—the person with management or control of the workplace.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

452 Identification and removal of asbestos before demolition

(1) This section applies if a structure or plant at a workplace is to be demolished.

(2) This section does not apply—

(a) in an emergency to which section 454 (Emergency procedure) applies; or

(b) to residential premises.

(3) The person with management or control of the workplace, or of the structure or plant, must ensure—

(a) that all asbestos that is likely to be disturbed by the demolition is identified; and

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(b) so far as is reasonably practicable, that the asbestos is removed before the demolition is commenced.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) Subsection (3) (b) does not apply if the purpose of the demolition is to gain access to the asbestos.

453 Identification and removal of asbestos before demolition of residential premises

(1) A person conducting a business or undertaking that is to carry out the demolition of residential premises must ensure—

(a) that all asbestos that is likely to be disturbed by the demolition is identified; and

(b) so far as is reasonably practicable, that the asbestos is removed before the demolition is commenced.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) This section does not apply in an emergency to which section 455 (Emergency procedure—residential premises) applies.

(3) Subsection (1) (b) does not apply if the purpose of the demolition is to gain access to the asbestos.

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454 Emergency procedure

(1) This section applies if—

(a) an emergency occurs at a workplace other than residential premises; and

(b) a structure or plant at the workplace must be demolished; and

(c) asbestos is fixed to or installed in the structure or plant before the emergency occurs.

(2) The person with management or control of the workplace must ensure, so far as is reasonably practicable, that—

(a) before the demolition is commenced, a procedure is developed that will, so far as is reasonably practicable, reduce the risk of exposure of workers and persons in the vicinity of the demolition site to asbestos to below the exposure standard; and

(b) the asbestos register for the workplace is considered in the development of the procedure.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure that the regulator is given written notice about the emergency—

(a) immediately after the person becomes aware of the emergency; and

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(b) before the demolition is commenced.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) For the purposes of this section, an ***emergency*** occurs if—

(a) a structure or plant is structurally unsound; or

(b) collapse of the structure or plant is imminent.

455 Emergency procedure—residential premises

(1) This section applies if—

(a) an emergency occurs at residential premises; and

(b) a structure or plant at the premises must be demolished; and

(c) asbestos is fixed to or installed in the structure or plant before the emergency occurs.

(2) A person conducting a business or undertaking who is to carry out the demolition of the residential premises must ensure so far as is reasonably practicable, that, before the demolition is commenced, a procedure is developed that will, so far as is reasonably practicable, reduce the risk of exposure of workers and persons in the vicinity of the demolition site to asbestos to below the exposure standard.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) The person must ensure that the regulator is given written notice about the emergency—

(a) immediately after the person becomes aware of the emergency; and

(b) before the demolition is commenced.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) For the purposes of this section, an ***emergency*** occurs if—

(a) a structure or plant is structurally unsound; or

(b) collapse of the structure or plant is imminent.

456 Identification and removal of asbestos before refurbishment

(1) This section applies if a structure or plant at a workplace is to be refurbished.

(2) This section does not apply to residential premises.

(3) The person with management or control of the workplace, or of the structure or plant, must ensure that—

(a) all asbestos that is likely to be disturbed by the refurbishment is identified; and

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(b) so far as is reasonably practicable, the asbestos is removed before the refurbishment is commenced.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

457 Refurbishment of residential premises

A person conducting a business or undertaking who is to carry out refurbishment of residential premises must ensure that—

(a) all asbestos that is likely to be disturbed by the refurbishment is identified; and

(b) so far as is reasonably practicable, the asbestos is removed before the refurbishment is commenced.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Part 8.7 Asbestos removal work

458 Duty to ensure asbestos removalist is licensed

A person conducting a business or undertaking that commissions the removal of asbestos must ensure that the asbestos removal work is carried out by a licensed asbestos removalist who is licensed to carry out the work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 ***Licensed asbestos removalist***—see the dictionary.

Note 2 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 3 For certain asbestos removal work that involves building work, a licensed asbestos removalist must also be, or be supervised by, a licensed builder under the *Construction Occupations (Licensing) Act 2004*.

459 Asbestos removal supervisor must be present

A licensed asbestos removalist must ensure that the nominated asbestos removal supervisor for asbestos removal work is present at the asbestos removal area whenever the removal work is being carried out.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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460 Asbestos removal worker must be trained

(1) A licensed asbestos removalist must not direct or allow a worker to carry out licensed asbestos removal work unless the removalist is satisfied that the worker holds a certification in relation to the specified VET course for asbestos removal relevant to the class of licensed asbestos removal work to be carried out by the worker.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 ***Licensed asbestos removal work***—see the dictionary.

Note 2 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A licensed asbestos removalist must provide appropriate training to a worker carrying out licensed asbestos removal work at a workplace to ensure that the work is carried out in accordance with the asbestos removal control plan for the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) In this section:

appropriate training means training designed specifically for the workplace where the licensed asbestos removal work is carried out and the work to be carried out at the workplace.

Note Unless this section applies, the obligation to provide training to workers carrying out unlicensed asbestos removal work is set out in s 445.

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461 Licensed asbestos removalist must keep training records

(1) A licensed asbestos removalist must keep a record of the training undertaken by a worker carrying out licensed asbestos removal work—

(a) while the worker is carrying out licensed asbestos removal work; and

(b) for 5 years after the day the worker stopped carrying out licensed asbestos removal work for the removalist.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The licensed asbestos removalist must ensure that the training record is readily accessible at the asbestos removal area and available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

462 Duty to give information about health risks of licensed asbestos removal work

A licensed asbestos removalist must give the following information to a person likely to be engaged to carry out licensed asbestos removal work before the person is engaged to carry out the work:

(a) the health risks and health effects associated with exposure to asbestos;

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(b) the need for, and details of, health monitoring of a worker carrying out licensed asbestos removal work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

463 Asbestos removalist must obtain register

(1) A licensed asbestos removalist must obtain a copy of the asbestos register for a workplace before the removalist carries out asbestos removal work at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Subsection (1) does not apply if the asbestos removal work is to be carried out at residential premises.

464 Asbestos removal control plan

(1) A licensed asbestos removalist must prepare an asbestos removal control plan for any licensed asbestos removal work the removalist is commissioned to undertake.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) An asbestos removal control plan must include—

(a) details of how the asbestos removal will be carried out, including the method to be used and the tools, equipment and personal protective equipment to be used; and

(b) details of the asbestos to be removed, including the location, type and condition of the asbestos.

(3) The licensed asbestos removalist must give a copy of the asbestos removal control plan to the person who commissioned the licensed asbestos removal work.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

465 Asbestos removal control plan to be kept and available

(1) Subject to subsection (2), a licensed asbestos removalist must ensure that a copy of the asbestos removal control plan prepared under section 464 is kept until the asbestos removal work to which it relates is completed.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) If a notifiable incident occurs in connection with the asbestos removal work to which the asbestos removal control plan relates, the licensed asbestos removalist must keep the asbestos removal control plan for at least 2 years after the incident occurs.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The licensed asbestos removalist must ensure that, for the period for which the asbestos removal control plan must be kept under this section, a copy is—

(a) readily accessible to—

(i) a person conducting a business or undertaking at the workplace; and

(ii) the person's workers at the workplace, or a health and safety representative who represents the workers; and

(iii) if the asbestos removal work is to be carried out in residential premises—the occupants of the premises; and

(b) available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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466 Regulator must be notified of asbestos removal

(1) A licensed asbestos removalist must give written notice to the regulator at least 5 days before the removalist commences licensed asbestos removal work.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Despite subsection (1), licensed asbestos removal work may be commenced immediately if there is—

(a) a sudden and unexpected event, including a failure of equipment, that may cause persons to be exposed to respirable asbestos fibres; or

(b) an unexpected breakdown of an essential service that requires immediate rectification to enable the service to continue.

(3) If the asbestos must be removed immediately, the licensed asbestos removalist must give notice to the regulator—

(a) immediately by telephone; and

(b) in writing, within 24 hours after notice is given under paragraph (a).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(4) A notice under subsection (1) or (3) must include the following:

(a) the following in relation to the licensed asbestos removalist:

(i) name;

(ii) registered business name;

(iii) Australian Business Number;

(iv) licence number;

(v) business contact details;

(b) the name and business contact details of the supervisor of the licensed asbestos removal work;

(c) the name of the licensed asbestos assessor engaged to carry out a clearance inspection and issue a clearance certificate for the work;

(ca) if air monitoring of the asbestos removal area is required under section 475 (Air monitoring—asbestos removal requiring Class A asbestos removal licence)—the name of the independent licensed asbestos assessor engaged to undertake the air monitoring.

(d) the name and contact details of the person for whom the work is to be carried out;

(e) the following in relation to the workplace where the asbestos is to be removed:

(i) the name, including the registered business or company name, of the person with management or control of the workplace;

(ii) the address and, if the workplace is large, the specific location of the asbestos removal;

(iii) the kind of workplace;

(f) the date of the notice;

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(g) the date when the asbestos removal work is to commence and the estimated duration of the work;

(h) whether the asbestos to be removed is friable or non-friable;

(i) if the asbestos to be removed is friable—the way the area of removal will be enclosed;

(j) the estimated quantity of asbestos to be removed;

(k) the number of workers who are to carry out the asbestos removal work;

(l) for each worker who is to carry out asbestos removal work—details of the worker's competency to carry out asbestos removal work.

467 Licensed asbestos removalist must inform certain persons about intended asbestos removal work

(1) This section applies if a licensed asbestos removalist is to carry out licensed asbestos removal work at a workplace.

(2) The licensed asbestos removalist must, before commencing the licensed asbestos removal work, inform the person with management or control of the workplace—

(a) that licensed asbestos removal work is to be carried out at the workplace; and

(b) when the work is to commence.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(3) If the workplace is residential premises, the licensed asbestos removalist must, so far as is reasonably practicable, before commencing the licensed asbestos removal work, inform the following persons that asbestos removal work is to be carried out at the workplace, and when the work is to commence:

(a) the person who commissioned the asbestos removal work;

(b) a person conducting a business or undertaking at the workplace;

(c) the occupier of the residential premises;

(d) the owner of the residential premises;

(e) anyone occupying premises in the immediate vicinity of the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

468 Person with management or control of workplace must inform persons about asbestos removal work

(1) This section applies if the person with management or control of a workplace is informed that asbestos removal work is to be carried out at the workplace.

(2) The person must ensure that the following persons are informed that asbestos removal work is to be carried out at the workplace and when the work is to commence, before the work commences:

(a) the person's workers and any other persons at the workplace;

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(b) the person who commissioned the asbestos removal work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must take all reasonable steps to ensure that the following persons are informed that asbestos removal work is to be carried out at the workplace and when the work is to commence, before the work commences:

(a) anyone conducting a business or undertaking at, or in the immediate vicinity of, the workplace;

(b) anyone occupying premises in the immediate vicinity of the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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469 Signage and barricades for asbestos removal work

A licensed asbestos removalist must ensure that—

(a) signs alerting persons to the presence of asbestos are placed to indicate where the asbestos removal work is being carried out; and

(b) barricades are erected to delineate the asbestos removal area.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

470 Limiting access to asbestos removal area

(1) This section applies to—

(a) a person conducting a business or undertaking at a workplace who commissions a person to carry out licensed asbestos removal work at the workplace; and

(b) a person with management or control of a workplace who is aware that licensed asbestos removal work is being carried out at the workplace.

(2) Subject to subsection (4), the person must ensure, so far as is reasonably practicable, that no-one other than the following has access to an asbestos removal area:

(a) workers engaged in the asbestos removal work;

(b) other persons associated with the asbestos removal work;

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(c) anyone allowed under this regulation or another law to be in the asbestos removal area.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person may refuse to allow access to an asbestos removal area at the workplace to anyone who does not comply with—

(a) a control measure implemented for the workplace in relation to asbestos; or

(b) a direction of the licensed asbestos removalist.

(4) A person mentioned in subsection (2) (a), (b) or (c) has access to an asbestos removal area subject to any direction of the licensed asbestos removalist.

(5) If a person mentioned in subsection (2) (a), (b) or (c) has access to an asbestos removal area, the person must comply with any direction of the licensed asbestos removalist.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

471 Decontamination facilities

(1) A licensed asbestos removalist must ensure that facilities are available to decontaminate the following:

(a) the asbestos removal area;

(b) any plant used in the asbestos removal area;

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(c) workers carrying out asbestos removal work;

(d) other persons who have access to the asbestos removal area under section 470 (2) (b).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A licensed asbestos removalist must ensure that nothing that is likely to be contaminated with asbestos is removed from the asbestos removal area unless the thing—

(a) is decontaminated before being removed; or

(b) is sealed in a container, and the exterior of the container is, before being removed—

(i) decontaminated; and

(ii) labelled in accordance with the GHS to indicate the presence of asbestos.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 ***GHS***—see the dictionary.

Note 2 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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472 Disposing of asbestos waste and contaminated personal protective equipment

(1) Subject to subsections (2) and (3), a licensed asbestos removalist must ensure that asbestos waste—

(a) is contained and labelled in accordance with the GHS before the waste is removed from an asbestos removal area; and

Note ***GHS***—see the dictionary.

(b) is disposed of as soon as practicable at a site authorised to accept asbestos waste.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A licensed asbestos removalist must ensure that personal protective equipment used in asbestos removal work and contaminated with asbestos—

(a) is sealed in a container before being removed from an asbestos waste area; and

(b) so far as is reasonably practicable, is disposed of on the completion of the asbestos removal work at a site authorised to accept asbestos waste; and

(c) if it is not reasonably practicable to dispose of the personal protective equipment that is clothing—

(i) is laundered at a laundry equipped to launder asbestos-contaminated clothing; or

(ii) if it is not practicable to launder the clothing—is kept in the sealed container until it is re-used for asbestos removal purposes; and

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(d) if it is not reasonably practicable to dispose of the personal protective equipment that is not clothing—

(i) is decontaminated before it is removed from the asbestos removal area; or

(ii) if it is not practicable to decontaminate the equipment in the asbestos removal area—is kept in the sealed container until it is re-used for asbestos removal purposes.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Example—personal protective equipment

work boots

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) A licensed asbestos removalist must ensure that a sealed container mentioned in subsection (2) is decontaminated and labelled in accordance with the GHS to indicate the presence of asbestos before being removed from the asbestos removal area.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 ***GHS***—see the dictionary.

Note 2 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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473 Clearance inspection

(1) This section applies if a person commissions licensed asbestos removal work at a workplace.

(2) The person or, if the workplace is residential premises, the licensed asbestos removalist must ensure that, when the licensed asbestos removal work is completed, an independent licensed asbestos assessor carries out a clearance inspection of—

(a) the asbestos removal area; and

(b) the area surrounding the asbestos removal area, including access and egress pathways.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) In this part:

clearance inspection means an inspection of an asbestos removal area after asbestos removal work has been completed to verify that the area is safe for normal use, that—

(a) includes a visual inspection; and

(b) may include air monitoring.

Note If it is not reasonably practicable for the licensed asbestos assessor to be independent, the person or licensed asbestos removalist may apply to the regulator for an exemption under pt 11.2 from the requirement that the assessor be independent.

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474 Clearance certificates

(1) This section applies if a clearance inspection has been made in accordance with section 473.

(2) The licensed asbestos assessor who carried out the clearance inspection must issue a clearance certificate, in accordance with this section, before the asbestos removal area at the workplace is re-occupied.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The licensed asbestos assessor must ensure that the asbestos removal area does not pose a risk to health and safety from exposure to asbestos.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The licensed asbestos assessor must not issue a clearance certificate unless satisfied that—

(a) the asbestos removal area, and the area immediately surrounding it, are free from visible asbestos contamination; and

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(b) if the assessor undertook air monitoring as part of the clearance inspection—the monitoring shows asbestos below 0.01 fibres/mL.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) The clearance certificate must be in writing and must state that—

(a) the assessor found no visible asbestos residue from asbestos removal work in the area, or in the vicinity of the area, where the work was carried out; and

(b) if air monitoring was carried out by the assessor as part of the clearance inspection—the airborne asbestos fibre level was less than 0.01 asbestos fibres/mL.

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Part 8.8 Asbestos removal requiring Class A asbestos removal licence

475 Air monitoring—asbestos removal requiring Class A asbestos removal licence

(1) A person conducting a business or undertaking who commissions asbestos removal work requiring a Class A asbestos removal licence at a workplace must ensure that an independent licensed asbestos assessor undertakes air monitoring of the asbestos removal area at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If the workplace is residential premises, the licensed removalist carrying out asbestos removal work requiring a Class A asbestos removal licence at the premises must ensure that an independent licensed asbestos assessor undertakes air monitoring of the asbestos removal area at the premises.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The air monitoring must be carried out—

(a) immediately before the licensed asbestos removal work commences; and

(b) while the licensed asbestos removal work is carried out.

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(4) The person who commissions the licensed asbestos removal work must ensure that the results of the air monitoring are given to the following:

(a) workers at the workplace;

(b) health and safety representatives for workers at the workplace;

(c) a person conducting a business or undertaking at the workplace;

(d) other persons at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) If the workplace is residential premises, the licensed asbestos removalist carrying out the licensed asbestos removal work at the premises must ensure that the results of the air monitoring are given to the following:

(a) the person who commissioned the asbestos removal work;

(b) workers at the workplace;

(c) health and safety representatives for workers at the workplace;

(d) a person conducting a business or undertaking at the workplace;

(e) the occupier of the residential premises;

(f) the owner of the residential premises;

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(g) other persons at the workplace.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(6) An independent licensed asbestos assessor, who undertakes air monitoring for the purposes of this section, must use the membrane filter method for the air monitoring.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

476 Action if respirable asbestos fibre level too high

(1) The licensed removalist carrying out asbestos removal work requiring a Class A asbestos removal licence at a workplace must—

(a) if respirable asbestos fibre levels are recorded at the asbestos removal area at 0.01 fibres/mL or more, but not at 0.02 fibres/mL or more—immediately—

(i) investigate the cause of the respirable asbestos fibre level; and

(ii) implement controls to prevent exposure of anyone to asbestos; and

(iii) prevent the further release of respirable asbestos fibres; and

(b) if respirable asbestos fibre levels are recorded at the asbestos removal area at 0.02 fibres/mL or more—immediately—

(i) order the asbestos removal work to stop; and

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(ii) notify the regulator; and

(iii) investigate the cause of the respirable asbestos fibre level; and

(iv) implement controls to prevent exposure of anyone to asbestos; and

(v) prevent the further release of respirable asbestos fibre.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If the licensed removalist stops asbestos removal work requiring a Class A asbestos removal licence because the recorded respirable asbestos fibre level reaches or exceeds 0.02 fibres/mL, the removalist must ensure that the asbestos removal work does not resume until air monitoring shows that the recorded respirable asbestos fibre level is below 0.01 fibres/mL.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

477 Removing friable asbestos

(1) A licensed asbestos removalist removing friable asbestos must ensure, so far as is reasonably practicable, the following:

(a) the asbestos removal area is enclosed to prevent the release of respirable asbestos fibres;

(b) negative pressure is used;

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(c) the wet method of asbestos removal is used;

(d) the asbestos removal work does not commence until the air monitoring is commenced by a licensed asbestos assessor;

(e) air monitoring is undertaken during the asbestos removal work, at times decided by the independent licensed asbestos assessor undertaking the monitoring.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A licensed asbestos removalist must ensure that any enclosure used in removing friable asbestos is tested for leaks.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The licensed removalist must not dismantle an enclosure for a friable asbestos removal area until the removalist receives results of air monitoring, showing that the recorded respirable asbestos fibre level within the enclosure is below 0.01 fibres/mL, from—

(a) if the friable asbestos is removed from residential premises—the licensed asbestos assessor who undertook the air monitoring; or

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(b) in any other case—the person who commissioned the Class A asbestos removal work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The licensed removalist must ensure that an enclosure for a friable asbestos removal area is dismantled in a way that, so far as is reasonably practicable, eliminates the release of respirable asbestos fibre.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) The person who commissioned the removal of the friable asbestos must obtain a clearance certificate from a licensed asbestos assessor after the enclosure for the friable asbestos removal area has been dismantled.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Part 8.9 Asbestos-related work

478 Application—pt 8.9

This part applies in relation to asbestos-related work.

479 Uncertainty as to presence of asbestos

(1) If there is uncertainty (based on reasonable grounds) as to whether work to be carried out for a business or undertaking is asbestos-related work, the person conducting the business or undertaking must ensure that analysis of a sample is undertaken to determine if asbestos or ACM is present.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) For the purposes of subsection (1), the person must ensure that the sample is analysed only by—

(a) a NATA-accredited laboratory accredited for the relevant test method; or

Note ***NATA***—see the dictionary.

(b) a laboratory approved by the regulator in accordance with guidelines published by Safe Work Australia; or

(c) a laboratory operated by the regulator.

(3) Subsection (1) does not apply if the person assumes that asbestos is present.

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480 Duty to give information about health risks of asbestos-related work

A person conducting a business or undertaking must give the following information to a person likely to be engaged to carry out asbestos-related work for the business or undertaking before the person is engaged to carry out the work:

(a) the health risks and health effects associated with exposure to asbestos;

(b) the need for, and details of, health monitoring of a worker carrying out asbestos-related work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

481 Asbestos-related work to be in separate area

A person conducting a business or undertaking that involves the carrying out of asbestos-related work must ensure that—

(a) the asbestos-related work area is separated from other work areas at the workplace; and

(b) signs alerting persons to the presence of asbestos are placed to indicate where the asbestos-related work is being carried out; and

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(c) barricades are erected to delineate the asbestos-related work area.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

482 Air monitoring

(1) A person conducting a business or undertaking at a workplace must ensure that a licensed asbestos assessor carries out air monitoring of the work area where asbestos-related work is being carried out if there is uncertainty as to whether the exposure standard is likely to be exceeded.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If the licensed asbestos assessor determines that the exposure standard has been exceeded at any time in a work area, the person conducting the business or undertaking must, so far as is reasonably practicable—

(a) determine the workers and other persons who were in the work area during that time; and

(b) warn those workers about possible exposure to respirable asbestos fibres; and

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(c) so far as is reasonably practicable, warn the other persons about possible exposure to respirable asbestos fibres.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person conducting the business or undertaking must ensure that information about exposure to respirable asbestos fibres, including the determination made by the licensed asbestos assessor and the results of the air monitoring, is readily accessible to the workers and other persons mentioned in subsection (2).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

483 Decontamination facilities

(1) A person conducting a business or undertaking for which asbestos-related work is carried out must ensure that facilities are available to decontaminate the following:

(a) the asbestos-related work area;

(b) any plant used in the asbestos-related work area;

(c) workers carrying out the asbestos-related work;

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(d) other persons who have access to the asbestos removal area under section 470 (2) (b) or (c) (Limiting access to asbestos removal area).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure that nothing that is likely to be contaminated with asbestos is removed from the asbestos-related work area unless the thing—

(a) is decontaminated before being removed; or

(b) is sealed in a container, and the exterior of the container is—

(i) decontaminated; and

(ii) labelled in accordance with the GHS to indicate the presence of asbestos;

before being removed.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 ***GHS***—see the dictionary.

Note 2 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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484 Disposing of asbestos waste and contaminated personal protective equipment

(1) Subject to subsection (2), a person conducting a business or undertaking for which asbestos-related work is carried out must ensure that asbestos waste—

(a) is contained and labelled in accordance with the GHS before the waste is removed from an asbestos-related work area; and

Note ***GHS***—see the dictionary.

(b) is disposed of as soon as practicable at a site authorised to accept asbestos waste.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The person must ensure that personal protective equipment used in asbestos-related work and contaminated with asbestos—

(a) is sealed in a container, and that the exterior of the container is decontaminated and labelled in accordance with the GHS to indicate the presence of asbestos before being removed; and

(b) so far as is reasonably practicable, is disposed of on the completion of the asbestos-related work at a site authorised to accept asbestos waste; and

(c) if it is not reasonably practicable to dispose of the personal protective equipment that is clothing—

(i) is laundered at a laundry equipped to launder asbestos-contaminated clothing; or

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(ii) if it is not practicable to launder the clothing, is kept in the sealed container until it is re-used for the purposes of asbestos-related work; and

(d) if it is not reasonably practicable to dispose of the personal protective equipment that is not clothing—

(i) is decontaminated before it is removed from the asbestos removal area; or

(ii) if it is not practicable to decontaminate the equipment in the asbestos removal area, is kept in the sealed container until it is re-used for the purposes of asbestos-related work.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Example—personal protective equipment

work boots

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The person must ensure that a sealed container mentioned in subsection (2) is decontaminated and labelled in accordance with the GHS to indicate the presence of asbestos before being removed from the asbestos-related work area.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 ***GHS***—see the dictionary.

Note 2 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Part 8.10 Licensing of asbestos removalists and asbestos assessors

Division 8.10.1 Asbestos removalists—requirement to be licensed

485 Requirement to hold Class A asbestos removal licence

(1) A person must not carry out the removal of the following at a workplace unless the person, or the person on whose behalf the work is carried out, holds a Class A asbestos removal licence:

(a) friable asbestos;

(b) except as provided in section 486, ACD.

(2) A person who conducts a business or undertaking must not direct or allow a worker to carry out the removal of the following unless the person holds a Class A asbestos removal licence:

(a) friable asbestos;

(b) except as provided in section 486, ACD.

Note See the Act, s 43 (2) (Requirements for authorisation of work).

486 Exception to requirement to hold Class A asbestos removal licence

A Class A asbestos removal licence is not required for the removal of ACD that is associated with the removal of non-friable asbestos.

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487 Requirement to hold Class B asbestos removal licence

(1) A person must not carry out the removal of the following at a workplace unless the person, or the person on whose behalf the work is carried out, holds a Class B asbestos removal licence or a Class A asbestos removal licence:

(a) non-friable asbestos or ACM;

(b) ACD associated with the removal of non-friable asbestos or ACM.

Note See the Act, s 43 (1) (Requirements for authorisation of work).

(2) A person who conducts a business or undertaking must not direct or allow a worker to carry out the removal of the following unless the person holds a Class B asbestos removal licence or a Class A asbestos removal licence:

(a) non-friable asbestos or ACM;

(b) ACD associated with the removal of non-friable asbestos or ACM.

Note See the Act, s 43 (2) (Requirements for authorisation of work).

488 Recognition of asbestos removal licences in other jurisdictions

(1) In this division, a reference to an asbestos removal licence includes a reference to an equivalent licence—

(a) granted under a corresponding WHS law; and

(b) that is being used in accordance with the terms and conditions under which it was granted.

(1A) A person who holds an equivalent licence (other than a licensee who also holds a licence granted under an ACT law) must notify the regulator before undertaking asbestos removal work in the ACT for the first time after the commencement of this subsection, that the licensee intends to undertake the work in the ACT.

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(2) Subsection (1) does not apply to a licence that is suspended or cancelled or has expired in the corresponding jurisdiction.

Division 8.10.2 Asbestos assessors—requirement to be licensed

489 Requirement to hold asbestos assessor licence

A person must not carry out the following at a workplace unless the person holds an asbestos assessor licence:

(a) air monitoring during asbestos removal work;

(b) clearance inspections for asbestos removal work;

(c) issuing clearance certificates in relation to asbestos removal work;

(d) identifying the location, type and condition of asbestos or ACM, including by taking samples;

(e) assessing the risk resulting from the identified asbestos or ACM;

(f) advising on how the asbestos or ACM should be managed;

(g) reporting about the work mentioned in paragraphs (a) to (e).

Note See the Act, s 43 (1) (Requirements for authorisation of work).

490 Recognition of asbestos assessor licences in other jurisdictions

(1) In this division, a reference to an asbestos assessor licence includes a reference to an equivalent licence—

(a) granted under a corresponding WHS law; and

(b) that is being used in accordance with the terms and conditions under which it was granted.

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(1A) A person who holds an equivalent licence (other than a licensee who also holds a licence granted under an ACT law) must notify the regulator before undertaking asbestos assessor work in the ACT for the first time after the commencement of this subsection, that the licensee intends to undertake the work in the ACT.

(2) Subsection (1) does not apply to a licence that is suspended or cancelled or has expired in the corresponding jurisdiction.

Division 8.10.3 Licensing process

491 Who may apply for licence

(1) Only a person who conducts, or proposes to conduct, a business or undertaking may apply for an asbestos removal licence.

(2) Only an individual who holds the qualifications set out in section 495 (Content of application—asbestos assessor licence) may apply for an asbestos assessor licence.

492 Application for asbestos removal licence or asbestos assessor licence

(1) This section applies to an application for—

(a) an asbestos removal licence; or

(b) an asbestos assessor licence.

(2) The application must include the following information:

(a) the name and address of the applicant;

(aa) if required by the regulator of an applicant who is an individual, a photograph of the applicant in the form required by the regulator;

(b) any other evidence of the applicant's identity required by the regulator;

(c) the class of licence to which the application relates;

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(d) if, in the case of an asbestos removal licence, the applicant conducts the business or undertaking under a business name—that business name and a certificate or other written evidence of the registration of the business name;

(e) a declaration that the applicant does not hold an equivalent licence under a corresponding WHS law;

(f) if the applicant is an individual—

(i) a declaration as to whether or not the applicant has ever been convicted or found guilty of any offence under the Act or this regulation, the *Construction Occupations (Licensing) Act 2004*, or under any corresponding WHS law; and

Note 1 A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

Note 2 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).

(ii) details of any conviction or finding of guilt declared under subparagraph (i); and

(iii) a declaration as to whether or not the applicant has been convicted or found guilty of any offence in relation to the unlawful disposal of hazardous waste under the *Environment Protection Act 1997* or the *Dangerous Goods (Road Transport) Act 2009*; and

(iv) details of any conviction or finding of guilt declared under subparagraph (iii); and

(v) a declaration as to whether or not the applicant has ever entered into an enforceable undertaking under the Act, the *Construction Occupations (Licensing) Act 2004*, or under any corresponding WHS law; and

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(vi) details of any enforceable undertaking declared under subparagraph (v); and

(vii) if the applicant has previously been refused an equivalent licence under the *Construction Occupations (Licensing) Act 2004* or a corresponding WHS law, a declaration giving details of that refusal; and

(viii) if the applicant has previously held an equivalent licence under the *Construction Occupations (Licensing) Act 2004* or a corresponding WHS law, a declaration—

(A) describing any condition imposed on that licence; and

(B) stating whether or not that licence had been suspended or cancelled and, if so, whether or not the applicant had been disqualified from applying for any licence; and

(C) giving details of any suspension, cancellation or disqualification;

(g) if the applicant is a body corporate, the information referred to in paragraph (f) in relation to—

(i) the body corporate; and

(ii) each officer of the body corporate;

(h) in the case of an application for an asbestos removal licence—the additional information referred to in section 493 (Content of application—Class A asbestos removal licence) or 494 (Content of application—Class B asbestos removal licence), as applicable;

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(i) in the case of an asbestos assessor licence—the additional information referred to in section 495 (Content of application—asbestos assessor licence).

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

493 Content of application—Class A asbestos removal licence

(1) For the purposes of section 492 (2) (h), an application for a Class A asbestos removal licence must include the following:

(a) the names of 1 or more competent persons who have been engaged by the applicant to supervise the asbestos removal work to be authorised by the licence;

(b) evidence, as required by the regulator, that each named supervisor is at least 18 years of age;

(c) a copy of a certification issued to each named supervisor for the specified VET course for the supervision of asbestos removal work;

(d) evidence that each named supervisor has at least 3 years of relevant industry experience;

(e) evidence that the applicant has a certified safety management system in place.

(2) If the applicant is an individual who proposes to supervise the carrying out of the Class A asbestos removal work, the statement and information referred to in subsection (1) (b), (c) and (d) must relate to the applicant.

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494 Content of application—Class B asbestos removal licence

(1) For the purposes of section 492 (2) (h) (Application for asbestos removal licence or asbestos assessor licence), an application for a Class B asbestos removal licence must include the following:

(a) the name of 1 or more competent persons who have been engaged by the applicant to supervise the asbestos removal work to be authorised by the licence;

(b) evidence, as required by the regulator, that each named supervisor is at least 18 years of age;

(c) a copy of a certification issued to each named supervisor for the specified VET course for the supervision of asbestos removal work;

(d) evidence that each named supervisor has at least 1 year of relevant industry experience.

(2) If the applicant is an individual who proposes to supervise the carrying out of the Class B asbestos removal work, the statement and information referred to in subsection (1) (b), (c) and (d) must relate to the applicant.

495 Content of application—asbestos assessor licence

For the purposes of section 492 (2) (i) (Application for asbestos removal licence or asbestos assessor licence), an application for an asbestos assessor licence must include—

(a) evidence that the applicant has acquired through training or experience the knowledge and skills of relevant asbestos assessment and removal industry practice; and

(b) either—

(i) a copy of a certification held by the applicant in relation to the specified VET course for asbestos assessor work; or

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(ii) evidence that the applicant holds a tertiary qualification in occupational health and safety, industrial hygiene, science, building construction or environmental health.

496 Additional information

(1) If an application for a licence does not contain sufficient information to enable the regulator to make a decision whether or not to grant the licence, the regulator may ask the applicant to provide additional information.

(2) A request for additional information must—

(a) specify the date (being not less than 28 days after the request) by which the additional information is to be given; and

(b) be confirmed in writing.

(3) If an applicant does not provide the additional information by the date specified, the application is to be taken to have been withdrawn.

(4) The regulator may make more than 1 request for additional information.

497 Decision on application

(1) Subject to subsection (3), the regulator must grant an asbestos removal licence or asbestos assessor licence if satisfied about—

(a) the matters referred to in subsection (2); and

(b) the additional matters referred to in section 498 (Class A asbestos removal licence—regulator to be satisfied about additional matters) or section 499 (Class B asbestos removal licence—regulator to be satisfied about additional matters), as applicable.

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(2) The regulator must be satisfied about the following:

(a) the application has been made in accordance with this regulation;

(b) the applicant does not hold an equivalent licence under a corresponding WHS law unless that licence is due for renewal;

(c) if the applicant is an individual, the applicant—

(i) resides in the ACT; or

(ii) resides outside the ACT and circumstances exist that justify the grant of the licence;

(d) if the applicant is a body corporate, the applicant's registered office—

(i) is located in the ACT; or

(ii) is located outside the ACT and circumstances exist that justify the grant of the licence;

(e) the applicant is able to ensure that the work or other activities to which the licence relates are carried out safely and competently;

(f) the applicant is able to ensure compliance with any conditions that will apply to the licence.

(3) The regulator must refuse to grant a licence if satisfied that—

(a) the applicant is disqualified under a corresponding WHS law from holding an equivalent licence; or

(b) the applicant, in making the application, has—

(i) given information that is false or misleading in a material particular; or

(ii) failed to give any material information that should have been given.

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(4) If the regulator decides to grant the licence, it must notify the applicant within 14 days after making the decision.

(5) If the regulator does not make a decision within 120 days after receiving the application or the additional information requested under section 496, the regulator is taken to have refused to grant the licence applied for.

Note A refusal to grant a licence (including under s (5)) is a reviewable decision (see s 676).

498 Class A asbestos removal licence—regulator to be satisfied about additional matters

For the purposes of section 497 (1) (b), in relation to a Class A asbestos removal licence, the regulator must be satisfied that—

(a) each supervisor named by the applicant—

(i) is at least 18 years of age; and

(ii) holds a certification for—

(A) the specified VET course for the supervision of asbestos removal work; and

(B) the specified VET course for the Class A asbestos removal work; and

(C) the specified VET course for the Class B asbestos removal work; and

(iii) has at least 3 years of relevant industry experience; and

(b) the applicant has a certified safety management system in place.

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499 Class B asbestos removal licence—regulator to be satisfied about additional matters

For the purposes of section 497 (1) (b) (Decision on application), in relation to a Class B asbestos removal licence, the regulator must be satisfied that each supervisor named by the applicant—

(a) is at least 18 years of age; and

(b) holds a certification for—

(i) the specified VET course for the supervision of asbestos removal work; and

(ii) the specified VET course for the Class B asbestos removal work; and

(c) has at least 1 year of relevant industry experience.

500 Matters to be taken into account

(1) For the purposes of section 497 (2) (e) and (f) (Decision on application), the regulator must have regard to all relevant matters, including the following:

(a) any offence under the Act or this regulation, the *Construction Occupations (Licensing) Act 2004* or under a corresponding WHS law of which the applicant has been convicted or found guilty;

Note 1 A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

Note 2 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) any offence in relation to the unlawful disposal of hazardous waste under the *Environment Protection Act 1997* or the *Dangerous Goods (Road Transport) Act 2009* of which the applicant has been convicted or found guilty;

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(c) any enforceable undertaking the applicant has entered into under the Act or a corresponding WHS law;

(d) in relation to any equivalent licence applied for or held by the applicant under the Act or this regulation, the *Construction Occupations (Licensing) Act 2004* or under a corresponding WHS law—

(i) any refusal to grant the licence; and

(ii) any condition imposed on the licence, if granted; and

(iii) any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence;

(e) the record of the applicant in relation to any matters arising under the Act or this regulation, the *Construction Occupations (Licensing) Act 2004* or under a corresponding WHS law.

(2) For the purposes of section 497 (2) (e) and (f), if the applicant is a body corporate, the regulator must have regard to all relevant matters, including the matters referred to in subsection (1), in relation to—

(a) the body corporate; and

(b) each officer of the body corporate.

501 Refusal to grant licence—process

(1) If the regulator proposes to refuse to grant a licence, the regulator must give the applicant a written notice—

(a) informing the applicant of the reasons for the proposed refusal; and

(b) advising the applicant that the applicant may, by a specified date (being not less than 28 days after the day the notice is given), make a submission to the regulator in relation to the proposed refusal.

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(2) After the date specified in a notice under subsection (1), the regulator must—

(a) if the applicant has made a submission in relation to the proposed refusal to grant the licence—consider that submission; and

(b) whether or not the applicant has made a submission—decide whether to grant or refuse to grant the licence; and

(c) within 14 days after making the decision, give the applicant written notice of the decision, including the reasons for the decision.

Note A refusal to grant a licence is a reviewable decision (see s 676).

502 Conditions of licence

(1) The regulator may impose any conditions it considers appropriate on an asbestos removal licence or asbestos assessor licence.

(2) Without limiting subsection (1), the regulator may impose conditions in relation to 1 or more of the following:

(a) control measures which must be implemented in relation to the carrying out of work or activities under the licence;

(b) the recording or keeping of information;

(c) requiring the licence-holder, or a nominated supervisor of the licence-holder, to undergo retraining or reassessment during the term of the licence;

(d) the provision of information to the regulator;

(e) the nature of work or activities authorised by the licence;

(f) the circumstances in which work or activities authorised by the licence may be carried out.

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(3) A licence under this part includes a condition that, if the licensee is issued with an infringement notice under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011*, information about the infringement notice be included in a public register in accordance with section 698A.

Note 1 A person must comply with the conditions of a licence (see Act, s 45).

Note 2 A decision to impose a condition on a licence is a reviewable decision (see s 676).

503 Duration of licence

Subject to this part, an asbestos removal licence or asbestos assessor licence takes effect on the day it is granted and, unless cancelled earlier, expires 5 years after that day.

504 Licence document

(1) If the regulator grants an asbestos removal licence or asbestos assessor licence, the regulator must issue to the applicant a licence document in the form determined by the regulator.

(2) The licence document must include the following:

(a) the name of the licence-holder;

(b) if the licence-holder conducts the business or undertaking under a business name—the business name;

(c) in the case of an asbestos removal licence—the class of asbestos removal licence and a description of the work within the scope of the licence;

(d) any conditions imposed on the licence by the regulator;

(e) the date on which the licence was granted;

(f) the expiry date of the licence.

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505 Licence document to be available

(1) A licence-holder must keep the licence document available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Subsection (1) does not apply if the licence document is not in the licence-holder's possession because—

(a) it has been returned to the regulator under section 512 (Licence-holder to return licence); and

(b) the licence-holder has applied for, but has not received, a replacement licence document under section 513 (Replacement licence document).

Division 8.10.4 Amendment of licence and licence document

506 Changes to information

(1) The licence-holder of an asbestos removal licence or asbestos assessor licence must give the regulator written notice of any change to any material particular in any information given at any time by the licence-holder to the regulator in relation to the licence within 14 days after the day the licence-holder becomes aware of the change.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) Subsection (1) applies whether the information was given in the application for grant or renewal of the licence or in any other circumstance.

507 Change to nominated supervisor

(1) If there is a change in relation to a supervisor named to the regulator by the holder of an asbestos removal licence (other than a licence-holder who is an individual), the licence-holder must—

(a) if the change is to remove a supervisor—within 14 days after the change, ask the regulator to amend the licence under section 509 (Amendment on application by licence-holder) to make that change; and

(b) if the change is to add a supervisor—give the regulator the information about the supervisor referred to in section 498 (Class A asbestos removal licence—regulator to be satisfied about additional matters) or section 499 (Class B asbestos removal licence—regulator to be satisfied about additional matters).

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If the change referred to in subsection (1) is to add a supervisor, that supervisor is not a nominated supervisor for the purposes of this regulation until the regulator has approved the nomination.

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508 Amendment imposed by regulator

(1) The regulator may, on its own initiative, amend an asbestos removal licence or asbestos assessor licence, including by amending the licence to—

(a) vary or delete a condition of the licence; or

(b) impose a new condition on the licence.

(2) If the regulator proposes to amend a licence, the regulator must give the licence-holder written notice—

(a) setting out the proposed amendment and the reasons for it; and

(b) advising the licence-holder that the licence-holder may, by a specified date (being not less than 28 days after the day the notice is given), make a submission to the regulator in relation to the proposed amendment.

(3) After the date specified in a notice under subsection (2), the regulator must—

(a) if the licence-holder has made a submission in relation to the proposed amendment—consider that submission; and

(b) whether or not the licence-holder has made a submission—decide—

(i) to make the proposed amendment; or

(ii) not to make any amendment; or

(iii) to make a different amendment that results from consideration of any submission made by the licence-holder; and

(c) within 14 days after making that decision, give the licence-holder written notice that—

(i) sets out the amendment, if any, or states that no amendment is to be made; and

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(ii) if a submission was made in relation to the proposed amendment—sets out the regulator's reasons for making the amendment; and

(iii) specifies the date (being not less than the 28 days after the day the licence-holder is given the notice) on which the amendment, if any, takes effect.

Note A decision to amend a licence is a reviewable decision (see s 676).

509 Amendment on application by licence-holder

(1) The regulator, on application by the licence-holder, may amend an asbestos removal licence or asbestos assessor licence, including by amending the licence to vary or delete a condition of the licence.

(2) If the regulator proposes to refuse to amend the licence, the regulator must give the licence-holder a written notice—

(a) informing the licence-holder of the proposed refusal to amend the licence and the reasons for the proposed refusal; and

(b) advising the licence-holder that the licence-holder may, by a specified date (being not less than 28 days after the day the notice is given), make a submission to the regulator in relation to the proposed refusal.

(3) After the date specified in a notice under subsection (2), the regulator must—

(a) if the licence-holder has made a submission in relation to the proposed refusal—consider that submission; and

(b) whether or not the licence-holder has made a submission—decide—

(i) to make the amendment applied for; or

(ii) not to make any amendment; or

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(iii) to make a different amendment that results from consideration of any submission made by the licence-holder; and

(c) within 14 days after making that decision, give the licence-holder written notice of the decision in accordance with this section.

(4) If the regulator makes the amendment applied for, the notice under subsection (3) (c) must specify the date (being not less than 28 days after the day the licence-holder is given the notice) on which the amendment takes effect.

(5) If the regulator refuses to make the amendment applied for or makes a different amendment, the notice under subsection (3) (c) must—

(a) if a submission was made in relation to the proposed refusal of the amendment applied for—set out the reasons for the regulator's decision; and

(b) if the regulator makes a different amendment—

(i) set out the amendment; and

(ii) specify the date (being not less than 28 days after the licence-holder is given the notice) on which the amendment takes effect.

Note A refusal to make the amendment applied for, or a decision to make a different amendment, is a reviewable decision (see s 676).

510 Minor corrections to licence

The regulator may make minor amendments to a licence, including an amendment—

(a) to correct an obvious error; or

(b) to change an address; or

(c) that does not impose a significant burden on the licence-holder.

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511 Regulator to give amended licence to holder

If the regulator amends an asbestos removal licence or asbestos assessor licence and considers that the licence document requires amendment, the regulator must give the licence-holder an amended licence document within 14 days after making the decision to amend the licence.

512 Licence-holder to return licence

The holder of an asbestos removal licence or asbestos assessor licence that has been amended must return the licence document to the regulator for amendment at the written request of the regulator and within the time specified in the request.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

513 Replacement licence document

(1) A licence-holder of an asbestos removal licence or an asbestos assessor licence must notify the regulator as soon as practicable if the licence document is lost, stolen or destroyed.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) If a licence document is lost, stolen or destroyed, the licence-holder may apply to the regulator for a replacement document.

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

Note 4 A licence-holder is required to keep the licence document available for inspection (see s 505).

(3) The application must include a declaration describing the circumstances in which the original document was lost, stolen or destroyed.

(4) The regulator must issue a replacement licence document if satisfied that the original document was lost, stolen or destroyed.

(5) If the regulator refuses to issue a replacement licence document, it must give the licence-holder written notice of this decision, including the reasons for the decision, within 14 days after making the decision.

Note A refusal to issue a replacement licence document is a reviewable decision (see s 676).

514 Voluntary surrender of licence

(1) A licence-holder may voluntarily surrender the licence document to the regulator.

(2) The licence expires on the surrender of the licence document.

Division 8.10.5 Renewal of licence

515 Regulator may renew licence

The regulator may renew an asbestos removal licence or asbestos assessor licence on application by the licence-holder.

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516 Application for renewal

(1) This section applies to an application for renewal of an asbestos removal licence or asbestos assessor licence.

(2) The application must include the following information:

(a) the name and address of the applicant;

(b) if required by the regulator of an applicant who is an individual, a photograph of the applicant in the form required by the regulator;

(c) any other evidence of the applicant's identity required by the regulator;

(d) written evidence that the applicant has obtained any retraining or reassessment or taken any other action required under section 502 (Conditions of licence);

(e) a declaration by the applicant that the applicant or a supervisor named by the applicant, as applicable, has maintained the competency required to carry out the work covered by the licence.

(3) The application must be made before the expiry of the licence.

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

517 Provisions relating to renewal of licence

(1) For the purposes of this division—

(a) section 496 (Additional information) applies as if a reference in that section to an application for a licence were a reference to an application to renew a licence; and

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(b) section 497 (Decision on application) (except subsection (5)), section 500 (Matters to be taken into account), section 502 (Conditions of licence) and section 503 (Duration of licence) apply as if a reference in those sections to the grant of a licence were a reference to the renewal of a licence; and

(c) section 501 (Refusal to grant licence—process) applies as if a reference in that section to a refusal to grant a licence were a reference to a refusal to renew a licence.

(2) The regulator must not renew an asbestos removal licence unless the regulator is satisfied about the matters referred to in section 518.

(3) The regulator must not renew an asbestos removal licence or asbestos assessor licence granted to a person under a corresponding WHS law if that licence is renewed under that law.

(4) If a licence-holder applies under section 516 for the renewal of an asbestos removal licence or asbestos assessor licence, the licence is taken to continue in force from the day it would, apart from this subsection, have expired until the licence-holder is given notice of the decision on the application.

Note A refusal to renew a licence is a reviewable decision (see s 676).

518 Renewal of asbestos removal licence—regulator to be satisfied about certain matters

For the purposes of section 517, the regulator must not renew an asbestos removal licence unless satisfied that—

(a) each supervisor named by the applicant—

(i) holds a certification for the specified VET course for supervision of the asbestos removal work to be authorised by the licence; and

(ii) has appropriate experience in the asbestos removal work to be authorised by the licence; and

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(b) asbestos removal work of the type authorised by the licence has been carried out on behalf of the applicant during the term of the licence.

519 Status of licence during review

(1) This section applies if the regulator gives a licence-holder written notice of its decision to refuse to renew the licence.

(2) If the licence-holder does not apply for internal review of the decision, the licence continues to have effect until the last of the following events:

(a) the expiry of the licence;

(b) the end of the time for applying for an internal review.

(3) If the licence-holder applies for an internal review of the decision, the licence continues to have effect until the earlier of the following events:

(a) the licence-holder withdraws the application for review;

(b) the regulator makes a decision on the review.

(4) If the licence-holder does not apply for an external review, the licence continues to have effect until the end of the time for applying for an external review.

(5) If the licence-holder applies for an external review, the licence continues to have effect until the earlier of the following events:

(a) the licence-holder withdraws the application for review;

(b) the ACAT makes a decision on the review.

(6) The licence continues to have effect under this section even if its expiry date passes.

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Division 8.10.6 Suspension and cancellation of licence

520 Suspension or cancellation of licence

(1) The regulator may suspend or cancel an asbestos removal licence or asbestos assessor licence if satisfied about 1 or more of the following:

(a) the licence-holder has failed to ensure that the work or other activities authorised by the licence are carried out safely and competently;

(b) the licence-holder has failed to ensure compliance with a condition of the licence, including a condition requiring the licence-holder, or a nominated supervisor of the licence-holder, to undergo retraining or reassessment during the term of the licence;

(c) the licence-holder, in the application for the grant or renewal of the licence or on request by the regulator for additional information—

(i) gave information that was false or misleading in a material particular; or

(ii) failed to give any material information that should have been given in that application or on that request;

(d) in relation to an asbestos removal licence—the licence was granted or renewed on the basis of a certification that was obtained on the basis of the giving of false or misleading information by any person or body;

(e) in relation to a Class A asbestos removal licence—the licence-holder failed to have a certified safety management system in place.

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(2) It is a ground for the suspension or cancellation of an asbestos removal licence if the licence-holder does not have a qualified nominated asbestos removal supervisor.

Note Section 507 provides for a licence-holder to notify the regulator of any change in a nominated supervisor.

(3) For the purposes of subsection (1) (b), a licence-holder complies with a condition on the licence that requires the licence-holder or a nominated supervisor of the licence-holder to undergo retraining or reassessment during the term of the licence if the licence-holder provides a certification in relation to that retraining or reassessment.

(4) If the regulator suspends or cancels a licence, the regulator may disqualify the licence-holder from applying for—

(a) a further licence of the same type; or

(b) another licence under this regulation to carry out work which requires skills that are the same as or similar to those required for the work authorised by the licence that has been suspended or cancelled.

Note A decision to suspend a licence, to cancel a licence or to disqualify the licence-holder from applying for a further licence is a reviewable decision (see s 676).

521 Matters taken into account

(1) In making a decision under section 520, the regulator must have regard to—

(a) any submissions made by the licence-holder under section 522; and

(b) any advice received from a corresponding regulator.

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(2) For the purposes of section 520 (1) (a) and (b), if the licence-holder is an individual, the regulator must have regard to all relevant matters, including the following:

(a) any offence under the Act or this regulation, the *Construction Occupations (Licensing) Act 2004* or under a corresponding WHS law, of which the licence-holder has been convicted or found guilty;

Note 1 A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

Note 2 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) any enforceable undertaking the licence-holder has entered into under the Act or this regulation, the *Construction Occupations (Licensing) Act 2004* or a corresponding WHS law;

(c) in relation to any equivalent licence applied for or held by the licence-holder under the Act or this regulation, the *Construction Occupations (Licensing) Act 2004* or under a corresponding WHS law—

(i) any refusal to grant the licence; and

(ii) any condition imposed on the licence, if granted; and

(iii) any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence;

(d) the record of the licence-holder in relation to any matters arising under the Act or this regulation, the *Construction Occupations (Licensing) Act 2004* or under a corresponding WHS law.

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(3) For the purposes of section 520 (1) (a) and (b), if the licence-holder is a body corporate, the regulator must have regard to all relevant matters, including the matters referred to in subsection (2), in relation to—

(a) the body corporate; and

(b) each officer of the body corporate.

522 Notice to and submissions by licence-holder

Before suspending or cancelling an asbestos removal licence or asbestos assessor licence, the regulator must give the licence-holder a written notice of the proposed suspension or cancellation and any proposed disqualification—

(a) outlining all relevant allegations, facts and circumstances known to the regulator; and

(b) advising the licence-holder that the licence-holder may, by a specified date (being not less than 28 days after the day the notice is given), make a submission in relation to the proposed suspension or cancellation and any proposed disqualification.

523 Notice of decision

(1) The regulator must give the licence-holder written notice of a decision under section 520 (Suspension or cancellation of licence) to suspend or cancel an asbestos removal licence or asbestos assessor licence within 14 days after making the decision.

(2) The notice must—

(a) state that the licence is to be suspended or cancelled; and

(b) if the licence is to be suspended, state—

(i) when the suspension begins and ends; and

(ii) the reasons for the suspension; and

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(iii) whether the licence-holder is required to undergo retraining or reassessment or take any other action before the suspension ends; and

(iv) whether or not the licence-holder is disqualified from applying for a further licence during the suspension; and

(c) if the licence is to be cancelled, state—

(i) when the cancellation takes effect; and

(ii) the reasons for the cancellation; and

(iii) whether or not the licence-holder is disqualified from applying for a further licence; and

(d) if the licence-holder is disqualified from applying for a further licence, state—

(i) when the disqualification begins and ends; and

(ii) the reasons for the disqualification; and

(iii) whether or not the licence-holder is required to undergo retraining or reassessment or take any other action before the disqualification ends; and

(iv) any other class of licence under this regulation that the licence-holder is disqualified from applying for; and

(e) state when the licence document must be returned to the regulator.

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524 Immediate suspension

(1) The regulator may suspend an asbestos removal licence or asbestos assessor licence on a ground referred to in section 520 (Suspension or cancellation of licence) without giving notice under section 522 (Notice to and submissions by licence-holder), if satisfied that—

(a) work carried out under the licence should cease because the work may involve an imminent serious risk to the health or safety of any person; or

(b) a corresponding regulator has suspended an equivalent licence held by the licence-holder under this section as applying in the corresponding jurisdiction.

(2) If the regulator decides to suspend a licence under this section—

(a) the regulator must give the licence-holder written notice of the suspension and the reasons for the suspension; and

(b) the suspension of the licence takes effect on the giving of the notice.

(3) The regulator must then—

(a) give notice under section 522 within 14 days after giving the notice under subsection (2); and

(b) make its decision under section 520.

(4) If the regulator does not give notice under subsection (3), the suspension ends at the end of the 14 day period.

(5) If the regulator gives notice under subsection (3), the licence remains suspended until the decision is made under section 520.

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525 Licence-holder to return licence document

A licence-holder, on receiving a notice under section 523 (Notice of decision), must return the licence document to the regulator in accordance with the notice.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

526 Regulator to return licence document after suspension

The regulator must return the licence document to the licence-holder within 14 days after the licence suspension ends.

Division 8.10.7 General

527 Asbestos removal licence register

The regulator must keep a register of—

(a) each person holding an asbestos removal licence; and

(b) each supervisor named to the regulator in relation to an asbestos removal licence.

528 Asbestos assessors register

The regulator must keep a publicly available register of each person holding an asbestos assessor licence.

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529 Work must be supervised by named supervisor

A person who holds an asbestos removal licence must ensure that asbestos removal work authorised by the licence is supervised by a supervisor named to the regulator by the licence-holder.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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Chapter 9 Major hazard facilities

Part 9.1 Preliminary

Division 9.1.1 Application and interpretation

530 This chapter does not apply to certain facilities

(1) This chapter does not apply in relation to a facility that is regulated by the National Offshore Petroleum Safety and Environmental Management Authority under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth).

(2) This chapter does not apply in relation to a pipeline that is regulated under the *Gas Safety Act 2000* or the *Utilities (Technical Regulation) Act 2014*.

531 Meaning of *major incident*—ch 9

(1) In this chapter, a ***major incident*** at a major hazard facility is an occurrence that—

(a) results from an uncontrolled event at the major hazard facility involving, or potentially involving, Schedule 15 chemicals; and

(b) exposes a person to a serious risk to health or safety emanating from an immediate or imminent exposure to the occurrence.

(2) Without limiting subsection (1), an ***occurrence*** includes any of the following:

(a) escape, spillage or leakage;

(b) implosion, explosion or fire.

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532 Meaning of hazardous chemicals that are *present or likely to be present*

(1) In this regulation, a reference to hazardous chemicals, including Schedule 15 chemicals, being ***present or likely to be present*** at a facility is a reference to the quantity of hazardous chemicals that would, if present, meet the maximum capacity of the facility, including—

(a) the maximum capacity of process vessels and interconnecting pipe systems that contain the hazardous chemicals; and

(b) the maximum capacity of storage tanks and vessels used for the hazardous chemicals; and

(c) the maximum capacity of other storage areas at the facility that could contain the hazardous chemicals; and

(d) the maximum capacity of pipe work outside process areas to contain the hazardous chemicals; and

(e) the maximum quantity of hazardous chemicals that would, in the event of failure, escape into the facility from pipe work that is situated off the premises but is connected to the facility; and

(f) the maximum quantity of hazardous chemicals loaded into or onto, or unloaded from, vehicles, trailers, rolling stock and ships that are from time to time present at the facility in the course of the facility's operations.

(2) Subsection (1) applies with any necessary changes to hazardous chemicals that are ***likely to be present*** at a proposed facility.

(3) Schedule 15 chemicals present or likely to be present in the tailings dam of a mine are not to be considered in determining whether a mine is a facility or a major hazard facility.

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533 Meaning of *operator* of a facility or proposed facility—ch 9

(1) In this chapter, the ***operator*** of a facility is the person conducting the business or undertaking of operating the facility who has—

(a) management or control of the facility; and

(b) the power to direct that the whole facility be shut down.

(2) In this chapter, ***operator of a proposed facility*** means—

(a) the operator of a proposed facility that is an existing workplace; or

(b) the person who is to be the operator of a proposed facility that is being designed or constructed.

(3) If more than 1 person is an operator of the facility within the meaning of subsection (1)—

(a) 1 of those persons must be selected as the operator of the facility for the purposes of this chapter; and

(b) that person's details must be given to the regulator.

(4) The person selected—

(a) must notify the regulator of the nomination; and

(b) may do so by including the nomination in a notification under section 536 (Operators of certain facilities must notify regulator).

(5) The person selected under subsection (3) is the ***operator*** of the facility for the purposes of this chapter.

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(6) If a selection is not made, each of the following persons is taken to be an ***operator*** of the facility for the purposes of this chapter:

(a) each operator within the meaning of subsection (1) who is an individual;

(b) for each operator within the meaning of subsection (1) that is a body corporate—each officer of the body corporate.

534 Meaning of *modification* of a major hazard facility

(1) In this regulation, a reference to a ***modification*** of a major hazard facility is a reference to a change or proposed change at the major hazard facility that has or would have the effect of—

(a) creating a major incident hazard that has not previously been identified; or

(b) significantly increasing the likelihood of a major incident occurring; or

(c) in relation to a major incident that may occur—significantly increasing—

(i) its magnitude; or

(ii) the severity of its health and safety consequences.

(2) For the purposes of subsection (1), a ***change or proposed change*** at a major hazard facility means a change or proposed change of any kind, including any of the following:

(a) a change to any plant, structure, process or chemical or other substance used in a process, including the introduction of new plant, a new structure, a new process or a new chemical;

(b) a change to the quantity of Schedule 15 chemicals present or likely to be present at the major hazard facility;

(c) a change to the operation, or the nature of the operation, of the major hazard facility;

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(d) a change in the workers' safety role;

(e) a change to the major hazard facility's safety management system;

(f) an organisational change at the major hazard facility, including a change in its senior management.

Division 9.1.2 Requirement to be licensed

535 A major hazard facility must be licensed—Act, s 41

(1) A facility at which Schedule 15 chemicals are present or likely to be present in a quantity that exceeds their threshold quantity must be licensed under part 9.7 (Licensing of major hazard facilities).

Note See the Act, s 41 (Requirements for authorisation of workplaces).

(2) A facility that is determined to be a major hazard facility under section 541 (Determination in relation to facility, on inquiry) must be licensed under part 9.7 (Licensing of major hazard facilities).

Note See the Act, s 41 (Requirements for authorisation of workplaces).

(3) Despite subsection (1) or (2), a determined major hazard facility is exempt from the requirement to be licensed during the exemption period if the operator of the major hazard facility is taken to be a suitable person to operate the facility for the purposes of part 9.2 (Determinations about major hazard facilities).

(4) The operator of a licensed major hazard facility must hold the licence for the major hazard facility.

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(5) In this section:

exemption period, in relation to a determined major hazard facility, means the period beginning on the determination of the facility and ending on the first of the following to occur:

(a) the revocation of the determination of the facility under section 546 (When regulator may revoke a determination);

(b) the end of the period for applying for a licence given under section 549 (Time in which major hazard facility licence must be applied for), unless an application for a licence for the facility is made within that period;

(c) the grant of a licence for the facility under part 9.7 (Licensing of major hazard facilities);

(d) if the regulator decides to refuse to grant a licence for the facility—

(i) the end of the period for applying for an external review of that decision, unless an application for external review is made within that period; or

(ii) the making of the decision on the external review.

Note 1 The licensing process is provided for in pt 9.7.

Note 2 Under pt 9.2, an operator of a determined major hazard facility is taken to be a suitable operator if no determination is made under s 543.

Note 3 Under pt 9.3, the operator of a determined major hazard facility is given a limited time to prepare the major hazard facility to be licensed, including by preparing a safety case.

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Note 4 Pt 9.2 provides for the notification and determination of facilities and operators of facilities. The purpose of notification is to enable the regulator to determine whether—

(a) a facility or proposed facility is a major hazard facility; and

(b) the operator of a determined major hazard facility is a suitable person to—

(i) operate the facility while the determination under paragraph (a) is in force; and

(ii) apply for a licence for the facility.

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Part 9.2 Determinations about major hazard facilities

536 Operators of certain facilities must notify regulator

(1) The operator of a facility at which Schedule 15 chemicals are present or likely to be present in a quantity that exceeds 10% of their threshold quantity must notify the regulator of this circumstance in accordance with this part.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Notification must be given—

(a) as soon as practicable (but not more than 3 months) after the operator becomes aware, or ought reasonably to have become aware, of the circumstance giving rise to the requirement to notify; or

(b) within any longer period that the regulator determines if satisfied on application by the operator that there is a reasonable excuse for the delayed notification.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

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537 Notification—proposed facilities

(1) The operator of a proposed facility at which Schedule 15 chemicals are likely to be present in a quantity that exceeds 10% of their threshold quantity may notify the regulator of this circumstance.

Note 1 ***Proposed facility***—see the dictionary.

Note 2 ***Likely to be present***—see s 532.

(2) Any notification under this section must include the information required by section 538 (with any necessary changes).

538 Content of notification

(1) This section applies to a notification under section 536 (Operators of certain facilities must notify regulator).

(2) The notification must include the following:

(a) information about the facility, including the nature of its operations;

(b) information about the operator, including the matters specified in subsection (3);

(c) information about the Schedule 15 chemicals present or likely to be present at the facility;

(d) the nomination of a contact person with whom the regulator can communicate for the purposes of—

(i) this part; and

(ii) the licensing process;

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(e) any additional information required by the regulator.

Note 1 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 2 A fee may be determined under the Act, s 278 for this provision.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(3) The information given under subsection (2) (b) must include the following:

(a) the operator's name;

(b) whether or not the operator is a body corporate;

(c) any other evidence of the operator's identity required by the regulator;

(d) if the operator is an individual—

(i) a declaration as to whether or not the operator has ever been convicted or found guilty of any offence under the Act or this regulation or under any corresponding WHS law; and

Note 1 ***Found guilty***—see the Legislation Act, dictionary, pt 1.

Note 2 A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

(ii) details of any conviction or finding of guilt declared under subparagraph (i); and

(iii) a declaration as to whether or not the operator has ever entered into an enforceable undertaking under the Act or under any corresponding WHS law; and

Note ***Corresponding WHS law***—see s 9A.

(iv) details of any enforceable undertaking declared under subparagraph (iii); and

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(v) if the operator has previously been refused a major hazard facility licence under a corresponding WHS law, a declaration giving details of that refusal; and

(vi) if the operator has previously held a major hazard facility licence under a corresponding WHS law, a declaration—

(A) describing any condition imposed on that licence; and

(B) stating whether or not that licence had been suspended or cancelled and, if so, whether or not the operator had been disqualified from applying for a major hazard facility licence; and

(C) giving details of any suspension, cancellation or disqualification;

(e) if the operator is a body corporate, the information specified in paragraph (d) in relation to—

(i) the operator; and

(ii) each officer of the operator.

Note A fee may be determined under the Act, s 278 for this provision.

539 When regulator may conduct inquiry

The regulator may conduct an inquiry under this division if a notification under section 536 (Operators of certain facilities must notify regulator) or section 537 (Notification—proposed facilities) discloses, or if for some other reason the regulator reasonably suspects, that—

(a) the quantity of Schedule 15 chemicals present or likely to be present at a facility (or proposed facility) exceeds 10% of their threshold quantity but does not exceed their threshold quantity; or

(b) the operator of the facility (or proposed facility) may not be a suitable person to operate the facility (or proposed facility).

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540 Inquiry procedure

(1) This section sets out the procedure for an inquiry.

(2) The regulator must give a written notice to the person referred to in subsection (3)—

(a) informing the person of the reasons for the inquiry; and

(b) advising the person that the person may, by a specified date (being not less than 28 days after the notice is given), make a submission to the regulator in relation to the inquiry.

(3) Notice under subsection (2) must be given—

(a) for an inquiry about a facility in relation to which a notification has been given under section 536 (Operators of certain facilities must notify regulator) or section 537 (Notification—proposed facilities)—to the contact person identified in the notification; and

(b) in any other case—to the operator of the facility.

(4) The regulator must—

(a) if the recipient of the notice has made a submission in relation to the inquiry—consider that submission; and

(b) consult with interested persons including—

(i) health and safety representatives at the facility; and

(ii) the emergency service organisations that have responsibility for the area in which the facility is located; and

(iii) any Commonwealth government department or agency, or territory authority or administrative unit, with a regulatory role in relation to major hazard facilities; and

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(c) decide whether or not to make a determination under section 541 or section 542 (Determination in relation to over-threshold facility); and

(d) if it decides to make a determination under section 541 or section 542—decide whether or not to make a determination in relation to the operator under section 543 (Suitability of facility operator).

541 Determination in relation to facility, on inquiry

(1) This section applies if an inquiry discloses that the quantity of Schedule 15 chemicals present or likely to be present at a facility or proposed facility exceeds 10% of their threshold quantity, but does not exceed their threshold quantity.

(2) The regulator may determine the facility or proposed facility to be a major hazard facility if the regulator considers that there is a potential for a major incident to occur at the facility or proposed facility having regard to all relevant matters, including—

(a) the quantity and combination of Schedule 15 chemicals present or likely to be present at the facility; and

(b) the type of activity at the facility that involves the Schedule 15 chemicals; and

(c) land use and other activities in the surrounding area.

Note 1 If an inquiry discloses that the quantity of Schedule 15 chemicals present or likely to be present at a facility exceeds their threshold quantity, the facility is a major hazard facility (see dict, def ***major hazard facility***).

Note 2 A determination that a facility is a major hazard facility, or that a proposed facility is not a major hazard facility, is a reviewable decision (see s 676).

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542 Determination in relation to over-threshold facility

(1) This section applies if a notification under section 536 (Operators of certain facilities must notify regulator) or section 537 (Notification—proposed facilities) discloses that the quantity of Schedule 15 chemicals present or likely to be present at a facility (or proposed facility) exceeds their threshold quantity.

(2) The regulator must make a determination confirming the facility (or proposed facility) to be a major hazard facility.

Note A determination that a facility is a major hazard facility is a reviewable decision (see s 676).

543 Suitability of facility operator

(1) This section applies if the regulator determines a facility or a proposed facility to be a major hazard facility under section 541 (Determination in relation to facility, on inquiry) or section 542.

(2) The regulator may determine that the operator of the major hazard facility or proposed major hazard facility is not a suitable person to operate the major hazard facility if the regulator—

(a) has conducted an inquiry under section 540 (Inquiry procedure) into the suitability of the operator; and

(b) is satisfied on reasonable grounds that the operator is not a suitable person to operate the major hazard facility or proposed major hazard facility.

(3) If no determination is made under this section, the operator of the major hazard facility or proposed major hazard facility is taken to be a suitable person to operate the major hazard facility and to apply for a major hazard facility licence.

Note A determination that a person is not a suitable operator is a reviewable decision (see s 676).

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544 Conditions on determination of major hazard facility

(1) The regulator may impose any conditions it considers appropriate on a determination made under section 541 (Determination in relation to facility, on inquiry) or section 542 (Determination in relation to over-threshold facility).

(2) Without limiting subsection (1), the regulator may impose conditions in relation to 1 or more of the following:

(a) additional control measures that must be implemented in relation to the carrying out of work or activities at the determined major hazard facility;

(b) the recording or keeping of additional information;

(c) the provision of additional information, training and instruction or the provision of specified information, training and instruction to additional persons or classes of persons;

(d) the provision of additional information to the regulator;

(e) if the operator is a person conducting a business or undertaking, the additional class of persons who may carry out work or activities on the operator's behalf.

Note 1 A condition may include the payment of a fee determined under the Act, s 278, for this provision.

Note 2 ***Person*** includes a body corporate—see the Legislation Act, s 160.

(3) The operator of a determined major hazard facility, in relation to which conditions are imposed under this section, must ensure that the conditions are complied with.

Note A decision to impose a condition on a determination is a reviewable decision (see s 676).

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545 Notice and effect of determinations

(1) If the regulator makes a determination under this part, the regulator must give the operator of the determined major hazard facility a written notice of the determination, stating—

(a) the reasons for the determination; and

(b) the date on which the determination takes effect, which must be at least 28 days after the date of the notice; and

(c) any conditions imposed on the determination under section 544.

(2) The notice must be given within 14 days of the making of the determination.

(3) The effect of a determination under section 543 (Suitability of facility operator) is that—

(a) the operator is not taken to be a suitable person to operate the determined major hazard facility; and

(b) the exemption provided by section 535 (3) (A major hazard facility must be licensed—Act, s 41) does not apply to the determined major hazard facility.

Note For the effect of a determination under s 541 or s 542, see the dictionary, definition of ***determined major hazard facility***.

(4) A determination takes effect on the date specified in the notice.

(5) A determination is of unlimited duration unless it is revoked.

546 When regulator may revoke a determination

The regulator may revoke a determination under this part if, after consultation with the major hazard facility's contact person or operator (as applicable), the regulator is satisfied that the reasons for the determination no longer apply.

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547 Re-notification if quantity of Schedule 15 chemicals increases

(1) This section applies to a facility or proposed facility—

(a) at which the quantity of Schedule 15 chemicals present or likely to be present exceeds 10% of their threshold quantity but does not exceed their threshold quantity; and

(b) in relation to which notification was given under section 536 (Operators of certain facilities must notify regulator) or section 537 (Notification—proposed facilities); and

(c) in relation to which the regulator—

(i) has not conducted an inquiry under this division; or

(ii) on conducting an inquiry, has not determined the facility or proposed facility to be a major hazard facility under section 541 (Determination in relation to facility, on inquiry).

(2) The operator of the facility or proposed facility must re-notify the regulator in accordance with this part if the quantity of Schedule 15 chemicals present or likely to be present at the facility or proposed facility increases, or is likely to increase, to a level that exceeds the level previously notified to the regulator.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The provisions of this part apply, to the extent that they relate to a re-notification under this section, as if the re-notification were a notification under section 536 (Operators of certain facilities must notify regulator).

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548 Notification by new operator

(1) This section applies—

(a) in relation to a determined major hazard facility that is proposed to be operated by a new operator; and

(b) whether or not a determination under section 543 (Suitability of facility operator) was made in relation to the current operator.

(2) A proposed new operator of the determined major hazard facility must give the regulator a notification that contains the information specified in section 538 (2) (Content of notification) in relation to the proposed new operator.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The provisions of this part apply, to the extent that they relate to the suitability of an operator, as if the notification under subsection (2) were a notification under section 536 (Operators of certain facilities must notify regulator).

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549 Time in which major hazard facility licence must be applied for

(1) Subject to this section, the operator of a determined major hazard facility must apply for a major hazard facility licence within 24 months after the determination of the facility.

(2) The regulator may extend the time in which the operator of a determined major hazard facility must apply for a licence if satisfied, on application by the operator, that there has not been sufficient time to comply with part 9.3 (Duties of operators of determined major hazard facilities).

Note The exemption from the requirement to be licensed is conditional on an application for a licence being made within the time specified in this section (see s 535 (3) and (5)).

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Part 9.3 Duties of operators of determined major hazard facilities

Note 1 The operator of a determined major hazard facility is required to comply with this part for a specified period and to prepare a safety case in order to apply for a major hazard facility licence.

Note 2 The Act and ch 7 continue to apply to a determined major hazard facility.

Division 9.3.1 Application—pt 9.3

550 Application—pt 9.3

This part ceases to apply to a determined major hazard facility at the end of the exemption period applying to that facility under section 535 (A major hazard facility must be licensed—Act, s 41).

Division 9.3.2 Determined major hazard facility—safety case outline

551 Safety case outline must be provided

The operator of a determined major hazard facility must provide the regulator with a safety case outline for the major hazard facility within 3 months after the facility is determined to be a major hazard facility.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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552 Safety case outline—content

A safety case outline provided under section 551 must include the following:

(a) a written plan for the preparation of the safety case, including key steps and timelines, with reference being made to each element of the safety case;

(b) a description of the methods to be used in preparing the safety case, including methods for ensuring that all the information contained in the safety case is accurate and up to date when the safety case is provided to the regulator;

(c) details of the resources that will be applied to the preparation of the safety case, including the number of persons involved, their relevant knowledge and experience and sources of technical information;

(d) a description of the consultation with workers that—

(i) occurred in the preparation of the safety case outline; and

(ii) will occur in the preparation of the safety case;

(e) a draft of the emergency plan prepared or to be prepared under section 557 (Determined major hazard facility—emergency plan);

(f) a summary of any arrangements that are to be made in relation to the security of the major hazard facility.

Example

arrangements for preventing unauthorised access to the major hazard facility

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553 Safety case outline—alteration

(1) If the regulator is not satisfied that a safety case outline provided by the operator of a determined major hazard facility will lead to the development of a safety case that complies with section 561 (Safety case—content), the regulator may require the operator to alter the outline.

(2) If the regulator proposes to require an operator to alter a safety case outline, the regulator must give the operator a written notice—

(a) informing the operator of the proposed requirement and the reasons for it; and

(b) advising the operator that the operator may make a submission to the regulator in relation to the proposed requirement; and

(c) specifying the date (being not less than 28 days) by which the submission must be made.

(3) The regulator must—

(a) if the operator has made a submission in relation to the proposed requirement to alter a safety case outline—consider that submission; and

(b) whether or not the operator has made a submission—decide whether or not to require the operator to alter the outline; and

(c) within 14 days after deciding, give the operator written notice of the decision, including details of the alteration required and the reasons why it is required.

(4) The operator must alter the outline as required.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(5) The operator must give the regulator a copy of a safety case outline that has been altered—

(a) under this section; or

(b) by the operator on the operator's initiative.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(6) The safety case outline as altered becomes the safety case outline for the major hazard facility.

Division 9.3.3 Determined major hazard facility—management of risk

554 Determined major hazard facility—identification of major incidents and major incident hazards

(1) The operator of a determined major hazard facility must identify—

(a) all major incidents that could occur in the course of the operation of the major hazard facility; and

(b) all major incident hazards for the major hazard facility, including major incident hazards relating to the security of the major hazard facility.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) In complying with subsection (1), the operator must have regard to any advice and recommendations given by—

(a) the emergency service organisations with responsibility for the area in which the major hazard facility is located; and

(b) any Commonwealth government department or agency, or territory authority or administrative unit, with a regulatory role in relation to major hazard facilities.

(3) The operator must document—

(a) all identified major incidents and major incident hazards; and

(b) the criteria and methods used in identifying the major incidents and major incident hazards; and

(c) any external conditions under which the major incident hazards, including those relating to the security of the major hazard facility, might give rise to the major incidents.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

555 Determined major hazard facility—safety assessment

(1) The operator of a determined major hazard facility must conduct a safety assessment in relation to the operation of the major hazard facility.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) In order to provide the operator with a detailed understanding of all aspects of risks to health and safety associated with major incidents, a safety assessment must involve a comprehensive and systematic investigation and analysis of all aspects of risks to health and safety associated with all major incidents that could occur in the course of the operation of the major hazard facility, including the following:

(a) the nature of each major incident and major incident hazard;

(b) the likelihood of each major incident hazard causing a major incident;

(c) in the event of a major incident occurring, its potential magnitude and the severity of its potential health and safety consequences;

(d) the range of control measures considered;

(e) the control measures the operator decides to implement.

(3) In conducting a safety assessment, the operator must—

(a) consider major incidents and major incident hazards cumulatively as well as individually; and

(b) use assessment methods (whether quantitative or qualitative, or both), that are suitable for the major incidents and major incident hazards being considered.

(4) The operator must document all aspects of the safety assessment, including—

(a) the methods used in the investigation and analysis; and

(b) the reasons for deciding which control measures to implement.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(5) The operator must keep a copy of the safety assessment at the major hazard facility.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

556 Determined major hazard facility—control of risk—Act, s 20

(1) The operator of a determined major hazard facility must implement control measures that—

(a) eliminate, so far as is reasonably practicable, the risk of a major incident occurring; or

(b) if it is not reasonably practicable to eliminate that risk—minimise that risk so far as is reasonably practicable.

Note WHS Act—s 20 (see s 9).

(2) The operator of a determined major hazard facility must implement risk control measures designed to minimise, in the event of a major incident occurring, its magnitude and the severity of its consequences to a person both on-site and off-site.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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557 Determined major hazard facility—emergency plan

(1) The operator of a determined major hazard facility must prepare an emergency plan for the major hazard facility that—

(a) addresses all health and safety consequences of a major incident occurring; and

(b) includes all matters specified in schedule 16 (Matters to be included in emergency plan for major hazard facility); and

(c) provides for testing of emergency procedures, including the frequency of testing.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) In preparing an emergency plan, the operator must consult with—

(a) the emergency service organisations with responsibility for the area in which the major hazard facility is located; and

(b) the chief health officer; and

(c) in relation to the off-site health and safety consequences of a major incident occurring—SEMSOG.

Note 1 ***Chief health officer***—see the Legislation Act, dictionary, pt 1.

Note 2 ***SEMSOG***—see the dictionary.

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(3) The operator must ensure that the emergency plan addresses any recommendation made by an entity consulted under subsection (2) in relation to—

(a) the testing of the emergency plan, including the manner in which it will be tested, the frequency of testing and whether or not emergency service organisations will participate in the testing; and

(b) what incidents or events at the major hazard facility should be notified to emergency service organisations.

(4) The operator must have regard to any other recommendation or advice given by an entity consulted under subsection (2).

(5) The operator must—

(a) keep a copy of the plan at the major hazard facility; and

(b) give a copy of the plan to—

(i) the entities consulted under subsection (2); and

(ii) any other relevant emergency service organisations.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(6) The operator must test the emergency plan in accordance with the recommendations made by the entities consulted under subsection (2) before applying for a licence for the major hazard facility.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(7) The operator must immediately implement the emergency plan if—

(a) a major incident occurs in the course of the operation of the major hazard facility; or

(b) an event occurs that could reasonably be expected to lead to a major incident.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(8) The operator must notify the entities consulted under subsection (2) of the occurrence of an incident or event referred to in subsection (3) (b).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 This section applies in addition to s 43.

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558 Determined major hazard facility—safety management system

(1) The operator of a determined major hazard facility must establish a safety management system for the operation of the major hazard facility, in accordance with this section.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The operator of a determined major hazard facility must implement the safety management system for the major hazard facility, so far as is reasonably practicable.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The safety management system must—

(a) provide a comprehensive and integrated system for the management of all aspects of risk control in relation to the occurrence and potential occurrence of major incidents at the major hazard facility; and

(b) be designed to be used by the operator as the primary means of ensuring the safe operation of the major hazard facility.

(4) The safety management system must—

(a) be documented; and

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(b) state the operator's safety policy, including the operator's broad aims in relation to the safe operation of the major hazard facility; and

(c) state the operator's specific safety objectives and describe the systems and procedures that will be used to achieve those objectives; and

(d) include the matters specified in schedule 17 (Additional matters to be included in safety management system of major hazard facility); and

(e) be readily accessible to persons who use it.

559 Determined major hazard facility—review of risk management

(1) The operator of a determined major hazard facility must review and, as necessary, revise the following in accordance with this section:

(a) the safety assessment conducted under section 555 (Determined major hazard facility—safety assessment—Act, s 20) in order to ensure the adequacy of the control measures to be implemented by the operator;

(b) the major hazard facility's emergency plan;

(c) the major hazard facility's safety management system.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Without limiting subsection (1), the operator must conduct a review and revision in the following circumstances:

(a) a modification to the major hazard facility is proposed;

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(b) a control measure implemented under section 556 (Determined major hazard facility—control of risk—Act, s 20) does not minimise the relevant risk so far as is reasonably practicable;

Example

an effectiveness test indicates a deficiency in the control measure

(c) a new major hazard risk is identified;

(d) the results of consultation by the operator under part 9.5 (Consultation and workers' safety role) indicate that a review is necessary;

(e) a health and safety representative requests a review under subsection (4);

(f) the regulator requires the review.

(3) In reviewing and revising the emergency plan, the operator must consult with the emergency service organisations referred to in section 557 (2) (Determined major hazard facility—emergency plan).

(4) A health and safety representative for workers at a major hazard facility may request a review if the representative reasonably believes that—

(a) a circumstance referred to in subsection (2) (a), (b), (c) or (d) affects or may affect the health and safety of a member of the work group represented by the health and safety representative; and

(b) the operator has not adequately conducted a review in response to the circumstance.

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Division 9.3.4 Determined major hazard facility—safety case

560 Safety case must be provided

The operator of a determined major hazard facility must provide the regulator with a completed safety case for the major hazard facility, that has been prepared in accordance with section 561, within 24 months after the facility was determined to be a major hazard facility.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

561 Safety case—content

(1) The operator must prepare the safety case in accordance with the safety case outline prepared or altered under this division.

(2) A safety case must contain the following:

(a) a summary of the identification conducted under section 554 (Determined major hazard facility—identification of major incidents and major incident hazards), including a list of all major incidents identified;

(b) a summary of the safety assessment conducted under section 555 (Determined major hazard facility—safety assessment);

(c) a summary of the major hazard facility's emergency plan;

(d) a summary of the major hazard facility's safety management system;

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(e) a description of any arrangements made in relation to the security of the major hazard facility;

(f) a description of the consultation with workers that took place under section 575 (Operator of major hazard facility must consult with workers—Act, s 49 (f)) in the preparation of the safety case;

(g) the additional matters specified in schedule 18 (Additional matters to be included in safety case for a major hazard facility).

(3) The safety case must include any further information that is necessary to ensure that all information contained in the safety case is accurate and up to date.

(4) A safety case must demonstrate—

(a) that the major hazard facility's safety management system will, once implemented, control risks arising from major incidents and major incident hazards; and

(b) the adequacy of the measures to be implemented by the operator to control risks associated with the occurrence and potential occurrence of major incidents.

(5) The operator must include in the safety case a signed statement that—

(a) the information provided under subsections (1) and (2) is accurate and up to date; and

(b) as a consequence of conducting the safety assessment, the operator has a detailed understanding of all aspects of risk to health and safety associated with major incidents that may occur; and

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(c) the control measures to be implemented by the operator—

(i) will eliminate the risk of a major incident occurring, so far as is reasonably practicable; and

(ii) if it is not reasonably practicable to eliminate the risk of a major incident occurring—will minimise the risk so far as is reasonably practicable; and

(iii) in the event of a major incident occurring—will minimise its magnitude and the severity of its health and safety consequences so far as is reasonably practicable; and

(d) all persons to be involved in the implementation of the safety management system have the knowledge and skills necessary to enable them to carry out their role safely and competently.

(6) If the operator is a body corporate, the safety case must be signed by the most senior executive officer of the body corporate who resides in the ACT.

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562 Coordination for multiple facilities

(1) The regulator may require the operators of 2 or more major hazard facilities to coordinate the preparation of the safety cases for their major hazard facilities if the regulator is satisfied on reasonable grounds that such coordination is necessary in the interests of the safe operation and effective safety management of any or all of those major hazard facilities.

(2) If the regulator requires the coordinated preparation of safety cases, each operator must provide the other operators with information concerning any circumstances at the operator's facility that could constitute a major incident hazard in relation to any of the other major hazard facilities.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) In complying with this section, the operator is not required to disclose information that may expose the major hazard facility to a major incident hazard in relation to the security of the major hazard facility.

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563 Review

The operator of a determined major hazard facility must review and as necessary revise the major hazard facility's safety case after any review is conducted under section 559 (Determined major hazard facility—review of risk management).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 The operator of a licensed major hazard facility is required to notify the regulator of any change in relation to certain information about the licence (see s 588).

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Part 9.4 Licensed major hazard facilities—risk management

Note This part applies to a major hazard facility that is licensed under pt 9.7.

564 Licensed major hazard facility—identification of major incidents and major incident hazards

(1) The operator of a licensed major hazard facility must identify—

(a) all major incidents that could occur in the course of the operation of the major hazard facility; and

(b) all major incident hazards for the major hazard facility, including major incident hazards relating to the security of the major hazard facility.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) In complying with subsection (1), the operator must have regard to any advice and recommendations given by—

(a) the emergency service organisations with responsibility for the area in which the major hazard facility is located; and

(b) any Commonwealth government department or agency, or territory authority or administrative unit, with a regulatory role in relation to major hazard facilities.

(3) The operator must document—

(a) all identified major incidents and major incident hazards; and

(b) the criteria and methods used in identifying the major incidents and major incident hazards; and

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(c) any external conditions under which the major incident hazards, including those relating to the security of the major hazard facility, might give rise to the major incidents.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) All major incidents and major incident hazards identified and documented under section 554 (Determined major hazard facility—identification of major incidents and major incident hazards) in relation to the major hazard facility are taken to have been identified and documented under this section.

565 Licensed major hazard facility—safety assessment

The operator of a licensed major hazard facility must keep a copy of the safety assessment documented under section 555 (Determined major hazard facility—safety assessment) as revised under part 9.3 (Duties of operators of determined major hazard facilities) and this part at the facility.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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566 Licensed major hazard facility—control of risk—Act, s 20

(1) The operator of a licensed major hazard facility must implement risk control measures that—

(a) eliminate, so far as is reasonably practicable, the risk of a major incident occurring; or

(b) if it is not reasonably practicable to eliminate that risk—minimise that risk so far as is reasonably practicable.

Note WHS Act—s 20 (see s 9).

(2) The operator of a licensed major hazard facility must implement risk control measures designed to minimise, in the event of a major incident occurring, its magnitude and the severity of its consequences to persons both on-site and off-site.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

567 Licensed major hazard facility—emergency plan

(1) The operator of a licensed major hazard facility must keep a copy of the major hazard facility's emergency plan prepared under section 557 (Determined major hazard facility—emergency plan) as revised under part 9.3 (Duties of operators of determined major hazard facilities) and this part at the facility.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The operator must test the emergency plan in accordance with the recommendations made by the emergency service organisations referred to in section 557 (2) (Determined major hazard facility—emergency plan).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(3) The operator must immediately implement the emergency plan if—

(a) a major incident occurs in the course of the operation of the major hazard facility; or

(b) an event occurs that could reasonably be expected to lead to a major incident.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The operator must notify the regulator and the emergency service organisations referred to in section 557 (2) (Determined major hazard facility—emergency plan) of the occurrence of an incident or event referred to in section 557 (3) as soon as practicable after the incident or event occurs.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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568 Licensed major hazard facility—safety management system

(1) The operator of a licensed major hazard facility must implement the major hazard facility's safety management system established under section 558 (Determined major hazard facility—safety management system) as revised under part 9.3 (Duties of operators of determined major hazard facilities) and this part.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The operator must use the safety management system as the primary means of—

(a) ensuring the health and safety of workers engaged or caused to be engaged by the operator and workers whose activities in carrying out work are influenced or directed by the operator while the workers are at work in the operation of the major hazard facility; and

(b) ensuring that the health and safety of other persons is not put at risk from work carried out as part of the operation of the major hazard facility.

Note The operator of a licensed major hazard facility is required to notify the regulator of any change in relation to certain information about the licence (see s 588).

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569 Licensed major hazard facility—review of risk management

(1) The operator of a licensed major hazard facility must review and, as necessary, revise the following in accordance with this section:

(a) the safety assessment for the facility in order to ensure the adequacy of the control measures to be implemented by the operator;

(b) the major hazard facility's emergency plan;

(c) the major hazard facility's safety management system.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) Without limiting subsection (1), the operator must conduct a review and revision in the following circumstances:

(a) a modification to the major hazard facility is proposed;

(b) a control measure implemented under section 566 (Licensed major hazard facility—control of risk—Act, s 20) does not minimise the relevant risk so far as is reasonably practicable;

Example

an effectiveness test indicates a deficiency in the control measure

(c) a new major hazard risk is identified;

(d) the results of consultation by the operator under part 9.5 (Consultation and workers' safety role) indicate that a review is necessary;

(e) a health and safety representative requests a review under subsection (5);

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(f) the regulator requires the review;

(g) at least once every 5 years.

(3) In reviewing and revising the safety assessment, the operator must comply with the requirements set out in section 555 (2), (3) and (4) (Determined major hazard facility—safety assessment).

(4) In reviewing and revising the emergency plan, the operator must consult with the emergency service organisations referred to in section 557 (2) (Determined major hazard facility—emergency plan).

(5) A health and safety representative for workers at a major hazard facility may request a review if the representative reasonably believes that—

(a) a circumstance referred to in subsection (2) (a), (b), (c) or (d) affects or may affect the health and safety of a member of the work group represented by the health and safety representative; and

(b) the operator has not adequately conducted a review in response to the circumstance.

570 Safety case—review

The operator of a licensed major hazard facility must review and as necessary revise the safety case after any review is conducted under section 569 (Licensed major hazard facility—review of risk management).

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 The operator of a licensed major hazard facility is required to notify the regulator of any change in relation to certain information about the licence (see s 588).

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571 Information for visitors

The operator of a licensed major hazard facility must ensure that a person other than a worker who enters the major hazard facility is as soon as practicable—

(a) informed about hazards at the major hazard facility that may affect that person; and

(b) instructed in safety precautions the person should take; and

(c) instructed in the actions the person should take if the emergency plan is implemented while the person is on-site.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

572 Information for local community—general

(1) The operator of a licensed major hazard facility must ensure the provision of the following information to the local community and SEMSOG:

(a) the name and location of the major hazard facility;

(b) the name, position and contact details of a contact person from whom information may be obtained;

(c) a general description of the major hazard facility's operations;

(d) the means by which the local community will be informed of a major incident occurring;

(e) the actions, as specified in the major hazard facility's emergency plan, that members of the local community should take if a major incident occurs;

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(f) a summary of the safety case for the major hazard facility.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 ***SEMSOG***—see the dictionary.

(2) The operator must ensure that the information provided under subsection (1) is—

(a) set out and expressed in a way that is readily accessible and understandable to persons who are not familiar with the major hazard facility and its operations; and

(b) reviewed and as necessary revised if a modification is made to the major hazard facility; and

(c) sent in writing to any community or public library serving the local community.

(3) In complying with subsection (1), the operator is not required to disclose information that may expose the major hazard facility to a major incident hazard in relation to the security of the major hazard facility.

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(4) The operator of a licensed major hazard facility who receives a written request from a person who reasonably believes that the occurrence of a major incident at the major hazard facility may adversely affect the person's health or safety must give that person a copy of the information provided to the local community under this section.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

573 Information for local community—major incident

(1) As soon as practicable after a major incident occurs, the operator of the major hazard facility must take all reasonable steps to provide the persons specified in subsection (2) with information about the major incident, including—

(a) a general description of the major incident; and

(b) a description of the actions the operator has taken and proposes to take to prevent any recurrence of the major incident or the occurrence of a similar major incident; and

(c) recommended actions that SEMSOG and members of the local community should take to eliminate or minimise risks to health and safety.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The persons to whom information about a major incident must be given are—

(a) the local community, if a member of the local community was affected by the major incident; and

(b) SEMSOG; and

(c) any Commonwealth government department or agency, or territory authority or administrative unit, with a regulatory role in relation to major hazard facilities.

Note ***SEMSOG***—see the dictionary.

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Part 9.5 Consultation and workers' safety role

574 Safety role for workers

(1) The operator of a determined major hazard facility must, within the time specified in the safety case outline for the major hazard facility, implement a safety role for the workers at the major hazard facility that enables them to contribute to—

(a) the identification of major incidents and major incident hazards under section 554 (Determined major hazard facility—identification of major incidents and major incident hazards); and

(b) the consideration of control measures in the conduct of the safety assessment under section 555 (Determined major hazard facility—safety assessment); and

(c) the conduct of a review under section 559 (Determined major hazard facility—review of risk management).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) The operator of a licensed major hazard facility must implement a safety role for workers at the facility so as to enable them to contribute to the conduct of a review under section 569 (Licensed major hazard facility—review of risk management).

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

575 Operator of major hazard facility must consult with workers—Act, s 49 (f)

(1) The operator of a determined major hazard facility must consult with workers at the major hazard facility in relation to the following:

(a) the preparation of the safety case outline for the major hazard facility;

(b) the preparation, testing and implementation of the major hazard facility's emergency plan;

(c) the establishment and implementation of the major hazard facility's safety management system;

(d) the conduct of a review under section 559 (Determined major hazard facility—review of risk management);

(e) the implementation of the workers' safety role under section 574 (1) (Safety role for workers);

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(f) the preparation and review of the major hazard facility's safety case.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) The operator of a licensed major hazard facility must consult with workers at the major hazard facility in relation to the following:

(a) the testing and implementation of the major hazard facility's emergency plan;

(b) the implementation of the major hazard facility's safety management system;

(c) the conduct of a review under section 569 (Licensed major hazard facility—review of risk management);

(d) the implementation of the workers' safety role under section 574 (2) (Safety role for workers);

(e) a review of the major hazard facility's safety case.

Maximum penalty:

(a) in the case of an individual—$6 000; or

(b) in the case of a body corporate—$30 000.

Note 1 Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Note 2 See the Act, s 49 for other consultation duties of a person conducting a business or undertaking.

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Part 9.6 Duties of workers at licensed major hazard facilities

576 Licensed major hazard facility—duties of workers

(1) While at work, a worker at a licensed major hazard facility must—

(a) comply with any procedure imposed by the operator as a control measure in relation to major incidents, including the taking of corrective action under the procedure; and

(b) comply with any procedure in the emergency plan, including the taking of corrective action under the plan; and

(c) immediately inform the operator about any circumstance that the worker believes may cause a major incident; and

(d) inform their supervisor about any corrective action taken by the worker.

Maximum penalty:

(a) in the case of an individual—$3 600; or

(b) in the case of a body corporate—$18 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) A worker is not required to comply with subsection (1) if to do so would risk the health or safety of the worker or of another worker or other person.

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Part 9.7 Licensing of major hazard facilities

Division 9.7.1 Licensing process

577 Who may apply for a licence

Only an operator of a determined major hazard facility who is taken to be a suitable operator under section 543 (Suitability of facility operator) may apply for a major hazard facility licence for that facility.

578 Application for major hazard facility licence

(1) This section applies to an application for a major hazard facility licence.

(2) The application must include the following information:

(a) the operator's name;

(b) whether or not the operator is a body corporate;

(c) if the operator conducts the business or undertaking under a business name—that business name and a certificate or other written evidence of the registration of the business name;

(d) any other evidence of the operator's identity required by the regulator;

(e) the safety case prepared under division 9.3.4 (Determined major hazard facility—safety case);

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(f) if the operator is an individual—

(i) a declaration as to whether or not the operator has ever been convicted or found guilty of any offence under the Act or this regulation or under any corresponding WHS law; and

Note 1 ***Found guilty***—see the Legislation Act, dictionary, pt 1.

Note 2 A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

(ii) details of any conviction or finding of guilt declared under subparagraph (i); and

(iii) a declaration as to whether or not the operator has ever entered into an enforceable undertaking under the Act or under any corresponding WHS law; and

(iv) details of any enforceable undertaking declared under subparagraph (iii); and

(v) if the operator has previously been refused a major hazard facility licence under a corresponding WHS law, a declaration giving details of that refusal; and

(vi) if the operator has previously held a major hazard facility licence under the Act or this regulation or under a corresponding WHS law, a declaration—

(A) describing any condition imposed on that licence; and

(B) stating whether or not that licence had been suspended or cancelled and, if so, whether or not the operator had been disqualified from applying for a major hazard facility licence; and

(C) giving details of any suspension, cancellation or disqualification;

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(g) if the operator is a body corporate, the information referred to in paragraph (f) in relation to—

(i) the operator; and

(ii) each officer of the operator.

Note 1 A fee may be determined under the Act, s 278 for this provision.

Note 2 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

579 Additional information

(1) If an application for a major hazard facility licence does not contain sufficient information to enable the regulator to make a decision whether or not to grant the licence, the regulator may ask the operator to provide additional information.

(2) A request for additional information must—

(a) specify the date (being not less than 28 days after the request) by which the additional information is to be given; and

(b) be confirmed in writing.

(3) If an operator does not provide the additional information by the date specified, the application is to be taken to have been withdrawn.

(4) The regulator may make more than 1 request for additional information under this section.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

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580 Decision on application

(1) Subject to this section, the regulator must grant a major hazard facility licence if satisfied about the matters referred to in subsection (2).

(2) The regulator must be satisfied about the following:

(a) the application has been made in accordance with this regulation;

(b) the safety case for the facility has been prepared in accordance with division 9.3.4 (Determined major hazard facility—safety case);

(c) the operator is able to operate the major hazard facility safely and competently;

(d) the operator is able to comply with any conditions that will apply to the licence.

(3) The regulator may refuse to grant a major hazard facility licence if it becomes aware of circumstances that satisfy it that the following persons are not suitable persons to exercise management or control over the major hazard facility:

(a) if the operator is an individual—the operator;

(b) if the operator is a body corporate—any officer of the body corporate.

(4) The regulator must refuse to grant a major hazard facility licence if satisfied that the operator, in making the application, has—

(a) given information that is false or misleading in a material particular; or

(b) failed to give any material information that should have been given.

(5) If the regulator decides to grant the licence, the regulator must notify the operator within 14 days after making the decision.

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(6) If the regulator does not make a decision within 6 months after receiving the application or the additional information requested under section 579 (Additional information), the regulator is taken to have refused to grant the licence applied for.

Note A refusal to grant a major hazard facility licence (including under s (6)) is a reviewable decision (see s 676).

581 Matters to be taken into account

(1) For the purposes of section 580 (3) (Decision on application), if the operator is an individual, the regulator must have regard to all relevant matters, including the following:

(a) any offence under the Act or this regulation or under a corresponding WHS law of which the operator has been convicted or found guilty;

Note 1 ***Found guilty***—see the Legislation Act, dictionary, pt 1.

Note 2 A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

(b) any enforceable undertaking the operator has entered into under the Act or under a corresponding WHS law;

(c) in relation to a major hazard facility licence applied for or held by the operator under the Act or this regulation or under a corresponding WHS law—

(i) any refusal to grant the licence; and

(ii) any condition imposed on the licence, if granted, and the reason the condition was imposed; and

(iii) any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence;

(d) the operator's record in relation to any matters arising under the Act or this regulation or under a corresponding WHS law;

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(e) any advice or recommendations received from any territory or Commonwealth agency with responsibility in relation to national security.

(2) For the purposes of section 580 (3) (Decision on application), if the operator is a body corporate, the regulator must have regard to all relevant matters, including the matters referred to in subsection (1), in relation to—

(a) the body corporate; and

(b) each officer of the body corporate.

582 When decision is to be made

The regulator must make a decision in relation to an application for a major hazard facility licence within 6 months after receiving the application or the additional information requested under section 579 (Additional information).

583 Refusal to grant major hazard facility licence—process

(1) If the regulator proposes to refuse to grant a major hazard facility licence, the regulator must give a written notice to the operator—

(a) informing the operator of the reasons for the proposed refusal; and

(b) advising the operator that the operator may, by a specified date (being not less than 28 days after giving the notice), make a submission to the regulator in relation to the proposed refusal.

(2) After the date specified in a notice under subsection (1), the regulator must—

(a) if the operator has made a submission in relation to the proposed refusal to grant the licence—consider that submission; and

(b) whether or not the operator has made a submission—decide whether to grant or refuse to grant the licence; and

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(c) within 14 days after making the decision, give the operator written notice of the decision, including the reasons for the decision.

584 Conditions of licence

(1) The regulator may impose any conditions the regulator considers appropriate on a major hazard facility licence.

(2) Without limiting subsection (1), the regulator may impose conditions in relation to 1 or more of the following:

(a) additional control measures which must be implemented in relation to the carrying out of work or activities under the licence;

(b) the recording or keeping of additional information;

(c) the provision of additional information, training and instruction or the giving of specified information, training and instruction to additional persons or classes of persons;

(d) the provision of additional information to the regulator;

(e) if the operator is a person conducting a business or undertaking—the additional class of persons who may carry out work or activities on the operator's behalf.

(3) A licence under this part includes a condition that, if the licensee is issued with an infringement notice under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011*, information about the infringement notice be included in a public register in accordance with section 698A.

Note 1 A person must comply with the conditions of a licence (see Act, s 45).

Note 2 A decision to impose a condition on a licence is a reviewable decision (see s 676).

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585 Duration of licence

Subject to this part, a major hazard facility licence takes effect on the day it is granted and, unless cancelled earlier, expires on the day determined by the regulator, which must be not more than 5 years after the day the licence was granted.

586 Licence document

(1) If the regulator grants a major hazard facility licence, the regulator must issue to the operator a licence document in the form determined by the regulator.

(2) The licence document must include the following:

(a) the name of the operator;

(b) if the operator conducts the business or undertaking under a business name—that business name;

(c) the location of the major hazard facility;

(d) any conditions imposed on the licence by the regulator;

(e) the date on which the licence was granted;

(f) the expiry date of the licence.

587 Licence document to be available

(1) The operator of the major hazard facility must keep the licence document available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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(2) Subsection (1) does not apply if the licence document is not in the operator's possession because—

(a) it has been returned to the regulator under section 593 (Operator to return licence); and

(b) the operator has applied for, but has not received, a replacement licence under section 594 (Replacement licence document).

Division 9.7.2 Amendment of licence and licence document

588 Changes to information

(1) The operator of a licensed major hazard facility must give the regulator written notice of any change to any material particular in any information given at any time by the operator to the regulator in relation to the licence within 14 days after the operator becomes aware of the change.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

Example

a change to the quantity of the hazardous chemicals present or likely to be present at the facility

(2) Subsection (1) applies whether the information was given in the application for grant or renewal of the licence or in any other circumstance.

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589 Amendment imposed by regulator

(1) The regulator may, on its own initiative, amend a major hazard facility licence, including by amending the licence to—

(a) vary or delete a condition of the licence; or

(b) impose a new condition on the licence.

(2) If the regulator proposes to amend a licence, the regulator must give the operator a written notice—

(a) setting out the proposed amendment and the reasons for it; and

(b) advising the operator that the operator may, by a specified date (being not less than 28 days after giving the notice), make a submission to the regulator in relation to the proposed amendment.

(3) After the date specified in a notice under subsection (2), the regulator must—

(a) if the operator has made a submission in relation to the proposed amendment—consider that submission; and

(b) whether or not the operator has made a submission—decide—

(i) to make the proposed amendment; or

(ii) not to make any amendment; or

(iii) to make a different amendment that results from consideration of any submission made by the operator; and

(c) within 14 days after making that decision, give the operator written notice that—

(i) sets out the amendment, if any; and

(ii) if a submission was made in relation to the proposed amendment—sets out the regulator's reasons for making the amendment; and

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(iii) specifies the date (being not less than 28 days after the operator is given the notice) on which the amendment, if any, takes effect.

Note A decision to amend a licence is a reviewable decision (see s 676).

590 Amendment on application by operator

(1) The regulator, on application by the operator of a licensed major hazard facility, may amend the major hazard facility licence, including by amending the licence to vary or delete a condition of the licence.

(2) If the regulator proposes to refuse to amend the licence, the regulator must give the operator a written notice—

(a) informing the operator of the proposed refusal to amend the licence and the reasons for the proposed refusal; and

(b) advising the operator that the operator may, by a specified date (being not less than 28 days after giving the notice), make a submission to the regulator in relation to the proposed refusal.

(3) After the date specified in a notice under subsection (2), the regulator must—

(a) if the operator has made a submission in relation to the proposed refusal—consider that submission; and

(b) whether or not the operator has made a submission—decide—

(i) to make the amendment applied for; or

(ii) not to make any amendment; or

(iii) to make a different amendment that results from consideration of any submission made by the operator; and

(c) within 14 days after making that decision, give the operator written notice of the decision in accordance with this section.

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(4) If the regulator makes the amendment applied for, the notice under subsection (3) (c) must specify the date (being not less than 28 days after the operator is given the decision notice) on which the amendment takes effect.

(5) If the regulator refuses to make the amendment applied for or makes a different amendment, the notice under subsection (3) (c) must—

(a) if a submission was made in relation to the proposed refusal of the amendment applied for—set out the reasons for the regulator's decision; and

(b) if the regulator makes a different amendment—

(i) set out the amendment; and

(ii) specify the date (being not less than 28 days after the operator is given the decision notice) on which the amendment takes effect.

Note A refusal to make the amendment applied for, or a decision to make a different amendment, is a reviewable decision (see s 676).

591 Minor corrections to major hazard facility licence

The regulator may make minor amendments to a major hazard facility licence, including an amendment—

(a) to correct an obvious error; or

(b) to change an address; or

(c) that does not impose a significant burden on the operator.

592 Regulator to give amended licence document to operator

If the regulator amends a major hazard facility licence and considers that the licence document requires amendment, the regulator must give the operator an amended licence document within 14 days after making the decision to amend the licence.

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593 Operator to return licence

If a major hazard facility licence is amended, the operator of the licensed major hazard facility must return the licence document to the regulator for amendment at the written request of the regulator and within the time specified in the request.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

594 Replacement licence document

(1) The operator of a licensed major hazard facility must give written notice to the regulator as soon as practicable if the licence document is lost, stolen or destroyed.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) If a licence document for a licensed major hazard facility is lost, stolen or destroyed, the operator may apply to the regulator for a replacement document.

Note 1 An operator is required to keep the licence document available for inspection (see s 587).

Note 2 A fee may be determined under the Act, s 278 for this provision.

Note 3 If a form is approved under the Act, s 277 for this provision, the form must be used.

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(3) The application must include a declaration describing the circumstances in which the original document was lost, stolen or destroyed.

Note It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(4) The regulator must issue a replacement licence document if satisfied that the original document was lost, stolen or destroyed.

(5) If the regulator refuses to issue a replacement licence document, the regulator must give the operator written notice of this decision, including the reasons for the decision, within 14 days after making the decision.

Note A refusal to issue a replacement licence document is a reviewable decision (see s 676).

Division 9.7.3 Renewal of major hazard facility licence

595 Regulator may renew licence

The regulator may renew a major hazard facility licence on application by the operator.

596 Application for renewal

(1) This section applies to an application for renewal of a major hazard facility licence.

Note 1 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 2 A fee may be determined under the Act, s 278 for this provision.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

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(2) The application must include a copy of the safety case for the major hazard facility as revised under section 570 (Safety case—review).

(3) The application must be made not less than 6 months before the licence to be renewed expires.

597 Licence continues in force until application is decided

If the operator of a licensed major hazard facility applies under section 596 (Application for renewal) for the renewal of a major hazard facility licence, the licence is taken to continue in force from the day it would, apart from this section, have expired until the operator is given notice of the decision on the application.

598 Provisions relating to renewal of licence

For the purposes of this division—

(a) section 579 (Additional information) applies as if a reference in that section to an application for a licence were a reference to an application to renew a licence; and

(b) section 580 (Decision on application) (except subsection (6)), section 581 (Matters to be taken into account), section 584 (Conditions of licence) and section 585 (Duration of licence) apply as if a reference in those sections to the grant of a licence were a reference to the renewal of a licence; and

(c) section 583 (Refusal to grant major hazard facility licence—process) applies as if a reference in that section to a refusal to grant a licence were a reference to a refusal to renew a licence.

Note A refusal to renew a licence is a reviewable decision (see s 676).

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599 Status of major hazard facility licence during review

(1) This section applies if the regulator gives the operator written notice of the regulator's decision to refuse to renew the licence.

(2) If the operator does not apply for an external review, the licence continues to have effect until the last of the following events:

(a) the expiry of the licence;

(b) the end of the period for applying for an external review.

(3) If the operator applies for an external review, the licence continues to have effect until the earlier of the following events:

(a) the operator withdraws the application for review;

(b) ACAT makes a decision on the review.

(4) The licence continues to have effect under this section even if its expiry date passes.

Division 9.7.4 Transfer of major hazard facility licence

600 Transfer of major hazard facility licence

(1) The regulator, on the application of the operator of a major hazard facility, may transfer a major hazard facility licence to another person who is to become the operator of the major hazard facility, if satisfied that the proposed operator will achieve a standard of health and safety in the operation of the facility that is at least equivalent to the standard that the current operator has achieved.

Note 1 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 2 A fee may be determined under the Act, s 278 for this provision.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

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(2) The regulator may transfer the licence subject to any conditions that the regulator considers necessary and appropriate to ensure that the new operator will be able to achieve a standard of health and safety in the operation of the facility that is at least equivalent to the standard achieved by the existing operator.

(3) On the completion of the transfer, the person to whom the licence is transferred becomes the operator of the major hazard facility for the purposes of this chapter.

Note A decision to refuse to transfer a major hazard facility licence is a reviewable decision (see s 676).

Division 9.7.5 Suspension and cancellation of major hazard facility licence

601 Cancellation of major hazard facility licence—on operator's application

(1) The operator of a licensed major hazard facility may apply to the regulator to cancel the licence.

Note 1 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 2 A fee may be determined under the Act, s 278 for this provision.

Note 3 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(2) The regulator must conduct an inquiry into the inventory and operations of the facility before deciding on an application to cancel a licence.

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(3) The regulator must cancel a major hazard facility licence if—

(a) the quantity of Schedule 15 chemicals present or likely to be present at the facility does not exceed their threshold quantity; and

(b) it is unlikely that a major incident will occur at the facility.

(4) If the regulator, under this section, cancels the licence of a facility that was determined to be a major hazard facility under part 9.2 (Determinations about major hazard facilities), the regulator must revoke the determination.

Note A decision to refuse to cancel a licence is a reviewable decision (see s 676).

602 Suspension or cancellation of licence—on regulator's initiative

(1) The regulator, on their own initiative, may suspend or cancel a major hazard facility licence if satisfied about 1 or more of the following:

(a) the operator has failed to ensure that the facility is operated safely and competently;

(b) the operator has failed to ensure compliance with a condition of the licence;

(c) the operator, in the application for the grant or renewal of the licence or on request by the regulator for additional information—

(i) gave information that was false or misleading in a material particular; or

(ii) failed to give any material information that should have been given in that application or on that request.

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(2) If the regulator suspends or cancels a major hazard facility licence, the regulator may disqualify the operator from applying for a further major hazard facility licence.

Note A decision to suspend a licence, to cancel a licence or to disqualify the operator from applying for a further licence is a reviewable decision (see s 676).

603 Matters to be taken into account

(1) In making a decision under section 602 (Suspension or cancellation of licence—on regulator's initiative), the regulator must have regard to the following:

(a) any submissions made by the operator under section 604 (Notice to and submissions by operator);

(b) any advice received from a corresponding regulator;

(c) any advice or recommendations received from any territory or Commonwealth agency with responsibility in relation to national security.

(2) For the purposes of section 602 (1) (a) and (b) (Suspension or cancellation of licence—on regulator's initiative), if the operator is an individual, the regulator must have regard to all relevant matters, including the following:

(a) any offence under the Act or this regulation or under a corresponding WHS law, of which the operator has been convicted or found guilty;

Note 1 ***Found guilty***—see the Legislation Act, dictionary, pt 1.

Note 2 A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

(b) any enforceable undertaking the operator has entered into under the Act or a corresponding WHS law;

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(c) in relation to a major hazard facility licence applied for or held by the operator under the Act or this regulation or under a corresponding WHS law—

(i) any refusal to grant the licence; and

(ii) any condition imposed on the licence, if granted, and the reason the condition was imposed; and

(iii) any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence;

(d) the operator's record in relation to any matters arising under the Act or this regulation or under a corresponding WHS law.

(3) For the purposes of section 602 (1) (a) and (b) (Suspension or cancellation of licence—on regulator's initiative), if the operator is a body corporate, the regulator must have regard to all relevant matters, including the matters referred to in subsection (2), in relation to—

(a) the body corporate; and

(b) each officer of the body corporate.

604 Notice to and submissions by operator

Before suspending or cancelling a major hazard facility licence, the regulator must give the operator a written notice of the proposed suspension or cancellation and any proposed disqualification—

(a) outlining all relevant allegations, facts and circumstances known to the regulator; and

(b) advising the operator that the operator may, by a specified date (being not less than 28 days after giving the notice), make a submission in relation to the proposed suspension or cancellation and any proposed disqualification.

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605 Notice of decision

(1) The regulator must give the operator of a major hazard facility written notice of a decision under section 602 (Suspension or cancellation of licence—on regulator's initiative) to suspend or cancel the major hazard facility licence within 14 days after making the decision.

(2) The notice must—

(a) state that the licence is to be suspended or cancelled; and

(b) if the licence is to be suspended, state—

(i) when the suspension begins and ends; and

(ii) the reasons for the suspension; and

(iii) whether or not the operator is required to take any action before the suspension ends; and

(iv) whether or not the operator is disqualified from applying for a further major hazard facility licence during the suspension; and

(c) if the licence is to be cancelled, state—

(i) when the cancellation takes effect; and

(ii) the reasons for the cancellation; and

(iii) whether or not the operator is disqualified from applying for a further major hazard facility licence; and

(d) if the operator is disqualified from applying for a further major hazard facility licence, state—

(i) when the disqualification begins and ends; and

(ii) the reasons for the disqualification; and

(iii) whether or not the operator is required to take any action before the disqualification ends; and

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(e) state when the licence document must be returned to the regulator.

606 Immediate suspension

(1) The regulator may suspend a major hazard facility licence on a ground referred to in section 602 (Suspension or cancellation of licence—on regulator's initiative) without giving notice under section 604 (Notice to and submissions by operator) if satisfied that—

(a) a person may be exposed to an imminent serious risk to their health or safety if the work carried out under the major hazard facility licence were not suspended; or

(b) a corresponding regulator has suspended a major hazard facility licence held by the operator under this section as applying in the corresponding jurisdiction.

(2) If the regulator decides to suspend a licence under this section—

(a) the regulator must give the operator of the major hazard facility written notice of the suspension and the reasons for the suspension; and

(b) the suspension of the licence takes effect on the giving of the notice.

(3) The regulator must then—

(a) give notice under section 604 within 14 days after giving the notice under subsection (2); and

(b) make its decision under section 602.

(4) If the regulator does not give notice under subsection (3), the suspension ends at the end of the 14 day period.

(5) If the regulator gives notice under subsection (3), the licence remains suspended until the decision is made under section 602.

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607 Operator to return licence document

An operator, on receiving a notice under section 605 (Notice of decision), must return the licence document to the regulator in accordance with the notice.

Maximum penalty:

(a) in the case of an individual—$1 250; or

(b) in the case of a body corporate—$6 000.

Note Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

608 Regulator to return licence document after suspension

The regulator must return the licence document to the operator within 14 days after the suspension ends.

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Chapter 11 General

Part 11.1 Review of decisions under this regulation

Division 11.1.1 Reviewable decisions

676 Which decisions under this regulation are reviewable

(1) The following table sets out—

(a) decisions made under this regulation that are reviewable under this part (***reviewable decisions***); and

(b) who is eligible to apply for review of a reviewable decision (the ***eligible person***).

column 1 item	column 2 section under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
High risk work licences		
1	89—refusal to grant licence	applicant
2	91—refusal to grant licence	applicant
2A	91A—imposition of a condition when granting licence	applicant
2B	91A—imposition of a condition when renewing licence	applicant
3	98—refusal to issue replacement licence document	licence-holder
4	104—refusal to renew licence	applicant
5	106—suspension of licence	licence-holder
6	106—cancellation of licence	licence-holder

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column 1 **item**	**column 2** **section under which reviewable decision is made**	**column 3** **eligible person in relation to reviewable decision**
7	106—disqualification of licence-holder from applying for another licence	licence-holder
7A	106—variation of licence conditions	licence-holder
Registration of Plant Designs		
17	256—refusal to register plant design	applicant
18	257—refusal to register plant design	applicant
19	258—imposition of a condition when granting registration of plant design	applicant
Registration of Plant		
20	269—refusal to register item of plant	• applicant • the person with management or control of the item of plant
21	270—refusal to register item of plant	• applicant • the person with management or control of the item of plant
22	271—imposition of a condition when granting registration of item of plant	• applicant • the person with management or control of the item of plant
23	271—imposition of a condition when renewing registration of item of plant	• registration holder • the person with management or control of the item of plant

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column 1 **item**	**column 2** **section under which reviewable decision is made**	**column 3** **eligible person in relation to reviewable decision**
24	279—refusal to renew registration of item of plant	• registration holder • the person with management or control of the item of plant
25	283—amendment of registration, on regulator's initiative	• registration holder • the person with management or control of the item of plant
26	284—refusal to amend registration on application (or a decision to make a different amendment)	• registration holder • the person with management or control of the item of plant
27	288—refusal to issue replacement registration document	• registration holder • the person with management or control of the item of plant
27A	288B—decision to cancel registration	• registration holder • the person with management or control of the item of plant
General Construction Induction Training		
28	322—refusal to issue general construction induction training card	applicant
29	322—refusal to issue replacement general construction induction training card	card-holder

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column 1 item	column 2 section under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
30	323—cancellation of general construction induction training card	card-holder
Hazardous chemicals and lead		
31	384—refusal to grant authorisation to use, handle or store a prohibited carcinogen or restricted carcinogen	applicant
32	386—cancellation of authorisation to use, handle or store a prohibited carcinogen or restricted carcinogen	authorisation holder
33	393—deciding a process to be a lead process	• a person conducting a business or undertaking that carries out the lead process • a worker whose interests are affected by the decision
34	407—determining a different frequency for biological monitoring of workers at a workplace, or a class of workers, carrying out lead risk work	• a person conducting a business or undertaking that carries out lead risk work • a worker whose interests are affected by the decision
Asbestos removal licences and asbestos assessor licences		
35	497—refusal to grant licence	applicant
36	501—refusal to grant licence	applicant
37	502—imposition of a condition when granting licence	applicant

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column 1 item	column 2 section under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
38	502—imposition of a condition when renewing licence	applicant
39	508—amendment of licence, on regulator's initiative	licence-holder
40	509—refusal to amend licence on application (or a decision to make a different amendment)	licence-holder
41	513—refusal to issue replacement licence document	licence-holder
42	517—refusal to renew licence	applicant
43	520—suspension of licence	licence-holder
44	520—cancellation of licence	licence-holder
45	520—disqualification of licence-holder from applying for another licence	licence-holder
Major hazard facilities ***Determination of facility to be a major hazard facility***		
46	541—determination of facility to be a major hazard facility, on making inquiry	• operator of facility
47	541—decision not to determine proposed facility to be a major hazard facility	• operator of facility
48	542—determination of major hazard facility	• operator of facility
49	543—determination of suitability of operator	• operator of facility
50	544—imposition of a condition on a determination of a major hazard facility	• operator of facility
Licensing of major hazard facility		
51	580—refusal to grant licence	• operator of facility
52	584—imposition of a condition when granting licence	• operator of facility

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column 1 item	column 2 section under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
53	584—imposition of a condition when renewing licence	• operator of facility
54	589—amendment of licence, on regulator's initiative	• operator of facility
55	590—refusal to amend licence, on application (or a decision to make a different amendment)	• operator of facility
56	594—refusal to issue replacement licence document	• operator of facility
57	598—refusal to renew licence	• operator of facility
58	600—refusal to transfer licence, on application	• operator of facility • proposed operator of facility
59	601—refusal to cancel licence, on application	• operator of facility
60	602—suspension of licence	• operator of facility
61	602—cancellation of licence	• operator of facility
62	602—disqualification of operator from applying for another licence	• operator of facility
Exemptions		
63	684—Refusal to exempt person (or a class of persons) from compliance with any provision of this regulation	• applicant
64	686—refusal to exempt person from requirement to hold a high risk work licence	• applicant
65	688—refusal to exempt operator of major hazard facility from compliance with any provision of this regulation, on application	• operator of facility
66	691—imposing condition on an exemption granted on application under pt 11.2	• applicant

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column 1 item	column 2 section under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
67	696—refusal to grant exemption	• applicant
68	697—amendment of an exemption granted under pt 11.2	• applicant
69	697—cancellation of an exemption granted on application under pt 11.2	• applicant

(2) Unless the contrary intention appears, a reference in this part to a decision includes a reference to—

(a) making, suspending, revoking or refusing to make an order, determination or decision; or

(b) giving, suspending, revoking or refusing to give a direction, approval, consent or permission; or

(c) granting, issuing, amending, renewing, suspending, cancelling, revoking or refusing to grant issue, amend or renew an authorisation; or

(d) imposing or varying a condition; or

(e) making a declaration, demand or requirement; or

(f) retaining, or refusing to deliver up, a thing; or

(g) doing or refusing to do any other act or thing; or

(h) being taken to refuse or do any act or thing.

Division 11.1.2 Internal review

677 Application

This division does not apply to a reviewable decision made under—

(a) chapter 9 (Major hazard facilities); or

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(b) part 11.2 (Exemptions).

678 Application for internal review

(1) Subject to subsection (2), an eligible person in relation to a reviewable decision may apply to the regulator for review (an ***internal review***) of the decision within—

(a) 28 days after the day on which the decision first came to the eligible person's notice; or

(b) any longer time the regulator allows.

(2) An eligible person in relation to a reviewable decision under section 89 (5) (Decision on application), section 256 (5) (Decision on application), section 269 (5) (Decision on application) or section 497 (5) (Decision on application) may apply to the regulator for review (an ***internal review***) of the decision within—

(a) 28 days after the day on which the 120-day period mentioned in that provision; or

(b) any longer time the regulator allows.

Note If a form is approved under the Act, s 277 for this provision, the form must be used.

679 Internal reviewer

(1) The regulator may appoint a person or body to review decisions on applications under this division.

(2) The person who made the reviewable decision cannot be an internal reviewer in relation to that decision.

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680 Decision of internal reviewer

(1) The internal reviewer must review the reviewable decision and make a decision as soon as practicable and within 14 days after the application for internal review, or the additional information requested under subsection (3), is received.

(2) The decision may be—

(a) to confirm or vary the reviewable decision; or

(b) to set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.

(3) The internal reviewer may ask the applicant to provide additional information in support of the application for review.

(4) The applicant must provide the additional information within the time (being not less than 7 days) stated by the internal reviewer in the request for information.

(5) If the applicant does not provide the additional information within the required time, the reviewable decision is taken to have been confirmed by the internal reviewer at the end of that time.

(6) If the reviewable decision is not varied or set aside within the 14-day period mentioned in subsection (1), the reviewable decision is taken to have been confirmed by the internal reviewer.

681 Decision on internal review

Within 14 days of making the decision on the internal review, the internal reviewer must give the applicant written notice of—

(a) the decision on the internal review; and

(b) the reasons for the decision.

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682 Internal review—reviewable decision continues

Subject to any provision to the contrary in relation to a particular decision, an application for an internal review does not affect the operation of the reviewable decision or prevent the taking of any lawful action to implement or enforce the decision.

Division 11.1.3 External review

683 Application for external review

(1) An eligible person may apply to the ACAT for review (an ***external review***) of—

(a) a reviewable decision made by the regulator under—

(i) chapter 9 (Major hazard facilities); or

(ii) part 11.2 (Exemptions); or

(b) a decision made, or taken to have been made, on an internal review.

(2) The application must be made within—

(a) 28 days after the day on which the decision first came to the eligible person's notice; or

(b) any longer time the ACAT allows.

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Part 11.2 Exemptions

Division 11.2.1 General

684 General power to grant exemptions

(1) The regulator may exempt a person or class of persons from compliance with any of this regulation.

Note A decision to refuse to grant an exemption is a reviewable decision (see s 676).

(2) The exemption may be granted on the regulator's own initiative or on the written application of 1 or more persons.

Note 1 If a form is approved under the Act, s 277 for this provision, the form must be used.

Note 2 It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

(3) This section is subject to the limitations set out in this part.

(4) This section does not apply to an exemption from—

(a) a provision requiring a person to hold a high risk work licence; or

(b) a provision of chapter 9 (Major hazard facilities) relating to a major hazard facility or proposed major hazard facility.

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685 Matters to be considered in granting exemptions

In deciding whether or not to grant an exemption under section 684 the regulator must have regard to all relevant matters, including the following:

(a) whether the granting of the exemption will result in a standard of health and safety at the relevant workplace, or in relation to the relevant undertaking, that is at least equivalent to the standard that would be achieved by compliance with the relevant provision or provisions;

(b) whether the requirements of paragraph (a) will be met if the regulator imposes certain conditions in granting the exemption and those conditions are complied with;

(c) whether exceptional circumstances justify the grant of the exemption;

(d) if the proposed exemption relates to a particular thing—whether the regulator is satisfied that the risk associated with the thing is not significant if the exemption is granted;

(e) whether the applicant has carried out consultation in relation to the proposed exemption in accordance with the Act, division 5.1 (Consultation, cooperation and coordination between duty-holders) and division 5.2 (Consultation with workers).

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Division 11.2.2 High risk work licences

686 High risk work licence—exemption

(1) The regulator may exempt a person or class of persons from compliance with a provision of this regulation requiring the person or class of persons to hold a high risk work licence.

(2) The exemption may be granted on the written application of any person concerned.

Note A decision to refuse to grant an exemption is a reviewable decision (see s 676).

687 High risk work licence—regulator to be satisfied about certain matters

(1) The regulator must not grant an exemption under section 686 unless satisfied that granting the exemption will result in a standard of health and safety that is at least equivalent to the standard that would have been achieved without that exemption.

(2) For the purposes of subsection (1), the regulator must have regard to all relevant matters, including whether or not—

(a) the obtaining of the high risk work licence would be impractical; and

(b) the competencies of the person to be exempted exceed those required for a high risk work licence; and

(c) any plant used by the person can be modified in a way that reduces the risk associated with using that plant.

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Division 11.2.3 Major hazard facilities

688 Major hazard facility—exemption

(1) The regulator may exempt the operator of a major hazard facility or proposed major hazard facility from compliance with any provision of this regulation relating to that facility.

(2) The exemption may be granted on the written application of the operator of the major hazard facility or proposed major hazard facility.

Note A decision to refuse to grant an exemption is a reviewable decision (see s 676).

689 Major hazard facility—regulator to be satisfied about certain matters

(1) The regulator must not grant an exemption under section 688 unless satisfied that—

(a) 1 or more Schedule 15 chemicals are present or likely to be present at the facility; and

(b) the quantity of the Schedule 15 chemicals exceeds the threshold quantity of the Schedule 15 chemicals periodically because they are solely the subject of intermediate temporary storage; and

(c) the Schedule 15 chemicals are in 1 or more containers with the capacity of each container being not more than a total of 500kg; and

(d) granting the exemption will result in a standard of health and safety in relation to the operation of the facility that is at least equivalent to the standard that would be achieved by compliance with the relevant provision or provisions.

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(2) For the purposes of subsection (1) (d), the regulator must have regard to all relevant matters, including whether or not—

(a) the applicant is complying with the Act and this regulation; and

(b) the applicant has processes and procedures in place which will keep the quantity of the Schedule 15 chemical or chemicals present or likely to be present at or below the threshold quantity for the Schedule 15 chemical or chemicals as often as practicable; and

(c) the applicant has implemented adequate control measures to minimise the risk of a major incident occurring.

Division 11.2.4 Exemption process

690 Application for exemption

An application for an exemption must be made in the manner and form required by the regulator.

Note 1 The application must be in writing (see s 684 (2)).

Note 2 The regulator may grant an exemption on its own initiative (see s 684 (2)).

Note 3 See the Act, s 268 for offences relating to the giving of false or misleading information under the Act or this regulation.

691 Conditions of exemption

(1) The regulator may impose any conditions it considers appropriate on an exemption granted under this part.

(2) Without limiting subsection (1), conditions may require the applicant to do 1 or more of the following:

(a) monitor risks;

(b) monitor the health of persons at the workplace who may be affected by the exemption;

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(c) keep certain records;

(d) use a stated system of work;

(e) report certain matters to the regulator;

(f) give notice of the exemption to persons who may be affected by the exemption.

Note A decision to impose a condition is a reviewable decision (see s 676).

692 Form of exemption document

The regulator must prepare an exemption document that states the following:

(a) the name of the applicant for the exemption (if any);

(b) the person or class of persons to whom the exemption will apply;

(c) the work or thing to which the exemption relates, if applicable;

(d) the circumstances in which the exemption will apply;

(e) the provisions of this regulation to which the exemption applies;

(f) any conditions on the exemption;

(g) the date on which the exemption takes effect;

(h) the duration of the exemption.

693 Compliance with conditions of exemption

A person to whom the exemption is granted must—

(a) comply with the conditions of the exemption; and

(b) ensure that any person under the management or control of that person complies with the conditions of the exemption.

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694 Notice of decision in relation to exemption

The regulator must give a copy of the exemption document mentioned in section 692 (Form of exemption document), within 14 days after making the decision to grant the exemption, to—

(a) if a person applied for the exemption—the applicant; or

(b) if the regulator granted the exemption on its own initiative—each person (other than persons to whom section 695 applies) to whom the exemption will apply.

695 Publication of notice of exemption

(1) This section applies to an exemption that relates to a class of persons.

(2) The exemption is a notifiable instrument.

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

696 Notice of refusal of exemption

(1) If the regulator refuses to grant an exemption, the regulator must give the applicant for the exemption written notice of the refusal within 14 days after making that decision.

(2) The notice must state the regulator's reasons for the refusal.

Note A refusal to grant an exemption is a reviewable decision (see s 676).

697 Amendment or cancellation of exemption

The regulator may at any time amend or cancel an exemption.

Note A decision to amend or cancel an exemption is a reviewable decision (see s 676).

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698 Notice of amendment or cancellation

(1) The regulator must give written notice of the amendment or cancellation of an exemption, within 14 days after making the decision to amend or cancel the exemption, to—

(a) if a person applied for the exemption—the applicant; or

(b) if the regulator granted the exemption on its own initiative—each person (other than persons to whom subsection (2) applies) to whom the exemption applies.

(2) If the exemption affects a class of persons—

(a) for an amendment—the exemption as amended is a notifiable instrument; and

(b) for a cancellation—notice of the cancellation is a notifiable instrument.

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

(3) The notifiable instrument must state the regulator's reasons for the amendment or cancellation.

(4) The amendment or cancellation takes effect—

(a) for an amendment or cancellation mentioned in subsection (2)—on the day after the exemption as amended, or notice of cancellation, is notified or on a later date stated in the notifiable instrument; or

(b) in any other case—on the giving of the notice to the applicant under subsection (1) or on a later date stated in the notice.

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Part 11.2A Licence register

698A Licence register

(1) The regulator must keep a register for the following kinds of licence:

(a) high risk work licence;

(b) asbestos assessor licence;

(ba) asbestos removal licence;

(c) major hazard facility licence.

(2) The register must include the following:

(a) if the licensee operates a business in relation to the licence—

(i) the registered business name and any trading name; and

(ii) the ABN or ACN;

(b) the licence type and number;

(d) the expiry date for the licence;

(e) if the licensee has been given an infringement notice—information about the infringement notice in accordance with a guideline determined by the Minister.

(3) A guideline determined by the Minister is a notifiable instrument.

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

(4) The information mentioned in subsection (2) must be available for public inspection.

(5) The regulator may correct a mistake, error or omission in the register.

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(6) In this section:

infringement notice means a notice issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011*.

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Part 11.3 Miscellaneous

699 Incident notification—prescribed serious illnesses—Act, s 36

For the purposes of the Act, section 36 (What is a *serious injury or illness*—pt 3), each of the following conditions is a serious illness:

(a) any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work—

(i) with micro-organisms; or

(ii) that involves providing treatment or care to a person; or

(iii) that involves contact with human blood or body substances; or

(iv) that involves handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products;

(b) the following occupational zoonoses contracted in the course of work involving handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products:

(i) Q fever;

(ii) Anthrax;

(iii) Leptospirosis;

(iv) Brucellosis;

(v) Hendra Virus;

(vi) Avian Influenza;

(vii) Psittacosis.

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700 Inspectors' identity cards—Act, s 157 (1) (e)

For the purposes of the Act, section 157 (1) (e) (Identity cards), an identity card given by the regulator to an inspector must include the following:

(a) a recent photograph of the inspector in the form stated by the regulator;

(b) the inspector's signature;

(c) the date (if any) on which the inspector's appointment ends;

(d) any conditions to which the inspector's appointment is subject, including the kinds of workplaces in relation to which the inspector may exercise his or her compliance powers.

701 Review of decisions under the Act—stay of decision—Act, s 228 (6) (a)

For the purposes of the Act, section 228 (6) (a) (Stays of reviewable decision on internal review), the prescribed period is 90 days.

702 Confidentiality of information—exception relating administration or enforcement of other laws

A corresponding WHS law is prescribed for the purposes of the Act, section 271 (3) (c) (ii).

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Schedule 3 High risk work licences and classes of high risk work

(see s 81)

Table 3.1

column 1 item	column 2 high risk work licence	column 3 description of class of high risk work
Scaffolding work		
1	basic scaffolding	scaffolding work involving any of the following: (a) modular or pre-fabricated scaffolds; (b) cantilevered materials hoists with a maximum working load of 500kg; (c) ropes; (d) gin wheels; (e) safety nets and static lines; (f) bracket scaffolds (tank and formwork); but excluding scaffolding work involving equipment, loads or tasks listed in item 2 (2) (a) to (g) and item 3 (2) (a) to (c)
2	intermediate scaffolding	(1) scaffolding work included in the class of basic scaffolding; and (2) scaffolding work involving any of the following: (a) cantilevered crane loading platforms; (b) cantilevered scaffolds; (c) spur scaffolds; (d) barrow ramps and sloping platforms; (e) scaffolding associated with perimeter safety screens and shutters; (f) mast climbing work platforms; (g) tube and coupler scaffolds (including tube and coupler covered ways and gantries); but excluding scaffolding work involving equipment, loads or tasks listed in item 3 (2) (a) to (c)

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column 1 item	column 2 high risk work licence	column 3 description of class of high risk work
3	advanced scaffolding	(1) scaffolding work included in the class of intermediate scaffolding; and (2) scaffolding work involving any of the following: (a) cantilevered hoists; (b) hung scaffolds, including scaffolds hung from tubes, wire ropes or chains; (c) suspended scaffolds
Dogging and rigging work		
4	dogging	dogging work
5	basic rigging	(1) dogging work (2) rigging work involving any of the following: (a) structural steel erection; (b) hoists; (c) pre-cast concrete members of a structure; (d) safety nets and static lines; (e) mast climbing work platforms; (f) perimeter safety screens and shutters; (g) cantilevered crane loading platforms; but excluding rigging work involving equipment, loads or tasks listed in item 6 (b) to (f) and item 7 (b) to (e)
6	intermediate rigging	rigging work involving any of the following: (a) rigging work in the class basic rigging; (b) hoists with jibs and self-climbing hoists; (c) cranes, conveyors, dredges and excavators; (d) tilt slabs; (e) demolition of structures or plant; (f) dual lifts; but excluding rigging work involving equipment listed in item 7 (b) to (e)

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column 1 item	column 2 high risk work licence	column 3 description of class of high risk work
7	advanced rigging	rigging work involving any of the following: (a) rigging work in the class intermediate rigging; (b) gin poles and shear legs; (c) flying foxes and cable ways; (d) guyed derricks and structures; (e) suspended scaffolds and fabricated hung scaffolds
Crane and hoist operation		
8	tower crane	use of a tower crane
9	self-erecting tower crane	use of a self-erecting tower crane
10	derrick crane	use of a derrick crane
11	portal boom crane	use of a portal boom crane
12	bridge and gantry crane	use of a bridge crane or gantry crane that is— (a) controlled from a permanent cabin or control station on the crane; or (b) remotely controlled and having more than 3 powered operations; including the application of load estimation and slinging techniques to move a load
13	vehicle loading crane	use of a vehicle loading crane with a capacity of 10 metre tonnes or more, including the application of load estimation and slinging techniques to move a load
14	non-slewing mobile crane	use of a non-slewing mobile crane with a capacity exceeding 3t

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column 1 item	column 2 high risk work licence	column 3 description of class of high risk work
15	slewing mobile crane—with a capacity up to 20t	use of a slewing mobile crane with a capacity of 20t or less use of a vehicle loading crane with a capacity of 10 metre tonnes or more, excluding the application of load estimation and slinging techniques to move a load use of a non-slewing mobile crane with a capacity exceeding 3t use of a reach stacker
16	slewing mobile crane—with a capacity up to 60t	use of a slewing mobile crane with a capacity of 60t or less use of a vehicle loading crane with a capacity of 10 metre tonnes or more, excluding the application of load estimation and slinging techniques to move a load use of a non-slewing mobile crane with a capacity exceeding 3t use of a reach stacker
17	slewing mobile crane—with a capacity up to 100t	use of a slewing mobile crane with a capacity of 100t or less use of a vehicle loading crane with a capacity of 10 metre tonnes or more, excluding the application of load estimation and slinging techniques to move a load use of a non-slewing mobile crane with a capacity exceeding 3t use of a reach stacker

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column 1 item	column 2 high risk work licence	column 3 description of class of high risk work
18	slewing mobile crane—with a capacity over 100t	use of a slewing mobile crane with a capacity exceeding 100t use of a vehicle loading crane with a capacity of 10 metre tonnes or more, excluding the application of load estimation and slinging techniques to move a load use of a non-slewing mobile crane with a capacity exceeding 3t use of a reach stacker
19	materials hoist	use of a materials hoist
20	personnel and materials hoist	use of a personnel and materials hoist use of a materials hoist
21	boom-type elevating work platform	use of a boom-type elevating work platform where the length of the boom is 11m or more
22	concrete placing boom	use of a concrete placing boom
Reach stackers		
23	reach stacker	operation of a reach stacker of greater than 3t capacity that incorporates an attachment for lifting, moving and travelling with a shipping container, but does not include a portainer crane
Forklift operation		
24	forklift truck	use of a forklift truck other than an order-picking forklift truck
25	order-picking forklift truck	use of an order-picking forklift truck
Pressure equipment operation		
26	standard boiler operation	operation of a boiler with a single fuel source that does not have a pre-heater, superheater or economiser attached

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column 1 item	column 2 high risk work licence	column 3 description of class of high risk work
27	advanced boiler operation	operation of a boiler, including a standard boiler, which may have 1 or more of the following: (a) multiple fuel sources; (b) pre-heater; (c) superheater; (d) economiser
28	steam turbine operation	operation of a steam turbine that has an output of 500kWs or more and— (a) is multi-wheeled; or (b) is capable of a speed greater than 3 600 revolutions per minute; or (c) has attached condensers; or (d) has a multi-staged heat exchange extraction process
29	reciprocating steam engine	operation of a reciprocating steam engine where the diameter of any piston exceeds 250mm

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3.1 Boom-type elevating work platform

For the purposes of table 3.1, item 21, the ***length of a boom*** is the greater of the following:

(a) the vertical distance from the surface supporting the boom-type elevating work platform to the floor of the platform, with the platform extended to its maximum height;

(b) the horizontal distance from the centre point of the boom's rotation to the outer edge of the platform, with the platform extended to its maximum distance.

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Schedule 4 High risk work licences—competency requirements

(see s 81)

4.1 Purpose—sch 4

This schedule sets out the qualifications for high risk work licences.

Table 4.1

column 1 item	column 2 licence class	column 3 VET course
1	basic scaffolding	licence to erect, alter and dismantle scaffolding basic level
2	intermediate scaffolding	licence to erect, alter and dismantle scaffolding basic level; and licence to erect, alter and dismantle scaffolding intermediate level
3	advanced scaffolding	licence to erect, alter and dismantle scaffolding basic level; and licence to erect, alter and dismantle scaffolding intermediate level; and licence to erect, alter and dismantle scaffolding advanced level
4	dogging	licence to perform dogging
5	basic rigging	licence to perform dogging; and licence to perform rigging basic level
6	intermediate rigging	licence to perform dogging; and licence to perform rigging basic level; and licence to perform rigging intermediate level
7	advanced rigging	licence to perform dogging; and licence to perform rigging basic level; and licence to perform rigging intermediate level; and licence to perform rigging advanced level

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column 1 item	column 2 licence class	column 3 VET course
8	tower crane	licence to operate a tower crane
9	self-erecting tower crane	licence to operate a self-erecting tower crane
10	derrick crane	licence to operate a derrick crane
11	portal boom crane	licence to operate a portal boom crane
12	bridge and gantry crane	licence to operate a bridge and gantry crane
13	vehicle loading crane	licence to operate a vehicle loading crane (capacity 10 metre tonnes and above)
14	non-slewing mobile crane	licence to operate a non-slewing mobile crane (greater than 3t capacity)
15	slewing mobile crane—with a capacity up to 20t	licence to operate a slewing mobile crane (up to 20t)
16	slewing mobile crane—with a capacity up to 60t	licence to operate a slewing mobile crane (up to 60t)
17	slewing mobile crane—with a capacity up to 100t	licence to operate a slewing mobile crane (up to 100t)
18	slewing mobile crane—with a capacity over 100t	licence to operate a slewing mobile crane (over 100t)
19	materials hoist	licence to operate a materials hoist
20	personnel and materials hoist	licence to operate a personnel and materials hoist
21	boom-type elevating work platform	licence to operate a boom-type elevating work platform (boom length 11m or more)
22	concrete placing boom	licence to operate a concrete placing boom
23	reach stacker	licence to operate a reach stacker of greater than 3t capacity

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column 1 item	column 2 licence class	column 3 VET course
24	forklift truck	licence to operate a forklift truck
25	order-picking forklift truck	licence to operate an order-picking forklift truck
26	standard boiler operation	licence to operate a standard boiler
27	advanced boiler operation	licence to operate a standard boiler; and licence to operate an advanced boiler
28	steam turbine operation	licence to operate a steam turbine
29	reciprocating steam engine operation	licence to operate a reciprocating steam engine

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Schedule 5 Registration of plant and plant designs

(see s 243 and s 246)

Part 5.1 Plant requiring registration of design

5.1 Items of plant requiring registration of design

5.1.1 Pressure equipment, other than pressure piping, and categorised as hazard level A, B, C or D according to the criteria in A 4343:2014 (Pressure equipment—Hazard levels), section 2.1.

Note AS 4343:2014 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

5.1.2 Gas cylinders covered by AS 2030.1:2009 (Gas cylinders—General Requirements), section 1.1

Note AS 2030.1:2009 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

5.1.3 Tower cranes including self-erecting tower cranes.

5.1.4 Lifts, escalators and moving walkways.

5.1.5 Building maintenance units.

5.1.6 Hoists with a platform movement exceeding 2.4m, designed to lift people.

5.1.7 Work boxes designed to be suspended from cranes.

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5.1.8 Amusement devices classified by AS 3533.1:2009 (Amusement rides and devices—Design and construction), section 2.1, except devices stated in this schedule, section 5.2 (2).

Note AS 3533.1:2009 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

5.1.8A Passenger ropeways.

5.1.9 Concrete placing booms.

5.1.10 Prefabricated scaffolding.

5.1.11 Boom-type elevating work platforms.

5.1.12 Gantry cranes with a safe working load greater than 5t or bridge cranes with a safe working load of greater than 10t, and any gantry crane or bridge crane which is designed to handle molten metal or Schedule 11 hazardous chemicals.

5.1.13 Vehicle hoists.

5.1.14 Mast climbing work platforms.

5.1.15 Mobile cranes with a rated capacity of greater than 10t.

5.2 Exceptions

(1) The items of plant listed in this schedule, section 5.1 do not include—

(a) a heritage boiler; or

(ab) any pressure equipment (other than a gas cylinder) excluded from the scope of AS/NZS 1200:2015 (Pressure equipment); or

Note 1 See paragraph A3 of AS/NZS 1200:2015, Appendix A.

Note 2 AS/NZS 1200:2015 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

(b) a crane or hoist that is manually powered; or

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(ba) a reach stacker; or

(c) an elevating work platform that is a scissor lift or a vertically moving platform; or

(d) a tow truck.

(2) The following devices are excluded from subsection 5.1.8:

(a) class 1 devices;

(b) playground devices;

(c) water slides where water facilitates patrons to slide easily, predominantly under gravity, along a static structure;

(d) wave generators where patrons do not come into contact with the parts of machinery used for generating water waves;

(e) inflatable devices, other than inflatable devices (continuously blown) with a platform height of 3m or more.

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Part 5.2 Items of plant requiring registration

5.3 Items of plant requiring registration

5.3.1 Boilers categorised as hazard level A, B or C according to criteria in AS 4343:2014 (Pressure equipment—Hazard levels), section 2.1.

5.3.2 Pressure vessels categorised as hazard level A, B or C according to the criteria in AS 4343:2014 (Pressure equipment—Hazard levels), section 2.1, except—

(a) gas cylinders; and

(b) LP Gas fuel vessels for automotive use; and

(c) serially produced vessels.

5.3.3 Tower cranes including self-erecting tower cranes.

5.3.4 Lifts, escalators and moving walkways.

5.3.5 Building maintenance units.

5.3.6 Amusement devices classified by AS 3533.1:2009 (Amusement rides and devices—Design and construction), section 2.1, except devices stated in this schedule, section 5.4 (2).

5.3.7 Concrete placing booms.

5.3.8 Mobile cranes with a rated capacity of greater than 10t.

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5.4 Exceptions

(1) The items of plant listed in this schedule, section 5.3 do not include—

(a) any pressure equipment (other than a gas cylinder) excluded from the scope of AS/NZS 1200:2015 (Pressure equipment); or

Note 1 See paragraph A3 of AS/NZS 1200:2015, Appendix A.

Note 2 AS/NZS 1200:2015 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

(b) a crane or hoist that is manually powered; or

(c) a reach stacker.

(2) The following devices are excluded from this schedule, subsection 5.3.6:

(a) class 1 devices;

(b) playground devices;

(c) water slides where water facilitates patrons to slide easily, predominantly under gravity, along a static structure;

(d) wave generators where patrons do not come into contact with the parts of machinery used for generating water waves;

(e) inflatable devices, other than inflatable devices (continuously blown) with a platform height of 3m or more.

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Schedule 6 Classification of mixtures

(see dictionary, def of ***GHS***)

6.1 Purpose of this schedule

The tables in this schedule replace some of the tables in the GHS.

Note ***GHS***—see the dictionary.

Table 6.1 Classification of mixtures containing respiratory or skin sensitisers

Cut-off values/concentration limits of ingredients of a mixture classified as either a respiratory sensitiser or a skin sensitiser that would trigger classification of the mixture.

column 1 **item**	**column 2** **ingredient classification**	**column 3** **mixture classification**		
		skin sensitiser category 1	**respiratory sensitiser category 1**	
		all physical states	**solid**	**gas**
1	skin sensitiser category 1	≥ 1.0%		
2	skin sensitiser subcategory 1A	≥ 0.1%		
3	skin sensitiser subcategory 1B	≥ 1.0%		
4	respiratory sensitiser category 1		≥ 1.0%	≥ 0.2%
5	respiratory sensitiser subcategory 1A		≥ 0.1%	≥ 0.1%

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column 1 item	column 2 ingredient classification	column 3 mixture classification		
6	respiratory sensitiser subcategory 1B		≥ 1.0%	≥ 0.2%

Note Table 6.1 replaces table 3.4.5 in—

(a) the GHS, p 159; and

(b) the GHS 3, p 151.

Table 6.2 Classification of mixtures containing carcinogens

Cut-off values/concentration limits of ingredients of a mixture classified as a carcinogen that would trigger classification of the mixture.

column 1 item	column 2 ingredient classification	column 3 mixture classification	
		category 1 carcinogen	**category 2 carcinogen**
1	category 1 carcinogen	≥ 0.1%	
2	category 2 carcinogen		≥ 1.0%

Note 1 The concentration limits in table 6.2 apply to solids and liquids (w/w units) and gases (v/v units).

Note 2 Table 6.2 replaces table 3.6.1 in—

(a) the GHS, p 174; and

(b) the GHS 3, p 166.

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Table 6.3 Classification of mixtures containing reproductive toxicants

Cut-off values/concentration limits of ingredients of a mixture classified as a reproductive toxicant or for effects on or via lactation that would trigger classification of the mixture.

column 1 **item**	**column 2** **ingredient classification**	**column 3** **mixture classification**		
		category 1 reproductive toxicant	**category 2 reproductive toxicant**	**additional category for effects on or via lactation**
1	category 1 reproductive toxicant	≥ 0.3%		
2	category 2 reproductive toxicant		≥ 3.0%	
3	additional category for effects on or via lactation			≥ 0.3%

Note 1 The concentration limits in table 6.3 apply to solids and liquids (w/w units) and gases (v/v units).

Note 2 Table 6.3 replaces table 3.7.1 in—

(a) the GHS, p 187; and

(b) the GHS 3, p 180.

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Table 6.4 Classification of mixtures containing specific target organ toxicants (single exposure)

Cut-off values/concentration limits of ingredients of a mixture classified as a specific target organ toxicant that would trigger classification of the mixture.

column 1 **item**	**column 2** **ingredient classification**	**column 3** **mixture classification**	
		category 1	**category 2**
1	category 1 specific target organ toxicant	concentration ≥ 10%	1.0% ≤ concentration < 10%
2	category 2 specific target organ toxicant		concentration ≥ 10%

Note 1 The concentration limits in table 6.4 apply to solids and liquids (w/w units) and gases (v/v units).

Note 2 Table 6.4 replaces table 3.8.2 in—

(a) the GHS, p 197; and

(b) the GHS 3, p 192.

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Table 6.5 Classification of mixtures containing specific target organ toxicants (repeated exposure)

Cut-off values/concentration limits of ingredients of a mixture classified as a specific target organ toxicant that would trigger classification of the mixture.

column 1 **item**	**column 2** **ingredient classification**	**column 3** **mixture classification**	
		category 1	**category 2**
1	category 1 specific target organ toxicant	concentration ≥ 10%	1.0% ≤ concentration < 10%
2	category 2 specific target organ toxicant		concentration ≥ 10%

Note 1 The concentration limits in table 6.5 apply to solids and liquids (w/w units) and gases (v/v units).

Note 2 Table 6.5 replaces table 3.9.3 in—

(a) the GHS, p 207; and

(b) the GHS 3, p 203.

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Schedule 7 Safety data sheets

(see s 330 and s 331)

7.1 Safety data sheets—content

(1) A safety data sheet for a hazardous chemical must—

(a) contain unit measures expressed in Australian legal units of measurement under the *National Measurement Act 1960* (Cwlth); and

Note The *National Measurement Act 1960* (Cwlth) does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The Act is available at www.legislation.gov.au.

(b) state the date it was last reviewed or, if it has not been reviewed, the date it was prepared; and

(c) state the name, and the Australian address and business telephone number of—

(i) the manufacturer; or

(ii) the importer; and

(d) state an Australian business telephone number from which information about the chemical can be obtained in an emergency; and

(e) be in English.

(2) A safety data sheet for a hazardous chemical must state the following information about the chemical:

(a) Section 1: Identification;

(b) Section 2: Hazard(s) identification;

(c) Section 3: Composition and information on ingredients, in accordance with schedule 8 (Disclosure of ingredients in safety data sheet);

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(d) Section 4: First aid measures;

(e) Section 5: Firefighting measures;

(f) Section 6: Accidental release measures;

(g) Section 7: Handling and storage;

(h) Section 8: Exposure controls and personal protection;

(i) Section 9: Physical and chemical properties;

(j) Section 10: Stability and reactivity;

(k) Section 11: Toxicological information;

(l) Section 12: Ecological information;

(m) Section 13: Disposal considerations;

(n) Section 14: Transport information;

(o) Section 15: Regulatory information;

(p) Section 16: Any other relevant information.

(3) The safety data sheet must use the headings and be set out in the order set out in subsection (2).

Note Section 330 and s 331 provide that s 7.2 will apply instead of s 7.1 in certain cases.

7.2 Safety data sheets—research chemical, waste product or sample for analysis

For the purposes of section 331 (Safety data sheets—research chemical, waste product or sample for analysis), a safety data sheet for a hazardous chemical that is a research chemical, waste product or sample for analysis must—

(a) be in English; and

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(b) state the name, Australian address and business telephone number of—

(i) the manufacturer; or

(ii) the importer; and

(c) state that full identification or hazard information is not available for the chemical, and in the absence of full identification or hazard information, a precautionary approach must be taken by a person using, handling or storing the chemical; and

(d) state the chemical identity or structure of the chemical or chemical composition, as far as is reasonably practicable; and

(e) state any known or suspected hazards; and

(f) state any precautions that a person using, handling or storing the chemical must take to the extent that the precautions have been identified.

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Schedule 8 Disclosure of ingredients in safety data sheet

(see sch 7, s 7.1 (2) (c))

8.1 Purpose of this schedule

This schedule sets out the way in which the ingredients of a hazardous chemical must be disclosed in section 3 of a safety data sheet prepared under this regulation.

Note See sch 7, s 7.1 (2) (c).

8.2 Identity of ingredients to be disclosed

(1) This section applies if an ingredient in a hazardous chemical causes the correct classification of the chemical to include a GHS hazard class and GHS hazard category referred to in table 8.2.

(2) The identity of the ingredient must be disclosed in English on the label and safety data sheet of the hazardous chemical.

Table 8.2

column 1 item	column 2 GHS hazard class	column 3 GHS hazard category
1	acute toxicity—oral	category 1 category 2 category 3 category 4
2	acute toxicity—dermal	category 1 category 2 category 3 category 4
3	acute toxicity—inhalation	category 1 category 2 category 3 category 4

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column 1 item	column 2 GHS hazard class	column 3 GHS hazard category
4	respiratory sensitiser	category 1
5	skin sensitiser	category 1
6	mutagenicity	category 1A category 1B category 2
7	carcinogenicity	category 1A category 1B category 2
8	toxic to reproduction	category 1A category 1B category 2 additional category for effects on or via lactation
9	target organ toxicity—single exposure	category 1 category 2 category 3
10	target organ toxicity—single exposure	category 1 category 2
11	aspiration hazards	category 1
12	skin corrosion or irritation	category 1A category 1B category 1C category 2
13	serious eye damage or eye irritation	category 1 category 2

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8.3 Generic names used to disclose identity of ingredients

(1) This section applies if an ingredient of a hazardous chemical must be disclosed under section 8.2.

(2) The ingredient—

(a) may be disclosed by its generic name if—

(i) the ingredient causes the correct classification of the hazardous chemical to include a hazard class and hazard category referred to in table 8.3; and

(ii) the ingredient does not cause the correct classification of the hazardous chemical to include any other hazard class and hazard category in table 8.2; and

(iii) the identity of the ingredient is commercially confidential; and

(iv) an exposure standard for the ingredient has not been established; or

(b) in any other case—must be disclosed by its chemical identity.

Table 8.3

column 1 item	column 2 hazard class and hazard category
1	acute toxicity (category 4)
2	aspiration hazard (category 1)
3	serious eye damage or eye irritation (category 2)
4	skin corrosion or irritation (category 2)
5	specific target organ toxicity (single exposure) (category 3)

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8.4 Disclosing proportions of ingredients

(1) This section applies if an ingredient of a hazardous chemical must be disclosed under section 8.2.

(2) The proportion of the ingredient to the hazardous chemical must be disclosed—

(a) if the exact proportion of the ingredient is not commercially confidential—as the exact proportion of the chemical, expressed as a percentage by weight or volume; or

(b) if the exact proportion of the ingredient is commercially confidential—as 1 of the following ranges within which the exact proportion fits, expressed as a percentage by weight or volume:

(i) <10%;

(ii) 10 – 30%;

(iii) 30 – 60%;

(iv) > 60%;

(v) a range that is narrower than the range set out in subparagraph (i), (ii), (iii) or (iv).

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Schedule 9 Classification, packaging and labelling requirements

(see s 329, s 334 and s 335)

Part 9.1 Correct classification

9.1 Correct classification of a substance, mixture or article

(1) A substance or mixture (other than a research chemical, sample for analysis or waste product) is ***correctly classified*** if a determination is made about whether the substance or mixture can be classified into a hazard class under the GHS including a mixture classification referred to in schedule 6 (Classification of mixtures).

Note The sch 6 tables replace some tables in the GHS.

(2) A substance or mixture that is a research chemical, sample for analysis or waste product is ***correctly classified*** if, so far as is reasonably practicable having regard to the known or suspected properties of the substance or mixture—

(a) a determination is made about the identity of the substance or mixture; and

(b) a determination is made about whether the substance or mixture can be classified into a hazard class under the GHS.

(3) An article that contains a substance or mixture that may be released during the use, handling or storage of the article is ***correctly classified*** if the substance or mixture is correctly classified.

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Part 9.2 Correct packing

9.2 Correctly packing hazardous chemicals

(1) A hazardous chemical is ***correctly packed*** if the chemical is packed in a container that—

(a) is in sound condition; and

(b) will safely contain the chemical for the time the chemical is likely to be packed; and

(c) is made of material that is compatible with, and will not be adversely affected by, the chemical; and

(d) does not usually contain food or beverages and cannot be mistakenly identified as containing food or beverages.

(2) Despite subsection (1), a hazardous chemical supplied by a retailer to a person, in a container provided by the person, is only ***correctly packed*** if—

(a) for a hazardous chemical with a classification that includes flammable gases or gases under pressure—the container—

(i) has a capacity less than the capacity stated for a hazardous chemical stored in bulk; and

(ii) complies with the ADG Code; and

(b) in any other case—the container—

(i) has a capacity that does not exceed the capacity stated for a hazardous chemical stored in bulk; and

(ii) is clearly marked with the product identifier or chemical identity; and

(iii) complies with subsection (1) (a) to (d).

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Part 9.3 Correct labelling

Note More than 1 section of this part may apply to a hazardous chemical depending on the nature of the hazardous chemical, its container and other matters.

9.3 Labelling hazardous chemicals—general

(1) A hazardous chemical is ***correctly labelled*** if the chemical is packed in a container that has a label in English including the following:

(a) the product identifier;

(b) the name, and the Australian address and business telephone number of—

(i) the manufacturer; or

(ii) the importer;

(c) for each ingredient of the chemical—the identity and proportion disclosed in accordance with schedule 8 (Disclosure of ingredients in safety data sheet);

(d) any hazard pictogram consistent with the correct classification of the chemical;

(e) any hazard statement, signal word and precautionary statement consistent with the correct classification of the chemical;

(f) any information about the hazards, first aid and emergency procedures relevant to the chemical, not otherwise included in the hazard statement or precautionary statement referred to in paragraph (e);

(g) if the chemical has an expiry date—the expiry date.

(2) The label may include any other information that does not contradict or cast doubt on the matters referred to in subsection (1).

(3) This section is subject to section 9.4 to section 9.10.

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9.4 Labelling hazardous chemicals—small container

(1) This section applies if a hazardous chemical is packed in a container that is too small for a label attached to it to include all the information referred to in section 9.3 (1).

(2) The hazardous chemical is ***correctly labelled*** if the chemical is packed in a container that has a label in English including the following:

(a) the product identifier;

(b) the name, and the Australian address and business telephone number of—

(i) the manufacturer; or

(ii) the importer;

(c) a hazard pictogram or hazard statement consistent with the correct classification of the chemical;

(d) any other information referred to in section 9.3 (1) that it is reasonably practicable to include.

9.5 Labelling hazardous chemicals—research chemicals or samples for analysis

(1) This section applies to a hazardous chemical that is a research chemical or sample for analysis.

(2) The hazardous chemical is ***correctly labelled*** if the chemical is packed in a container that has a label in English including the following:

(a) the product identifier;

(b) a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

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9.6 Labelling hazardous chemicals—decanted or transferred chemicals

(1) This section applies if—

(a) a hazardous chemical is decanted or transferred from the container in which it is packed; and

(b) either—

(i) will not be used immediately; or

(ii) is supplied to someone else.

(2) The hazardous chemical is ***correctly labelled*** if the chemical is packed in a container that has a label in English including the following:

(a) the product identifier;

(b) a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

9.7 Labelling hazardous chemicals—known hazards

(1) This section applies to a hazardous chemical if—

(a) the chemical is not being supplied to another workplace; and

(b) the hazards relating to the chemical are known to the workers involved in using, handling or storing the chemical.

(2) The hazardous chemical is ***correctly labelled*** if the chemical is packed in a container that has a label in English including the following:

(a) the product identifier;

(b) a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

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9.8 Labelling hazardous chemicals—waste products

(1) This section applies to a waste product if it is reasonably likely that the waste product is a hazardous chemical.

(2) The waste product is ***correctly labelled*** if it is packed in a container that has a label in English including the following for the hazardous chemical:

(a) the product identifier;

(b) the name, and the Australian address and business telephone number of—

(i) the manufacturer; or

(ii) the importer;

(c) a hazard pictogram and hazard statement consistent with the correct classification of the chemical.

9.9 Labelling hazardous chemicals—explosives

(1) This section applies to a hazardous chemical that may be classified in the explosives hazard class.

(2) The hazardous chemical is ***correctly labelled*** if the chemical is packed in a container that has a label in English that—

(a) complies with the Australian Explosives Code; and

(b) includes the following:

(i) the proper shipping name and UN number;

(ii) any hazard pictogram consistent with the correct classification of the chemical in relation to health hazards;

(iii) any hazard statement consistent with the correct classification of the chemical in relation to health hazards;

(iv) any precautionary statement consistent with the correct classification of the chemical in relation to health hazards.

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(3) In this section:

Australian Explosives Code means the *Australian Code for the Transport of Explosives by Road and Rail*, 3rd edition, published by the Commonwealth, as in force from time to time.

Note The *Australian Code for the Transport of Explosives by Road and Rail*, 3rd edition does not need to be notified under the Legislation Act because s 47 (6) does not apply (see s 15 and Legislation Act, s 47 (7)). The Code is available at www.safeworkaustralia.gov.au.

9.10 Labelling hazardous chemicals—agricultural and veterinary chemicals

(1) A hazardous chemical that is an agricultural or veterinary chemical is ***correctly labelled*** if—

(a) the chemical is labelled in accordance with the requirements of the Australian Pesticides and Veterinary Medicines Authority; and

(b) the label is in English and includes the following:

(i) any hazard statement consistent with the correct classification of the chemical;

(ii) any precautionary statement consistent with the correct classification of the chemical.

(2) In this section:

agricultural or veterinary chemical means an agricultural chemical product or veterinary chemical product under the Agvet Code.

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Schedule 10 Prohibited carcinogens, restricted carcinogens and restricted hazardous chemicals

(see s 340 and s 380 to s 384)

Note The prohibition of the use of carcinogens listed in table 10.1, column 2 and the restriction of the use of carcinogens listed in table 10.2, column 2 apply to the pure substance and where the substance is present in a mixture at a concentration greater than 0.1%, unless otherwise specified.

Table 10.1 Prohibited carcinogens

column 1 item	column 2 prohibited carcinogen [CAS number]
1	2-Acetylaminofluorene [53-96-3]
2	Aflatoxins
3	4-Aminodiphenyl [92-67-1]
4	Benzidine [92-87-5] and its salts (including benzidine dihydrochloride [531-85-1])
5	bis(Chloromethyl) ether [542-88-1]
6	Chloromethyl methyl ether [107-30-2] (technical grade which contains bis(Chloromethyl) ether)
7	4-Dimethylaminoazobenzene [60-11-7] (Dimethyl Yellow)
8	2-Naphthylamine [91-59-8] and its salts
9	4-Nitrodiphenyl [92-93-3]

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Table 10.2 Restricted carcinogens

column 1 item	column 2 restricted carcinogen [CAS number]	column 3 restricted use
1	acrylonitrile [107-13-1]	all
2	benzene [71-43-2]	all uses involving benzene as a feedstock containing more than 50% of benzene by volume genuine research or analysis
3	cyclophosphamide [50-18-0]	when used in preparation for therapeutic use in hospitals and oncological treatment facilities, and in manufacturing operations genuine research or analysis
4	3,3'-Dichlorobenzidine [91-94-1] and its salts (including 3,3'-Dichlorobenzidine dihydrochloride [612-83-9])	all
5	diethyl sulfate [64-67-5]	all
6	dimethyl sulfate [77-78-1]	all
7	ethylene dibromide [106-93-4]	when used as a fumigant genuine research or analysis
8	4,4'-Methylene bis(2-chloroaniline) [101-14-4] MOCA	all
9	3-Propiolactone [57-57-8] (Beta-propiolactone)	all
10	o-Toluidine [95-53-4] and o-Toluidine hydrochloride [636-21-5]	all
11	vinyl chloride monomer [75-01-4]	all

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Table 10.3 Restricted hazardous chemicals

column 1 item	column 2 restricted hazardous chemical	column 3 restricted use
1	antimony and its compounds	for abrasive blasting at a concentration of greater than 0.1% as antimony
2	arsenic and its compounds	for abrasive blasting at a concentration of greater than 0.1% as arsenic for spray painting
3	benzene (benzol), if the substance contains more than 1% by volume	for spray painting
4	beryllium and its compounds	for abrasive blasting at a concentration of greater than 0.1% as beryllium
5	cadmium and its compounds	for abrasive blasting at a concentration of greater than 0.1% as cadmium
6	carbon disulphide (carbon bisulphide)	for spray painting
7	chromate	for wet abrasive blasting
8	chromium and its compounds	for abrasive blasting at a concentration of greater than 0.5% (except as specified for wet blasting) as chromium
9	cobalt and its compounds	for abrasive blasting at a concentration of greater than 0.1% as cobalt
10	free silica (crystalline silicon dioxide)	for abrasive blasting at a concentration of greater than 1%
11	lead and compounds	for abrasive blasting at a concentration of greater than 0.1% as lead or which would expose the operator to levels in excess of those set in the sections covering lead
12	lead carbonate	for spray painting

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column 1 item	column 2 restricted hazardous chemical	column 3 restricted use
13	methanol (methyl alcohol), if the substance contains more than 1% by volume	for spray painting
14	nickel and its compounds	for abrasive blasting at a concentration of greater than 0.1% as nickel
15	nitrates	for wet abrasive blasting
16	nitrites	for wet abrasive blasting
17	radioactive substance of any kind where the level of radiation exceeds 1 Bq/g	for abrasive blasting, so far as is reasonably practicable
18	tetrachloroethane	for spray painting
19	tetrachloromethane (carbon tetrachloride)	for spray painting
20	tin and its compounds	for abrasive blasting at a concentration of greater than 0.1% as tin
21	tributyl tin	for spray painting

Note Section 382 deals with polychlorinated biphenyls (***PCBs***).

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Schedule 11 Placard and manifest quantities

(see s 347 to s 350, s 361, s 390 and s 391)

Table 11.1

column 1	column 2	column 3	column 4	column 5
item	**description of hazardous chemical**		**placard quantity**	**manifest quantity**
1	flammable gases	category 1A or 1B or a combination of the categories	200L	5 000L
2	gases under pressure	with acute toxicity, categories 1, 2, 3 or 4	50L	500L
3		with skin corrosion categories 1A, 1B or 1C	50L	500L
4		not specified elsewhere in this table	1 000L	10 000L
5	flammable liquids	category 1	50L	500L
6		category 2	250L	2 500L
7		category 3	1 000L	10 000L
8		any combination of chemicals from items 5 to 7 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000L	10 000L
9		category 4	10 000L	100 000L

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column 1	column 2	column 3	column 4	column 5
item	**description of hazardous chemical**		**placard quantity**	**manifest quantity**
10	self-reactive substances	type A	5kg or 5L	50kg or 50L
11		type B	50kg or 50L	500kg or 500L
12		type C to F	250kg or 250L	2 500kg or 2 500L
13	flammable solids	category 1	250kg	2 500kg
14		category 2	1 000kg	10 000kg
15		any combination of chemicals from items 11 to 14 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000kg or 1 000L	10 000kg or 10 000L
16	pyrophoric liquids and pyrophoric solids	category 1	50kg or 50L	500kg or 500L
17	self-heating substances and mixtures	category 1	250kg or 250L	2 500kg or 2 500L
18		category 2	1 000kg or 1 000L	10 000kg or 10 000L
19		any combination of chemicals from items 16 to 18 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000kg or 1 000L	10 000kg or 10 000L

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column 1	column 2	column 3	column 4	column 5
item	**description of hazardous chemical**		**placard quantity**	**manifest quantity**
20	substances which in contact with water emit flammable gas	category 1	50kg or 50L	500kg or 500L
21		category 2	250kg or 250L	2 500kg or 2 500L
22		category 3	1 000kg or 1 000L	10 000kg or 10 000L
23		any combination of chemicals from items 20 to 22 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000kg or 1 000L	10 000kg or 10 000L
24	oxidising liquids and oxidising solids	category 1	50kg or 50L	500kg or 500L
25		category 2	250kg or 250L	2 500kg or 2 500L
26		category 3	1 000kg or 1 000L	10 000kg or 10 000L
27		any combination of chemicals from items 24 to 26 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000kg or 1 000L	10 000kg or 10 000L

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column 1	column 2	column 3	column 4	column 5
item	**description of hazardous chemical**		**placard quantity**	**manifest quantity**
28	organic peroxides	type A	5kg or 5L	50kg or 50L
29		type B	50kg or 50L	500kg or 500L
30		type C to F	250kg or 250L	2 500kg or 2 500L
31		any combination of chemicals from items 29 and 30 where none of the items exceeds the quantities in columns 4 or 5 on their own	250kg or 250L	2 500kg or 2 500L
32	acute toxicity	category 1	50kg or 50L	500kg or 500L
33		category 2	250kg or 250L	2 500kg or 2 500L
34		category 3	1 000kg or 1 000L	10 000kg or 10 000L
35		any combination of chemicals from items 32 to 34 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000kg or 1 000L	10 000kg or 10 000L
36	skin corrosion	category 1A	50kg or 50L	500kg or 500L
37		category 1B	250kg or 250L	2 500kg or 2 500L
38		category 1C	1 000kg or 1 000L	10 000kg or 10 000L
39	corrosive to metals	category 1	1 000kg or 1 000L	10 000kg or 10 000L

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column 1	column 2	column 3	column 4	column 5
item	**description of hazardous chemical**		**placard quantity**	**manifest quantity**
40		any combination of chemicals from items 36 to 39 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000kg or 1 000L	10 000kg or 10 000L
41	unstable explosives		5kg or 5L	50kg or 50L
42	unstable chemicals	any combination of chemicals from item 10, item 28 and item 41 where none of the items exceeds the quantities in columns 4 or 5 on their own	5kg or 5L	50kg or 50L
43	aerosols	category 1, 2 or 3 or any combination of categories 1, 2 or 3	5 000L	10 000L

Note 1 In item 2, gases under pressure with acute toxicity, category 4 only applies up to a LC50 of 5 000 ppmV. This is equivalent to dangerous goods assigned as class 2, div 2.3 (Toxic gases) in the ADG Code.

Note 2 Item 43 includes flammable aerosols.

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11.1 Determination of classification of flammable liquids

For the purposes of this table, if a flammable liquid category 4 is used, handled or stored in the same spill compound as 1 or more flammable liquids of categories 1, 2 or 3, the total quantity of flammable liquids categories 1, 2 or 3 must be determined as if the flammable liquid category 4 had the same classification as the flammable liquid in the spill compound with the lowest flash point.

Example

For placarding and manifest purposes, a spill compound containing 1 000L of flammable liquid category 1 and 1 000L of flammable liquid category 4 is considered to contain 2 000L of flammable liquid category 1.

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Schedule 12 Manifest requirements

(see s 347 (2))

12.1 Manifest—general information

The manifest of hazardous chemicals must include—

(a) the name of the person conducting the business or undertaking; and

(b) the address of the workplace; and

(c) the date the manifest was last amended or, if it has not been amended, the date it was prepared; and

(d) business hours and after hours telephone numbers for at least 2 persons who may be contacted if there is a notifiable incident at the workplace.

12.2 Manifest—bulk storage and containers

(1) This section applies if a hazardous chemical is stored at a workplace in bulk or in a container.

(2) For each hazardous chemical stored in bulk other than in a container, the manifest of hazardous chemicals must include—

(a) the name of the chemical; and

(b) the quantity of the chemical stored.

(3) For each container storing the hazardous chemical, the manifest of hazardous chemicals must include—

(a) the identification number or code of the container; and

(b) the type and capacity of the container; and

(c) for a fixed vertical tank used to store fire risk hazardous chemicals—the diameter of the tank.

Note ***Fire risk hazardous chemical***—see the dictionary.

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12.3 Manifest—identification of hazardous chemical

The manifest of hazardous chemicals must include—

(a) for a hazardous chemical, other than a flammable liquid category 4, unstable explosive, organic peroxide type A or self-reactive substance type A—

(i) the proper shipping name as stated in the ADG Code, table 3.2.3 for the chemical; and

(ii) the UN number as stated in the ADG Code, table 3.2.3 for the hazardous chemical; and

(iii) the class and division of the hazardous chemical as stated in the ADG Code, table 3.2.3; and

(b) for a flammable liquid category 4—

(i) the product identifier; and

(ii) the words ‘combustible liquid’; and

(c) for an unstable explosive, organic peroxide type A or self-reactive substance type A—

(i) the name of the hazardous chemical stated in the ADG Code, Appendix A; and

(ii) the words ‘goods too dangerous to be transported’.

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12.4 Manifest—storage area for packaged hazardous chemicals

(1) This section applies if—

(a) a storage area—

(i) contains, or is likely to contain, a packaged hazardous chemical, or a hazardous chemical in an IBC; and

(ii) is required under this regulation to have a placard; and

(b) the hazardous chemicals are dangerous goods under the ADG Code.

(2) The manifest of hazardous chemicals must include—

(a) the identification number or code for the storage area; and

(b) for hazardous chemicals with an assigned class specified in the ADG Code, table 3.2.3—the largest quantity of each class of hazardous chemicals likely to be kept in the storage area; and

(c) for the specified hazardous chemicals that are likely to be kept in the storage area—

(i) the proper shipping name of the hazardous chemical as specified in the ADG Code, table 3.2.3; and

(ii) the class to which the hazardous chemical is assigned as specified in the ADG Code, table 3.2.3; and

(iii) the largest quantity of the hazardous chemical likely to be kept in the storage area; and

(d) for an unstable explosive, organic peroxide type A or self-reactive substance type A that is likely to be kept in the storage area—

(i) the name of the hazardous chemical; and

(ii) the words ‘goods too dangerous to be transported’; and

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(iii) the largest quantity of the hazardous chemical likely to be kept in the storage area; and

(e) for hazardous chemicals with an assigned class specified in the ADG Code, table 3.2.3—the class to which the hazardous chemical is assigned; and

(f) for flammable liquids category 4—the words ‘combustible liquid’.

(3) In this section:

specified hazardous chemicals means any of the following:

(a) flammable liquid category 1;

(b) self-reactive substances type B;

(c) substances which in contact with water emit flammable gas category 1;

(d) pyrophoric liquids category 1;

(e) pyrophoric solids category 1;

(f) organic peroxides type B;

(g) acute toxicity category 1;

(h) oxidising solids category 1;

(i) oxidising liquids category 1;

(j) skin corrosion category 1A;

(k) gases under pressure with acute toxicity categories 1, 2 or 3 or skin corrosion categories 1A, 1B or 1C.

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12.5 Manifest—hazardous chemicals being manufactured

For each area in which hazardous chemicals are manufactured, the manifest must include—

(a) the identification number or code of the area; and

(b) a description of the hazardous chemicals manufactured in the area; and

(c) the average and largest quantity of each hazardous chemical likely to be manufactured in the area.

12.6 Manifest—hazardous chemicals in transit

(1) This section applies to hazardous chemicals at a workplace if the hazardous chemicals are—

(a) dangerous goods under the ADG Code in transit at the workplace; and

(b) accompanied by dangerous goods transport documents (the ***transport documents***) in relation to the hazardous chemicals that comply with the ADG Code.

(2) The person conducting a business or undertaking at the workplace is taken to comply with section 12.4 (Manifest—storage area for packaged hazardous chemicals) and section 12.5 in relation to the hazardous chemicals if the manifest includes a compilation of the transport documents.

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12.7 Manifest—plan of workplace

The manifest of hazardous chemicals at a workplace must include a scale plan of the workplace that—

(a) shows the location of—

(i) containers and other storage of hazardous chemicals in bulk; and

(ii) storage areas for packaged hazardous chemicals and IBCs; and

(iii) each area where hazardous chemicals are manufactured or generated; and

(b) includes a description in words of the location of—

(i) the things referred to in paragraph (a); and

(ii) hazardous chemicals in transit; and

(c) provides the identification number or code, and a legend for the identification numbers and codes, for the things referred to in paragraph (a); and

(d) shows the location of—

(i) the main entrance and other places of entry to and exit from the workplace; and

(ii) essential site services, including fire services and isolation points for fuel and power; and

(iii) all drains on the site; and

(iv) the manifest; and

(e) includes the direction of true north; and

(f) describes the nature of the occupancy of adjoining sites or premises.

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Schedule 13 Placard requirements

(see s 349 (2) and s 350 (2))

13.1 Displaying placards

(1) This section applies if a person conducting a business or undertaking at a workplace must display a placard at the workplace in relation to a hazardous chemical.

(2) The person must ensure that the placard is—

(a) clearly legible by a person approaching the placard; and

(b) separate from any other sign or writing that contradicts, qualifies or distracts attention from the placard; and

(c) if a placard quantity of the hazardous chemical is contained in a building—

(i) located as close as is reasonably practicable to the main entrance of the building; and

(ii) located at the entrance to each room or walled section of the building in which the hazardous chemical is used, handled or stored; and

(d) if the hazardous chemical is contained in a container or outside storage area—located next to the container or outside storage area; and

(e) for a placard to which section 13.3 (Outer warning placards—requirements) applies—located at each entrance to the workplace where an emergency service organisation may enter the workplace; and

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(f) for a placard to which section 13.4 (Placards for particular hazardous chemicals stored in bulk) applies—located on or next to each container or storage area in which the hazardous chemicals are stored; and

(g) for a placard to which section 13.6 (Placards for packaged Schedule 11 hazardous chemicals (other than flammable liquids category 4) and IBCs) applies—located at each entrance to a storage area in which the hazardous chemicals are stored.

13.2 Maintaining placards

A person who is required to display a placard must—

(a) amend the placard as soon as practicable if—

(i) the type or quantity of hazardous chemical used, handled or stored at the workplace changes; and

(ii) the change requires the information displayed on the placard to be amended; and

(b) ensure that the placard is—

(i) kept clean; and

(ii) maintained in good repair; and

(iii) not covered or obscured.

13.3 Outer warning placards—requirements

(1) This section applies if a person conducting a business or undertaking at a workplace must display an outer warning placard at the workplace in relation to a hazardous chemical.

Note Section 349 sets out when an outer warning placard is required to be displayed, and states that it is not required for retail fuel outlets.

(2) The outer warning placard must—

(a) comply with the form shown in figure 13.1; and

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(b) display the word 'HAZCHEM' in red letters on a white or silver background.

Figure 13.1 Form and dimensions of outer warning placard

(3) In this section:

red means the colour 'signal red' in accordance with AS 2700S-1996 (R13) (Colour standards for general purposes—signal red).

Note AS 2700S-1996 (R13) does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

13.4 Placards for particular hazardous chemicals stored in bulk

(1) This section applies if a person conducting a business or undertaking at a workplace must display a placard at the workplace in relation to the storage in bulk of any of the following hazardous chemicals:

(a) gases under pressure, including flammable gases and flammable aerosols;

(b) flammable liquids category 1, 2 or 3;

(c) flammable solids category 1 or 2, self-reactive substances types B to F, self-heating substances category 1 or 2 or substances that, in contact with water, emit flammable gases;

(d) organic peroxides types B to F, oxidising solids and oxidising liquids category 1, 2 or 3;

(e) acute toxicity category 1, 2 or 3;

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(f) skin corrosion category 1A, 1B or 1C and corrosive to metals category 1.

(2) The placard must—

(a) comply with the template in figure 13.2; and

(b) subject to subsection (4) (b) and (c), have dimensions not less than those shown in figure 13.2.

(3) The placard must include the following in figure 13.2 for the hazardous chemical:

(a) in space (p)—the proper shipping name for the hazardous chemical as specified in the ADG Code, Table 3.2.3;

(b) in space (q)—the UN Number for the hazardous chemical as specified in the ADG Code, Table 3.2.3;

(c) in space (r)—the Hazchem Code for the hazardous chemical as specified in the ADG Code, Table 3.2.3;

(d) in space (s)—the class label and subsidiary risk label for the hazardous chemical as specified in the ADG Code, Table 3.2.3.

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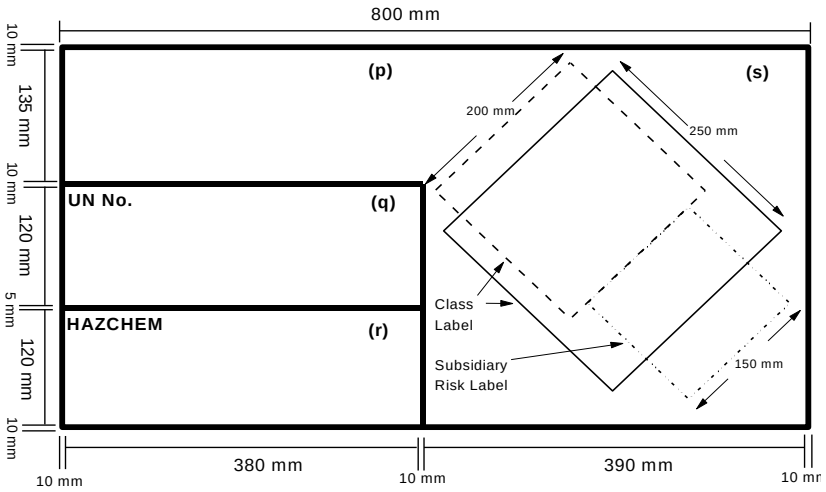

Figure 13.2 Template for a placard for a hazardous chemical stored in bulk

(4) For subsection (3) (a) to (c), the numerals and letters used for showing the proper shipping name, UN number and Hazchem Code must be—

(a) black on a white background, unless a letter of the Hazchem Code is white on a black background; and

(b) if the proper shipping name requires a single line only—at least 100mm high; and

(c) if the proper shipping name requires 2 lines—at least 50mm high.

(5) For subsection (3) (d)—

(a) the class label and subsidiary risk label (if any) must have the form and colouring stated in the ADG Code for the hazardous chemical; and

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(b) the class label must have—

(i) if there is a subsidiary risk label—sides of not less than 200mm; or

(ii) in any other case—sides of not less than 250mm; and

(c) if there is a subsidiary risk label—the subsidiary risk label must have sides of not less than 150mm; and

(d) if there are 2 or more subsidiary risk labels—the width of the right hand part of the placard may be extended.

13.5 Placards for unstable explosives, organic peroxides type A or self-reactive substances type A stored in bulk

(1) This section applies if a person conducting a business or undertaking at a workplace must display a placard at the workplace in relation to unstable explosives, organic peroxides type A or self-reactive substances type A that are stored in bulk.

(2) The placard must—

(a) comply with the form in figure 13.2; and

(b) have dimensions not less than those shown in figure 13.2.

(3) The placard must include the following, as indicated in figure 13.2, for the hazardous chemical:

(a) in space (p)—the name stated in the ADG Code for the hazardous chemical;

(b) in space (q)—the space left blank;

(c) in space (r)—the space left blank;

(d) in space (s)—the label in figure 13.3.

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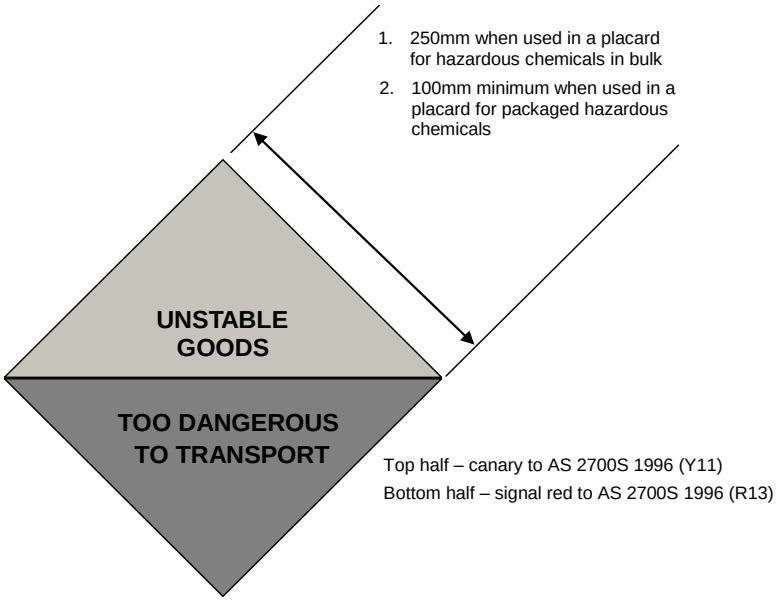

Figure 13.3 Label for unstable explosive, organic peroxide type A or self-reactive substance type A

(4) For subsection (3) (a), the letters used for showing the name must be—

(a) black on a white background; and

(b) if the name requires a single line only—at least 100mm high; and

(c) if the name requires 2 lines—at least 50mm high.

(5) For subsection (3) (d), the label must have sides of not less than 250mm.

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13.6 Placards for packaged Schedule 11 hazardous chemicals (other than flammable liquids category 4) and IBCs

(1) This section applies if a person conducting a business or undertaking at a workplace must display a placard at the workplace in relation to the storage of—

(a) packaged Schedule 11 hazardous chemicals (other than flammable liquids category 4); or

(b) a Schedule 11 hazardous chemical in an IBC.

(2) The placard must—

(a) be in the form shown in figure 13.4; and

(b) be of sufficient size to accommodate the labels to be included on the placard; and

(c) have a white or silver background; and

(d) include each required class label—

(i) in the form and colouring stated in the ADG Code for the hazardous chemical; and

(ii) with sides not less than 100mm.

(3) The placard must include—

(a) for a Schedule 11 hazardous chemical (other than unstable explosive, organic peroxide type A or self-reactive substance type A) present in a storage area at the workplace—the class label as stated in the ADG Code for each category of hazardous chemicals present in at least the placard quantity; or

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(b) for a flammable liquid category 4 stored with flammable liquids in a storage area at the workplace—a class 3 class label as stated in the ADG Code; or

(c) for an unstable explosive, organic peroxide type A or self-reactive substance type A—the label in figure 13.3.

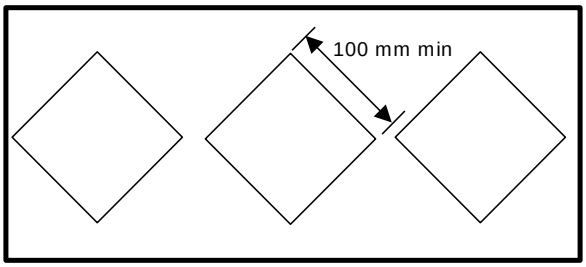

Figure 13.4 General form of placard for packaged Schedule 11 hazardous chemicals

(4) If hazardous chemicals in an IBC at the workplace are Schedule 11 hazardous chemicals intended for transport, and not intended for use at the workplace—

(a) the IBC must display a placard in accordance with the ADG Code; and

(b) the storage area at the workplace must display a placard in accordance with this section.

13.7 Placards for flammable liquids category 4 packaged or in bulk

(1) This section applies if a person conducting a business or undertaking at a workplace must display a placard at the workplace in relation to the storage of—

(a) a packaged flammable liquid category 4; or

(b) a flammable liquid category 4 in bulk.

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(2) The placard must—

(a) be in the form shown in figure 13.5; and

(b) have dimensions not less than those shown in figure 13.5; and

(c) have black letters on a white or silver background.

Figure 13.5 Placard for flammable liquid category 4

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Schedule 14 Requirements for health monitoring

(see s 368, s 370 and s 406)

Table 14.1 Hazardous chemicals (other than lead) requiring health monitoring

column 1 item	column 2 hazardous chemical	column 3 type of health monitoring
1	acrylonitrile	• demographic, medical and occupational history • records of personal exposure • physical examination
2	arsenic (inorganic)	• demographic, medical and occupational history • records of personal exposure • physical examination with emphasis on the peripheral nervous system and skin • urinary inorganic arsenic
3	benzene	• demographic, medical and occupational history • records of personal exposure • physical examination • baseline blood sample for haematological profile
4	cadmium	• demographic, medical and occupational history • records of personal exposure • physical examination with emphasis on respiratory system • standard respiratory questionnaire to be completed • standardised respiratory function tests including for example, FEV_1, FVC and FEV_1/FVC • urinary cadmium and β_2-microglobulin • health advice, including counselling on the effect of smoking on cadmium exposure

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column 1 item	column 2 hazardous chemical	column 3 type of health monitoring
5	chromium (inorganic)	• demographic, medical and occupational history • physical examination with emphasis on the respiratory system and skin • weekly skin inspection of hands and forearms by a competent person
6	creosote	• demographic, medical and occupational history • health advice, including recognition of photosensitivity and skin changes • physical examination with emphasis on the neurological system and skin, noting any abnormal lesions and evidence of skin sensitisation • records of personal exposure, including photosensitivity
7	crystalline silica	• demographic, medical and occupational history • records of personal exposure • standardised respiratory questionnaire to be completed • standardised respiratory function test, for example, FEV_1, FVC and FEV_1/FVC • chest X-ray full size PA view
8	isocyanates	• demographic, medical and occupational history • completion of a standardised respiratory questionnaire • physical examination of the respiratory system and skin • standardised respiratory function tests, for example, FEV_1, FVC and FEV_1/FVC

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column 1 item	column 2 hazardous chemical	column 3 type of health monitoring
9	mercury (inorganic)	• demographic, medical and occupational history • physical examination with emphasis on dermatological, gastrointestinal, neurological and renal systems • urinary inorganic mercury
10	4,4'-Methylene bis (2-chloroaniline) (MOCA)	• demographic, medical and occupational history • physical examination • urinary total MOCA • dipstick analysis of urine for haematuria • urine cytology
11	organophosphate pesticides	• demographic, medical and occupational history including pattern of use • physical examination • baseline estimation of red cell and plasma cholinesterase activity levels by the Ellman or equivalent method • estimation of red cell and plasma cholinesterase activity towards the end of the working day on which organophosphate pesticides have been used
12	pentachlorophenol (PCP)	• demographic, medical and occupational history • records of personal exposure • physical examination with emphasis on the skin, noting any abnormal lesions or effects of irritancy • urinary total pentachlorophenol • dipstick urinalysis for haematuria and proteinuria
13	polycyclic aromatic hydrocarbons (PAH)	• demographic, medical and occupational history • physical examination • records of personal exposure, including photosensitivity • health advice, including recognition of photosensitivity and skin changes

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column 1 item	column 2 hazardous chemical	column 3 type of health monitoring
14	thallium	• demographic, medical and occupational history • physical examination • urinary thallium
15	vinyl chloride	• demographic, medical and occupational history • physical examination • records of personal exposure

Table 14.2 Lead requiring health monitoring

column 1 item	column 2	column 3
1	lead (inorganic)	• demographic, medical and occupational history • physical examination • biological monitoring

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Schedule 15 Hazardous chemicals at major hazard facilities (and their threshold quantity)

(see dict, def ***Schedule 15 chemical*** and ***threshold quantity***)

15.1 Definitions—sch 15

In this schedule:

class—see the ADG Code.

division—see the ADG Code.

packing group—see the ADG Code.

subsidiary risk—see the ADG Code.

15.2 Relevant hazardous chemicals

The hazardous chemicals that characterise a workplace as a facility for the purposes of this regulation are the chemicals specifically referred to in table 15.6.2 and chemicals that belong to the types, classes and categories referred to in table 15.6.3.

15.3 Threshold quantity of one hazardous chemical

(1) In relation to each hazardous chemical referred to in section 15.2, table 15.6.2, column 4 and table 15.6.3, column 4 provide a quantity that is described as the ***threshold quantity*** of that chemical.

(2) If a hazardous chemical is referred to in table 15.6.2, the ***threshold quantity*** of the chemical is that described in table 15.6.2, whether or not the chemical also belongs to a type, class or category referred to in table 15.6.3.

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(3) If a hazardous chemical is not referred to in table 15.6.2, and the chemical belongs to a type, class or category referred to in table 15.6.3, the ***threshold quantity*** of that chemical is that of the type, class or category to which it belongs.

(4) If a hazardous chemical is not referred to in table 15.6.2, and the chemical appears to belong to more than 1 of the types, classes or categories referred to in table 15.6.3, the ***threshold quantity*** of that chemical is that of the relevant type, class or category which has the lower or lowest threshold quantity.

15.4 Threshold quantity of more than 1 hazardous chemical

If there is more than 1 hazardous chemical, a threshold quantity of chemicals exists where, if a number of chemicals are present, the result of the following aggregation formula exceeds 1:

$$\frac{q_x}{Q_x} + \frac{q_y}{Q_y} + [....] + \frac{q_n}{Q_n}$$

Where—

(a) ***x***, ***y***, [....] and ***n*** are the hazardous chemicals present or likely to be present;

(b) ***qx***, ***qy***, [....] and ***qn*** is the total quantity of hazardous chemicals x, y, [....] and n present or likely to be present, other than—

(i) a hazardous chemical that is present or likely to be present in an isolated quantity of less than 2% of its threshold quantity; or

(ii) hazardous chemicals that are solely the subject of intermediate temporary storage, while in transit by road or rail (unless it is reasonably foreseeable that, despite the transitory nature of the storage, hazardous chemicals are, or are likely to be present frequently or in significant quantities);

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(c) ***Qx***, ***Qy***, [....] and ***Qn*** is the individual threshold quantity for ch hazardous chemical x, y, [....] and n;

(d) a hazardous chemical is present or likely to be present in an ***isolated quantity***, for the purposes of paragraph (b) (i), if its location at the facility is such that it cannot, on its own, act as an initiator of a major incident.

15.5 How table 15.6.2 must be used

(1) The UN number listed in table 15.6.2 against the named hazardous chemical does not restrict the meaning of the name, which also applies to hazardous chemicals that fall outside the UN number.

Examples

1 The hazardous chemicals are too dangerous to be transported.

2 The hazardous chemicals are part of mixtures covered by a different UN number.

(2) Any hazardous chemicals that are covered by the listed UN numbers must be included in the quantity of the chemical named.

15.6 How table 15.6.3 must be used

(1) The quantities specified for explosives in table 15.6.3 relate to the weight of explosive exclusive of packagings, casings and other non-explosive components.

(2) If explosives of different hazard divisions are present in the same area or storage, all of the explosives must, before table 15.6.3 is applied, be classified in accordance with table 15.6.1.

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Table 15.6.1

column 1 Div.	column 2 1.1	column 3 1.2	column 4 1.3	column 5 1.4	column 6 1.5	column 7 1.6
1.1	1.1	1.1	1.1	1.1	1.1	1.1
1.2	1.1	1.2	1.1	1.2	1.1	1.2
1.3	1.1	1.1	1.3	1.3	1.1	1.3
1.4	1.1	1.2	1.3	1.4	1.5	1.6
1.5	1.1	1.1	1.1	1.5	1.5	1.5
1.6	1.1	1.2	1.3	1.6	1.5	1.6

Table 15.6.2

column 1 item	column 2 hazardous chemical	column 3 UN Nos included under name	column 4 threshold quantity (t)
1	acetone cyanohydrin	1541	20
2	acetylene	1001	50
3	acrolein	1092	200
4	acrylonitrile	1093	200
5	allyl alcohol	1098	20
6	allylamine	2334	200
7	ammonia, anhydrous, liquefied or ammonia solutions, relative density less than 0.880 at 15°C in water, with more than 50% ammonia	1005	200
8	ammonium nitrate fertilisers	2067 2068 2069 2070	5000

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column 1 item	column 2 hazardous chemical	column 3 UN Nos included under name	column 4 threshold quantity (t)
9	ammonium nitrate, with not more than 0.2% combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance	1942	2500
10	arsenic pentoxide, arsenic (V) acid and other salts	1559	10
11	arsenic trioxide, arsenious (III) acid and other salts	1561	0·1
12	arsine	2188	1·0
13	bromine or bromine solutions	1744	100
14	carbon disulfide	1131	200
15	chlorine	1017	25
16	dioxins	—	0·1
17	ethyl nitrate	—	50
18	ethylene dibromide	1605	50
19	ethylene oxide	1040	50
20	ethyleneimine	1185	50
21	fluorine	1045	25
22	formaldehyde (greater than 90%)	—	50
23	hydrofluoric acid solution (greater than 50%)	1790	50
24	hydrogen	1049	50

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column 1 item	column 2 hazardous chemical	column 3 UN Nos included under name	column 4 threshold quantity (t)
25	hydrogen chloride —anhydrous —refrigerated liquid	 1050 2186	 250 250
26	hydrogen cyanide	1051 1614	20
27	hydrogen fluoride	1052	50
28	hydrogen sulfide	1053	50
29	LP gases	1011 1012 1075 1077 1978	200
30	methane or natural gas	1971 1972	200
31	methyl bromide	1062	200
32	methyl isocyanate	2480	0.15
33	oxides of nitrogen, including nitrous oxide, nitrogen dioxide and nitrogen trioxide	1067 1070 1660 1975 2201 2421	50
34	oxygen	1072 1073	2000
35	phosgene	1076	0.75
36	propylene oxide	1280	50
37	propyleneimine	1921	200
38	sodium chlorate, solid	1495	200
39	sulfur dichloride	1828	1
40	sulfur dioxide, liquefied	1079	200

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column 1 item	column 2 hazardous chemical	column 3 UN Nos included under name	column 4 threshold quantity (t)
41	sulfuric anhydride (alt. sulfur trioxide)	1829	75
42	titanium tetrachloride	1838	500
43	toluene diisocyanate	2078	200

Table 15.6.3

column 1 item	column 2 hazardous chemical	column 3 description	column 4 threshold quantity (t)
1	explosive materials	explosive of division 1.1a	10
		all other explosives of division 1.1	50
		explosive of division 1.2	200
		explosive of division 1.3	200
2	compressed and liquefied gases	compressed or liquefied gases of division 2.1 or subsidiary risk 2.1	200
		liquefied gases of subsidiary risk 5	200
		compressed or liquefied gases that meet the criteria for very toxic in table 15.6.4	20
		compressed or liquefied gases that meet the criteria for toxic in table 15.6.4	200

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column 1 item	column 2 hazardous chemical	column 3 description	column 4 threshold quantity (t)
3	flammable materials	liquids that meet the criteria for class 3 packing group I materials (except for crude oil in remote locations)	200
		crude oil in remote locations that meet the criteria for class 3 packing group I	2 000
		liquids that meet the criteria for class 3 packing group II or III	50 000
		liquids with flash points <61°C kept above their boiling points at ambient conditions	200
		materials that meet the criteria for division 4.1 packing group I	200
		spontaneously combustible materials that meet the criteria for division 4.2 packing group I or II	200
		materials that liberate flammable gases or react violently on contact with water which meet the criteria for division 4.3 packing group I or II	200

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column 1 item	column 2 hazardous chemical	column 3 description	column 4 threshold quantity (t)
		materials that belong to classes 3 or 8 packing group I or II which have Hazchem codes of 4WE (materials that react violently with water)	500
4	oxidising materials	oxidising material listed in appendix a to the ADG Code	50
		oxidising materials that meet the criteria for division 5.1 packing group I or II	200
5	peroxides	peroxides that are listed in Appendix A to the ADG Code	50
		organic peroxides that meet the criteria for division 5.2	200
6	toxic solids and liquids	materials that meet the criteria for very toxic in table 15.6.4 except materials that are classified as infectious substances (division 6.2) or as radioactive (class 7)	20
		materials that meet the criteria for toxic in table 15.6.4	200

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Table 15.6.4

column 1 description	column 2 oral toxicity[1] LD_{50} (mg/kg)	column 3 dermal toxicity[2] LD_{50} (mg/kg)	column 4 inhalation toxicity[3] LC_{50} (mg/L)
very toxic	$LD_{50} \leq 5$	$LD_{50} \leq 40$	$LC_{50} \leq 0{\cdot}5$
toxic	$5 < LD_{50} \leq 50$	$40 < LD_{50} \leq 200$	$0{\cdot}5 < LC_{50} \leq 2$

Key

1 in rats

2 in rats or rabbits

3 4 hours in rats

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Schedule 16 Matters to be included in emergency plan for major hazard facility

(see s 557 (1) (b))

16.1 Site and hazard detail

16.1.1 The location of the facility, including its street address and the nearest intersection (if any).

Note Sufficient detail must be provided to enable a person not familiar with the site to find it.

16.1.2 A map—

(a) showing the site of the major hazard facility; and

(b) showing land use and occupancy in the surrounding area, and any other closely located major hazard facilities and hazardous chemical storage sites; and

(c) identifying all potentially hazardous inventories in the area that are known to the operator and the location of all staging points for emergency service organisations.

16.1.3 An inventory of all hazardous chemicals present or likely to be present at the facility, and their location.

16.1.4 A brief description of the nature of the facility and its operation.

16.1.5 The maximum number of persons, including workers, likely to be present at the facility on a normal working day.

16.1.6 The emergency planning assumptions, including emergency measures planned for identified incidents and likely areas affected.

16.1.7 The protective resources available to control an incident.

16.1.8 The emergency response procedures.

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16.1.9 The infrastructure (on-site and off-site) likely to be affected by a major incident.

16.2 Command structure and site personnel

16.2.1 The command philosophy and structure to be activated in an emergency, so that it is clear what actions will be taken, who will take these actions and how, when and where they will be taken.

16.2.2 Details of the person who can clarify the content of the emergency plan if necessary.

16.2.3 The contact details of, and the means of contacting, the persons at the facility responsible for liaising with emergency service organisations.

16.2.4 A list of 24 hour emergency contacts.

16.2.5 Arrangements for assisting emergency service organisations and nearby facilities with control actions taken in the surrounding area.

16.3 Notifications

16.3.1 In the event of the occurrence of a major incident or an event that could reasonably be expected to lead to a major incident, procedures for notifying the emergency service organisations with which the emergency plan was prepared under section 557 (Determined major hazard facility—emergency plan).

16.3.2 After a major incident has occurred, procedures for providing the local community and SEMSOG with information about the major incident under section 573 (Information for local community—major incident).

16.3.3 On-site and off-site warning systems.

16.3.4 Contact details for emergency service organisations and other support services that can assist in providing resources and implementing evacuation plans in the event of a major incident.

16.3.5 On-site communication systems.

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16.4 Resources and equipment

16.4.1 On-site emergency resources, including emergency equipment, personnel, gas detectors, wind velocity detectors, sand, lime, neutralising agents, absorbents, spill bins and decontamination equipment.

16.4.2 Off-site emergency resources, including arrangements for obtaining additional external resources (specific to the likely major incidents) to assist the control of major incidents and major incident hazards.

16.5 Procedures

16.5.1 Procedures for the safe evacuation of, and accounting for, all persons on site.

16.5.2 Procedures and control points for utilities, including gas, water and electricity.

16.5.3 Procedures for the control of any incident involving Schedule 15 chemicals.

16.5.4 Procedures for decontamination following an incident involving Schedule 15 chemicals.

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Schedule 17 Additional matters to be included in safety management system of major hazard facility

(see s 558)

17.1 Safety policy and safety objectives

17.1.1 A description of the means by which the operator's safety policy and specific safety objectives are to be communicated to all persons who are to participate in the implementation of the safety management system.

17.1.2 The safety policy must include an express commitment to ongoing improvement of all aspects of the safety management system.

17.2 Organisation and personnel

17.2.1 The identification (according to position description and location) of the persons who are to participate in the implementation of the safety management system, and a description of the command structure in which these persons work and of the specific tasks and responsibilities allocated to them.

17.2.2 A description of the means of ensuring that these persons have the knowledge and skills necessary to enable them to undertake their allocated tasks and discharge their allocated responsibilities, and that they retain such knowledge and skills.

17.3 Operational controls

17.3.1 A description of the procedures and instructions for—

(a) the safe operation of plant (including as to inspection and maintenance); and

(b) the mechanical integrity of plant; and

(c) plant processes; and

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(d) the control of abnormal operations and emergency shut down or decommissioning.

17.3.2 Provision of adequate means of achieving isolation of the major hazard facility or any part of the major hazard facility in the event of an emergency.

17.3.3 Provision of adequate means of gaining access for service and maintenance of the major hazard facility or any part of the major hazard facility.

17.3.4 A description of the roles of persons and of the interfaces between persons and plant.

17.3.5 Provision for alarm systems.

17.4 Duties of operators

17.4.1 A description of the means by which the operator proposes to comply with the Act and with division 9.3.3 (Determined major hazard facility—management of risk), part 9.4 (Licensed major hazard facilities—risk management) and part 9.5 (Consultation and workers' safety role).

17.4.2 In relation to each part of the documented safety management system that describes the means of compliance with a provision of chapter 9 (Major hazard facilities), an annotation or cross-reference identifying the specific provision being complied with.

17.5 Management of change

A description of the procedures for planning modifications to major hazard facilities.

17.6 Principles and standards

17.6.1 A statement of the principles, especially the design principles and engineering standards, being used to ensure the safe operation of the major hazard facility.

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17.6.2 A description of any technical standards, whether published or proprietary, being relied on in relation to such principles and standards.

17.7 Performance monitoring

17.7.1 Performance standards for measuring the effectiveness of the safety management system, that—

(a) relate to all aspects of the safety management system; and

(b) are sufficiently detailed to ensure that the ability of the operator to ensure the effectiveness of all aspects of the safety management system is apparent from the documentation; and

(c) include steps to be taken to continually improve all aspects of the safety management system.

17.7.2 A description of the way in which these performance standards are to be met.

17.7.3 Performance indicators for the effectiveness of control measures implemented, including—

(a) tests of the effectiveness of the control measures; and

(b) indicators of the failure of any control measure; and

(c) actions to be taken in reporting any such failure; and

(d) other corrective actions to be taken in the event of any such failure.

17.8 Audit

Provision for the auditing of performance against the performance standards, including the methods, frequency and results of the audit process.

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Schedule 18 Additional matters to be included in safety case for a major hazard facility

(see s 561)

Part 18.1 Facility description

18.1 The facility

18.1.1 A brief description of the nature of the facility and its operation, including a description of on-site activities and processes that involve or will involve Schedule 15 chemicals.

18.1.2 A description of the Schedule 15 chemicals and any other hazardous chemicals present or likely to be present at the facility, including—

(a) their identification by name and by any other means necessary for a clear identification; and

(b) the quantity present or likely to be present at the major hazard facility; and

(c) their physical, chemical and toxicological characteristics, and any other hazardous characteristics, both immediate and delayed; and

(d) their physical and chemical behaviour under normal conditions of use or under foreseeable abnormal conditions.

18.1.3 A description of the chemical and physical processes associated with any Schedule 15 chemicals present or likely to be present at the facility, including—

(a) the main units of plant used in those processes; and

(b) a process flow drawing, or set of flow drawings, describing the processes.

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18.1.4 A drawing of the major hazard facility's general layout, containing the location of—

(a) the main process units; and

(b) the main storage areas; and

(c) major incident hazards and major incident initiators.

18.1.5 In relation to proposed changes at the major hazard facility for which no new control measures are implemented—

(a) a description of any proposed changes to the major hazard facility that would—

(i) alter the production capacity or profile of the major hazard facility; or

(ii) involve the deletion, addition or modification of any processes; and

(b) a statement as to how existing control measures and work health and safety management systems are capable of maintaining the safe operation of the major hazard facility.

18.2 The surrounding area

18.2.1 A detailed scale plan of the facility and its surrounding area showing—

(a) the location of the facility within the surrounding area; and

(b) topographical information; and

(c) land use, occupancy and activities in the surrounding area and any other closely located major hazard facilities and hazardous chemical storage sites; and

(d) the location of any identified external conditions (including other major hazard facilities or other facilities that could affect the safety of the major hazard facility).

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18.2.2 Graphically presented demographic information for the local community, including surrounding land uses permitted by the planning and land authority.

Note ***Planning and land authority***—see the Legislation Act, dictionary, pt 1.

18.2.3 Meteorological data relevant to the estimation of the effects of any major incident.

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Part 18.2 Safety information

18.3 Control measures to limit the consequences of major incidents

18.3.1 A detailed description of—

(a) the instrumentation and other equipment installed in the facility and the processes and procedures in place that are the control measures to be implemented by the operator; and

(b) the critical operating parameters for those control measures; and

(c) key personnel and resources (internal and external) available to intervene in the event of any failure of a control measure, whether or not that failure results in a major incident; and

(d) a summary of the emergency plan, including specific information about how the plan can be expected to limit the consequences of a major incident; and

(e) the means of ensuring that there is at all times a command structure in place for the major hazard facility that applies in the event of an emergency, and that this command structure has been communicated to workers throughout the major hazard facility.

18.3.2 In this section:

critical operating parameters means the upper or lower performance limits of any equipment, process or procedure, compliance with which is necessary to avoid a major incident.

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failure of a control measure means—

(a) if the control measure is a positive action or event—the non-occurrence or the defective occurrence of that action or event; or

(b) if the control measure consists of a limitation on an operational activity, process or procedure—the breach of that limitation.

18.4 Performance monitoring

A detailed description of the performance standards and performance indicators required by schedule 17, section 17.7 (Performance monitoring) to be included in the safety management system.

18.5 Safety management system

18.5.1 At all points in the safety case where the matter addressed is covered by the safety management system, a clear reference to the relevant part of the documented safety management system.

18.5.2 A description of those parts of the documented safety management system that address the ongoing effective implementation and ongoing review and revision of the safety management system.

18.6 Safety and reliability of facility structures and plant

A description of the steps taken to ensure that safety and reliability are incorporated into the design and construction of all aspects of the major hazard facility itself, whether the operator is directly engaged in the design and construction or has engaged another person to carry out the design and construction.

18.7 Major incident history

A summary of the major incidents that have occurred at the major hazard facility over the previous 5 years.

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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:

- AS (see s 164 (1))
- AS/NZS (see s 164 (2))
- chief health officer
- found guilty
- in relation to
- instrument
- Legislation Act
- person
- planning and land authority.

Note 3 Terms used in this regulation have the same meaning that they have in the *Work Health and Safety Act 2011* (see Legislation Act, s 148). For example, the following terms are defined in the *Work Health and Safety Act 2011*, dict:

- asbestos (see s 197A)
- asbestos containing material (ACM) (see s 197A)
- compliance powers
- construct
- corresponding regulator
- corresponding WHS law
- demolition
- design
- designer (see s 22)
- disclose
- document
- eligible person
- employee record
- handling
- health

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- health and safety committee
- health and safety representative
- import
- importer (see s 24)
- inspector
- internal reviewer
- manufacturer (see s 23)
- medical treatment
- notifiable incident (see s 35)
- parties
- person conducting a business or undertaking (see s 5)
- person with management or control of a workplace (see s 20)
- person with management or control of plant at a workplace (see s 21)
- plant
- reasonably practicable
- regulator
- relevant worker
- reviewable decisions
- structure
- substance
- supplier
- supply
- union
- volunteer
- WHS entry permit
- WHS entry permit-holder
- worker (see s 7)
- work group
- workplace (see s 8).

abrasive blasting means propelling a stream of abrasive material at high speed against a surface using compressed air, liquid, steam, centrifugal wheels or paddles to clean, abrade, etch or otherwise change the original appearance or condition of the surface.

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ACD—see ***asbestos-contaminated dust or debris***.

ACM—see ***asbestos containing material***.

ADG Code means the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, approved by the Transport and Infrastructure Council, as in force from time to time.

Note The *Australian Code for the Transport of Dangerous Goods by Road and Rail*, 7th edition does not need to be notified under the Legislation Act because s 47 (6) does not apply (see s 15 and Legislation Act, s 47 (7)). The Code is available at www.ntc.gov.au.

administrative control means a method of work, a process or a procedure designed to minimise risk, but does not include—

(a) an engineering control; or

(b) the use of personal protective equipment.

Agvet Code means the Agricultural and Veterinary Chemicals Code set out in the schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* (Cwlth).

airborne contaminant means a contaminant in the form of a fume, mist, gas, vapour or dust, and includes microorganisms.

airborne crystalline silica, for chapter 7A (Crystalline silica)—see section 418A.

amusement device means plant operated for hire or reward that provides entertainment, sightseeing or amusement through movement of the equipment, or part of the equipment, or when passengers or other users travel or move on, around or along the equipment, but does not include—

(a) a miniature train and railway system owned and operated by a model railway society, club or association; or

(b) a ride or device that is used as a form of transport and that is, in relation to its use for that purpose, regulated under another Act or an Act of the Commonwealth; or

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(c) a boat or flotation device—

(i) that is solely propelled by a person who is in or on the boat or device; and

(ii) that is not attached to any mechanical elements or equipment outside the boat or device, and that does not rely on any artificial flow of water to move; or

(d) any plant specifically designed for a sporting, professional stunt, theatrical or acrobatic purpose or activity; or

(e) a coin-operated or token-operated device that—

(i) is intended to be ridden, at the one time, by not more than 4 children who must be below the age of 10 years; and

(ii) is usually located in a shopping centre or similar public location; and

(iii) does not necessarily have an operator.

approved warning sign—see the *Dangerous Substances (General) Regulation 2004*, section 338.

article means a manufactured item, other than a fluid or particle, that—

(a) is formed into a particular shape or design during manufacture; and

(b) has hazard properties and a function that is wholly or partly dependent on the shape or design.

asbestos-contaminated dust or debris (ACD) means dust or debris that has settled within a workplace and is, or is assumed to be, contaminated with asbestos.

asbestos management plan—see section 429 and section 432.

asbestos register—see section 425.

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asbestos-related work means work involving asbestos (other than asbestos removal work to which part 8.7 (Asbestos removal work) applies) that is permitted under the exceptions set out in section 419 (3), (4) and (5).

asbestos removalist means a person conducting a business or undertaking who carries out asbestos removal work.

asbestos removal licence means a Class A asbestos removal licence or a Class B asbestos removal licence.

asbestos removal work means—

(a) work involving the removal of asbestos or ACM; or

(b) in Part 8.10 (Licensing of asbestos removalists and asbestos assessors), Class A asbestos removal work or Class B asbestos removal work.

asbestos waste means asbestos or ACM removed and disposable items used during asbestos removal work including plastic sheeting and disposable tools.

biological monitoring means—

(a) the measurement and evaluation of a substance, or its metabolites, in the body tissue, fluids or exhaled air of a person exposed to the substance; or

(b) blood lead level monitoring.

blood lead level means the concentration of lead in whole blood expressed in micromoles per litre (µmol/L) or micrograms per decilitre (µg/dL).

blood lead level monitoring means the testing of the venous or capillary blood of a person by a laboratory accredited by NATA, under the supervision of a registered medical practitioner, to determine the blood lead level.

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boiler—

(a) means—

(i) a vessel, or an arrangement of vessels and interconnecting parts, in which steam or vapour is generated or in which water or other liquid is heated at a pressure above that of the atmosphere by the application of fire, the products of combustion, electrical power or similar high temperature means; and

(ii) the superheaters, reheaters, economisers, boiler piping, supports, mountings, valves, gauges, fittings, controls, boiler setting and other equipment directly associated with those vessels; but

(b) does not include—

(i) except in schedule 3 (High risk work licences and classes of high risk work) and schedule 4 (High risk work licences—competency requirements), a fully flooded or pressurised system where water or another liquid is heated to a temperature lower than the normal atmospheric boiling temperature of the liquid; or

(ii) for the purposes of part 5.2 (Additional duties relating to registered plant and plant designs), part 5.3 (Registration of plant designs and items of plant), schedule 3 and schedule 4—a boiler designed or manufactured to the following codes:

(A) AMBSC part 1—Australian Miniature Boiler Safety Committee Code for Copper Boilers;

(B) AMBSC part 2—Australian Miniature Boiler Safety Committee Code for Steel Boilers;

(C) AMBSC Part 3—Australian Miniature Boiler Safety Committee Code for Sub-Miniature Boilers;

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(D) AMBSC Part 4—Australian Miniature Boiler Safety Committee Code for Duplex Steel Boilers; or

Note The AMBSC does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The AMBSC may be purchased at www.aals.asn.au.

(iii) for schedule 3 and schedule 4—

(A) a direct-fired process heater; or

(B) boilers with less than $5m^2$ heating surface or 150kW output; or

(C) unattended boilers certified in compliance with AS 2593:2004 (Boilers—Safety management and supervision systems).

Note AS 2593:2004 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

boom-type elevating work platform means a telescoping device, hinged device, or articulated device, or any combination of these, used to support a platform on which personnel, equipment and materials may be elevated.

bridge crane means a crane that—

(a) consists of a bridge beam or beams, that are mounted to end carriages at each end; and

(b) is capable of travelling along elevated runways; and

(c) has 1 or more hoisting mechanisms arranged to traverse across the bridge.

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

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

bulk, in relation to a hazardous chemical, means any quantity of a hazardous chemical that is—

(a) in a container with a capacity exceeding 500L or net mass of more than 500kg; or

(b) if the hazardous chemical is a solid—an undivided quantity exceeding 500kg.

capacity, of a container for chapter 7 (Hazardous chemicals), means the internal volume of the container at a temperature of 15°C expressed in litres.

card-holder means the person to whom a general construction induction training card is issued.

certificate of medical fitness means a certificate of medical fitness that complies with section 169 (Certificate of medical fitness).

certification, in relation to a specified VET course, means—

(a) a statement of attainment issued by an RTO stating that the person to whom it is issued has successfully completed the specified VET course; or

(b) in the case of high risk work—a notice of satisfactory assessment stating that the person to whom it is issued has successfully completed the specified VET course; or

(c) an equivalent statement or notice issued by a corresponding RTO.

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certified safety management system, for chapter 8 (Asbestos), means a safety management system that complies with AS 4801:2001 (Occupational health and safety management systems), or an equivalent system determined by the regulator.

Note AS 4801:2001 may be purchased at www.standards.org.au.

chemical identity means a name, in accordance with the nomenclature systems of the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service, or a technical name, that gives a chemical a unique identity.

Note Nomenclature systems of the International Union of Pure and Applied Chemistry are available at www.iupac.org. Nomenclature systems of the Chemical Abstracts Service are available at www.cas.org.

class means—

(a) in relation to high risk work—a class of work stated in schedule 3 (High risk work licences and classes of high risk work); and

(b) in relation to asbestos removal work—Class A asbestos removal work or Class B asbestos removal work; and

(c) for schedule 15—see schedule 15, section 15.1.

Class A asbestos removal licence means a licence that authorises the carrying out of Class A asbestos removal work and Class B asbestos removal work by or on behalf of the licence-holder.

Class A asbestos removal work means work that is required to be licensed under section 485.

Class B asbestos removal licence means a licence that authorises the carrying out of Class B asbestos removal work by or on behalf of the licence-holder.

Class B asbestos removal work means work that is required to be licensed under section 487, but does not include Class A asbestos removal work.

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Class H vacuum, for chapter 7A (Crystalline silica)—see section 418A (1).

class label means a pictogram described in the ADG Code for a class, or division of a class, of dangerous goods.

Class M vacuum, for chapter 7A (Crystalline silica)—see section 418A (1).

clearance certificate—see section 474.

clearance inspection—see section 473 (3).

combustible dust means finely divided solid particles (including dust, fibres or flyings) that are—

(a) suspended in air or settle out of the atmosphere under their own weight; and

(b) able to burn or glow in the air; and

(c) able to form an explosive mixture with air at atmospheric pressure and normal temperature.

combustible substance—

(a) means a substance that is combustible; and

(b) includes dust, fibres, fumes, mists or vapours produced by the substance.

Examples

wood, paper, oil, iron filings

competency assessment, in part 4.5 (High risk work), means an assessment in relation to the completion of a specified VET course to carry out a class of high risk work.

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competent person means—

(a) for electrical work on energised electrical equipment or energised electrical installations (other than testing mentioned in section 150 (Inspection and testing of electrical equipment) and section 165 (Testing of residual current devices)—a licensed electrical worker; and

(b) for general diving work—see—

(i) section 174 (Competence of competent person supervising general diving work—Act, s 44); and

(ii) section 177 (Appointment of competent person to supervise diving work); and

(c) for a major inspection of a mobile crane or tower crane under section 235 (Major inspection of registered mobile cranes and tower cranes)—see section 235; and

(d) for inspection of amusement devices and passenger ropeways under section 241 (Annual inspection of amusement devices and passenger ropeways)—see section 241; and

(e) for design verification under section 252 (Who can be the design verifier)—a person who has the skills, qualifications, competence and experience to design the plant or verify the design; and

(f) for any other case—a person who has acquired through training, qualification or experience the knowledge and skills to carry out the task.

concrete placing boom means plant incorporating an articulating boom, capable of power-operated slewing and luffing to place concrete by way of pumping through a pipeline attached to, or forming part of, the boom of the plant.

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confined space—

(a) means an enclosed or partially enclosed space that—

(i) is not designed or intended primarily to be occupied by a person; and

(ii) is, or is designed or intended to be, at normal atmospheric pressure while any person is in the space; and

(iii) is, or is likely to be, a risk to health and safety from—

(A) an atmosphere that does not have a safe oxygen level; or

(B) contaminants, including airborne gases, vapours and dusts, that may cause injury from fire or explosion; or

(C) harmful concentrations of any airborne contaminants; or

(D) engulfment; but

(b) does not include a mine shaft or the workings of a mine.

confined space entry permit means a confined space entry permit issued under section 67 (Confined space entry permit).

construction project, for chapter 6 (Construction work)—see section 292.

construction work, for chapter 6 (Construction work)—see section 289.

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consumer product means a thing that—

(a) is packed or repacked primarily for use by a household consumer or for use in an office; and

(b) if the thing is packed or repacked primarily for use by a household consumer—is packed in the way and quantity in which it is intended to be used by a household consumer; and

(c) if the thing is packed or repacked primarily for use in an office—is packed in the way and quantity in which it is intended to be used for office work.

container, in relation to a hazardous chemical, means anything in or by which a hazardous chemical is, or has been, wholly or partly covered, enclosed or packed, including anything necessary for the container to perform its function as a container.

contaminant means any substance that may be harmful to health or safety.

control measure, in relation to a risk to health and safety, means a measure to eliminate or minimise the risk.

conveyor—

(a) means equipment or apparatus operated by power other than manual power and by which loads are raised, lowered or transported or capable of being raised, lowered, transported, or continuously driven, by—

(i) an endless belt, rope or chain or other similar means; or

(ii) buckets, trays or other containers or fittings moved by an endless belt, rope, chain or similar means; or

(iii) a rotating screw; or

(iv) a vibration or walking beam; or

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(v) a powered roller conveyor if the rollers are driven by an endless belt, rope or chain or other similar means; and

(b) includes the superstructure, gear and auxiliary equipment used in connection with that equipment or apparatus.

correct classification means the set of hazard classes and hazard categories assigned to a hazardous chemical when it is correctly classified.

crane—

(a) means an appliance intended for raising or lowering a load and moving it horizontally; and

(b) includes the supporting structure of the crane and its foundations; but

(c) does not include any of the following:

(i) an industrial lift truck;

(ii) earthmoving machinery;

(iii) an amusement device;

(iv) a tractor;

(v) an industrial robot;

(vi) a conveyor;

(vii) building maintenance equipment;

(viii) a suspended scaffold;

(ix) a lift.

crystalline silica control measure, for chapter 7A (Crystalline silica)—see section 418A (1).

crystalline silica material, for chapter 7A (Crystalline silica)—see section 418A (1).

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current certificate of medical fitness means a certificate of medical fitness that—

(a) was issued within the past 12 months; and

(b) has not expired or been revoked.

cut, for chapter 7A (Crystalline silica)—see section 418A.

demolition work—

(a) means work to demolish or dismantle a structure, or part of a structure that is load-bearing or otherwise related to the physical integrity of the structure; but

(b) does not include—

(i) the dismantling of formwork, falsework, or other structures designed or used to provide support, access or containment during construction work; or

(ii) the removal of power, light or telecommunication poles.

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

(a) guyed (guy-derrick) or held by backstays (stiff-legged derrick); and

(b) capable of luffing under load.

determined major hazard facility means a facility that has been determined under section 541 (Determination in relation to facility, on inquiry) or section 542 (Determination in relation to over-threshold facility) to be a major hazard facility.

direct-fired process heater means an arrangement of 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, fractionalism, reaction or other petrochemical processing of the process fluid, whether that fluid is liquid or gas, or a combination of liquid and gas.

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division, for schedule 15—see schedule 15, section 15.1.

dogging work means—

(a) the application of slinging techniques, including the selection and inspection of lifting gear, to safely sling a load; or

(b) the directing of a plant operator in the movement of a load when the load is out of the operator's view.

duty-holder, for part 3.1 (Managing risks to health and safety), means a person mentioned in section 32 (Application—pt 3.1).

EANx, for part 4.8 (Diving work), means a mixture of oxygen and nitrogen in which the volume of oxygen is at least 22%.

earthmoving machinery—

(a) means operator-controlled plant used to excavate, load, transport, compact or spread earth, overburden, rubble, spoil, aggregate or similar material; but

(b) does not include a tractor or industrial lift truck.

electrical equipment—

(a) for division 4.7.3 (Electrical equipment and electrical installations)—see section 148 (Electrical equipment and electrical installations—div 4.7.3); and

(b) for the remainder of part 4.7 (General electrical safety in workplaces and energised electrical work)—see section 144 (Meaning of *electrical equipment*—pt 4.7).

electrical installation—

(a) for division 4.7.3 (Electrical equipment and electrical installations)—see section 148 (Electrical equipment and electrical installations—div 4.7.3); and

(b) for the remainder of part 4.7 (General electrical safety in workplaces and energised electrical work)—see section 145 (Meaning of *electrical installation*—pt 4.7).

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electrical risk means risk to a person of death, shock or other injury caused directly or indirectly by electricity.

electrical work—for part 4.7 (General electrical safety in workplaces and energised electrical work)—see section 146 (Meaning of *electrical work*—pt 4.7).

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

electricity supply authority means an electricity distributor.

emergency service organisation means—

(a) the Australian Federal Police; or

(b) an emergency service.

Note An ***emergency service*** means the ambulance service, the fire and rescue service, the rural fire service or the SES (see Legislation Act, dict, pt 1).

emergency services worker means—

(a) a police officer; or

(b) a member of an emergency service.

Note An ***emergency service*** means the ambulance service, the fire and rescue service, the rural fire service or the SES (see Legislation Act, dict, pt 1).

engineered stone, for chapter 7A (Crystalline silica)—see section 418A.

engineering control means a control measure that is physical in nature, including a mechanical device or process.

entry, by a person into a confined space, means the person's head or upper body is in the confined space or within the boundary of the confined space.

essential services means the supply of—

(a) gas, water, sewerage, telecommunications, electricity and similar services; or

(b) chemicals, fuel and refrigerant in pipes or lines.

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excavation means a trench, tunnel or shaft, but does not include—

(a) a mine; or

(b) a bore to which the *Water Resources Act 2007* applies; or

(c) a trench for use as a place of interment.

excavation work means work to—

(a) make an excavation; or

(b) fill or partly fill an excavation.

exposure standard, except in part 4.1 (Noise), means an exposure standard declared by the Minister under section 48A.

exposure standard for noise, in relation to a person—see section 56 (Meaning of *exposure standard for noise*).

external review means an external review under part 11.1 (Review of decisions under this regulation).

extra-low voltage means voltage that does not exceed 50V AC or 120V ripple-free DC.

facility, for chapter 9 (Major hazard facilities), means a workplace at which Schedule 15 chemicals are present or likely to be present.

fall arrest system means plant or material designed to arrest a fall.

Examples

1 an industrial safety net

2 a catch platform

3 a safety harness system (other than a system that relies entirely on a restraint technique system)

fault, in relation to plant, means a break or defect that may cause the plant to present a risk to health and safety.

female of reproductive capacity, in part 7.2 (Lead), means a female other than a female who provides information stating that she is not of reproductive capacity.

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fire risk hazardous chemical means a hazardous chemical that—

(a) is any of the following:

(i) a flammable gas;

(ii) a flammable liquid (hazard category 1 to 3);

(iii) a flammable solid;

(iv) a substance liable to spontaneous combustion;

(v) a substance which, in contact with water, emits flammable gases;

(vi) an oxidizing substance;

(vii) an organic peroxide; and

(b) burns readily or supports combustion.

fitness criteria, in relation to diving work, means the fitness criteria stated in AS/NZS 2299.1:2015 (Occupational diving operations—Standard operational practice), Appendix M, clause M4.

Note AS/NZS 2299.1:2015 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

flammable gas—see the GHS.

flammable liquid means a flammable liquid within the meaning of the GHS that has a flash point of less than 93°C.

forklift truck, for schedule 3 (High risk work licences and classes of high risk work) and schedule 4 (High risk work licences—competency requirements)—

(a) means a powered industrial truck equipped with lifting media made up of a mast and an elevating load carriage to which is attached a pair of fork arms or other arms that can be raised 900mm or more above the ground; but

(b) does not include a pedestrian-operated truck or a pallet truck.

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friable asbestos means material that—

(a) is in a powder form or that can be crumbled, pulverised or reduced to a powder by hand pressure when dry; and

(b) contains asbestos.

gantry crane means a crane that—

(a) consists of a bridge beam or beams supported at one or both ends by legs mounted to end carriages; and

(b) is capable of travelling on supporting surfaces or deck levels, whether fixed or not; and

(c) has a crab with 1 or more hoisting units arranged to travel across the bridge.

gas cylinder means a rigid vessel that—

(a) does not exceed 3 000L water capacity and is without openings or integral attachments on the shell other than at the ends; and

(b) is designed for the storage and transport of gas under pressure; and

(c) is covered by AS 2030.1:2009 (Gas cylinders—General requirements).

Note AS 2030.1:2009 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at www.standards.org.au.

general construction induction training means training delivered in Australia by an RTO for the specified VET course for general construction induction training.

general construction induction training card means—

(a) for division 6.5.2 (General construction induction training cards)—a general construction induction training card issued under division 6.5.2; and

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(b) in any other case—a general construction induction training card issued—

(i) under division 6.5.2 or under a corresponding WHS law; or

(ii) by an RTO under an agreement between the regulator and an RTO or a corresponding regulator and an RTO.

general construction induction training certification means a certification for the completion of the specified VET course for general construction induction training.

general diving work—

(a) means work carried out in or under water while breathing compressed gas; and

(b) includes—

(i) incidental diving work; and

(ii) limited scientific diving work; but

(c) does not include high risk diving work.

genuine research means systematic investigative or experimental activities that are carried out for either acquiring new knowledge (whether or not the knowledge will have a specific practical application) or creating new or improved materials, products, devices, processes or services.

GHS means the *Globally Harmonized System of Classification and Labelling of Chemicals*, 7th revised edition, published by the United Nations, as modified under schedule 6 (Classification of mixtures).

Note 1 The *Globally Harmonized System of Classification and Labelling of Chemicals*, 7th revised edition does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The System is available at www.unece.org.

Note 2 The sch 6 tables replace some tables in the GHS.

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GHS 3 means the *Globally Harmonized System of Classification and Labelling of Chemicals*, 3rd revised edition, published by the United Nations, as modified under schedule 6 (Classification of mixtures).

Note 1 The *Globally Harmonized System of Classification and Labelling of Chemicals*, 3rd revised edition does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The System is available at www.unece.org.

Note 2 The sch 6 tables replace some tables in the GHS 3.

hazard category means a division of criteria within a hazard class in the GHS.

hazard class means the nature of a physical, health or environmental hazard under the GHS.

hazardous area means an area in which—

(a) an explosive gas is present in the atmosphere in a quantity that requires special precautions to be taken for the construction, installation and use of plant; or

(b) a combustible dust is present, or could reasonably be expected to be present, in the atmosphere in a quantity that requires special precautions to be taken for the construction, installation and use of plant.

hazardous atmosphere—see section 51 (2).

hazardous chemical means a substance, mixture or article that satisfies the criteria for any one or more hazard classes in the GHS (including a classification referred to in Schedule 6), unless the only hazard class or classes for which the substance, mixture or article satisfies the criteria are any 1 or more of the following:

(a) acute toxicity—oral—category 5;

(b) acute toxicity—dermal—category 5;

(c) acute toxicity—inhalation—category 5;

(d) skin corrosion/irritation—category 3;

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(e) aspiration hazard—category 2;

(f) flammable gas—category 2;

(g) acute hazard to the aquatic environment—category 1, 2 or 3;

(h) chronic hazard to the aquatic environment—category 1, 2, 3 or 4;

(i) hazardous to the ozone layer.

Note The sch 6 tables replace some tables in the GHS.

hazardous manual task means a task that requires a person to lift, lower, push, pull, carry or otherwise move, hold or restrain any person, animal or thing that involves 1 or more of the following:

(a) repetitive or sustained force;

(b) high or sudden force;

(c) repetitive movement;

(d) sustained or awkward posture;

(e) exposure to vibration.

Examples

1 a task requiring a person to restrain live animals

2 a task requiring a person to lift or move loads that are unstable or unbalanced or are difficult to grasp or hold

3 a task requiring a person to sort objects on a conveyor belt

hazard pictogram means a graphical composition, including a symbol plus other graphical elements, that is assigned in the GHS to a hazard class or hazard category.

hazard statement means a statement assigned in the GHS to a hazard class or hazard category describing the nature of the hazards of a hazardous chemical including, if appropriate, the degree of hazard.

Hazchem Code means a Hazchem Code under the ADG Code, also known as an Emergency Action Code.

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head or upper body means the area of a person's body at or above the person's shoulders.

health monitoring, of a person, means monitoring the person to identify changes in the person's health status because of exposure to certain substances.

heritage boiler means a boiler that—

(a) was manufactured before 1952; and

(b) is used for a historical purpose or activity, including an activity that is ancillary to a historical activity.

Example—historical activity

a historical display, parade, demonstration or re-enactment

Example—activity ancillary to a historical activity

restoring, maintaining, modifying, servicing, repairing or housing a boiler used, or to be used, for a historical activity

high risk construction work, for chapter 6 (Construction work)—see section 291.

high risk diving work—

(a) means work—

(i) carried out in or under water or any other liquid while breathing compressed gas; and

(ii) involving 1 or more of the following:

(A) construction work;

Note 1 Par (B) includes some additional construction-related activities.

Note 2 For construction work generally, see ch 6. ***Construction work***—see s 289.

(B) work of the kind described in section 289 (c) (iv);

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(C) inspection work carried out in order to determine whether or not work described in subparagraph (A) or (B) is necessary;

(D) the recovery or salvage of a large structure or large item of plant for commercial purposes; but

(b) does not include minor work carried out in the sea or the waters of a bay or inlet or a marina that involves cleaning, inspecting, maintaining or searching for a vessel or mooring.

high risk work means any work set out in schedule 3 (High risk work licences and classes of high risk work) as being within the scope of a high risk work licence.

high risk work licence means any of the licences listed in schedule 3 (High risk work licences and classes of high risk work).

hoist—

(a) means an appliance intended for raising or lowering a load or people; and

(b) includes an elevating work platform, a mast climbing work platform, personnel and materials hoist, scaffolding hoist and serial hoist; but

(c) does not include a lift or building maintenance equipment.

IBC—see ***intermediate bulk container***.

ignition source means a source of energy capable of igniting flammable or combustible substances.

incidental diving work means general diving work that—

(a) is incidental to the conduct of the business or undertaking in which the diving work is carried out; and

Example

acting underwater is incidental to the business or undertaking of filming

(b) involves limited diving.

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independent, in relation to clearance inspections and air monitoring under chapter 8 (Asbestos), means—

(a) not involved in the removal of the asbestos; and

(b) not involved in a business or undertaking involved in the removal of the asbestos;

in relation to which the inspection or monitoring is conducted.

industrial lift truck—

(a) means powered mobile plant, designed to move goods, materials or equipment that is equipped with an elevating load carriage and is in the normal course of use equipped with a load-holding attachment; but

(b) does not include a mobile crane or earthmoving machinery.

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

inflatable device (continuously blown) means an amusement device that is an inflatable device that relies on a continuous supply of air pressure to maintain its shape.

in situ asbestos means asbestos or ACM fixed or installed in a structure, equipment or plant, but does not include naturally occurring asbestos.

intermediate bulk container (or ***IBC***)—see the ADG Code.

internal review means internal review under part 11.1 (Review of decisions under this regulation).

in transit, in relation to a thing, means that the thing is—

(a) supplied to, or stored at, a workplace in containers that are not opened at the workplace; and

(b) not used at the workplace; and

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(c) kept at the workplace for not more than 5 consecutive days.

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

lead process, for part 7.2 (Lead)—see section 392.

lead process area means a workplace or part of a workplace where a lead process is carried out.

lead risk work, for part 7.2 (Lead)—see section 394.

licence-holder means—

(a) in the case of a high risk work licence—the person who is licensed to carry out the work; or

(b) in the case of an asbestos assessor licence—the person who is licensed—

(i) to carry out air monitoring during asbestos removal work; and

(ii) to carry out clearance inspections of asbestos removal work; and

(iii) to issue clearance certificates in relation to asbestos removal work; and

(iv) to identify the location, type and condition of asbestos or ACM, including by taking samples; and

(v) to assess the risk resulting from the identified asbestos or ACM; and

(vi) to advise on how the asbestos or ACM should be managed; and

(vii) to report about the work mentioned in paragraphs (i) to (v); or

(c) in the case of an asbestos removal licence—the person conducting the business or undertaking to whom the licence is granted; or

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(d) in the case of a major hazard facility licence—the operator of the major hazard facility to whom the licence is granted or transferred.

licensed asbestos assessor means a person who holds an asbestos assessor licence.

licensed asbestos removalist means a person conducting a business or undertaking who is licensed under this regulation to carry out Class A asbestos removal work or Class B asbestos removal work.

licensed asbestos removal work means asbestos removal work for which a Class A asbestos removal licence or Class B asbestos removal licence is required.

licensed electrical worker means a person who holds a licence under the *Construction Occupations (Licensing) Act 2004*, in the class of electrician.

licensed major hazard facility means a major hazard facility that is licensed under part 9.7 (Licensing of major hazard facilities).

lift—

(a) means plant that is, or is intended to be, permanently installed in or attached to a structure, in which people, goods or materials may be raised or lowered within a car or cage, or on a platform and the movement of which is restricted by a guide or guides; and

(b) includes—

(i) a chairlift and stairway lift; and

(ii) any supporting structure, machinery, equipment, gear, lift well, enclosures and entrances.

limited diving means diving that does not involve any of the following:

(a) diving to a depth below 30m;

(b) the need for a decompression stop;

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(c) the use of mechanical lifting equipment or a buoyancy lifting device;

(d) diving beneath anything that would require the diver to move sideways before being able to ascend;

(e) the use of plant that is powered from the surface;

(f) diving for more than 28 days during a period of 6 months.

limited scientific diving work means general diving work that—

(a) is carried out for the purpose of professional scientific research, natural resource management or scientific research as an educational activity; and

(b) involves only limited diving.

local community, in relation to a major hazard facility, means the community in the surrounding area.

lower explosive limit (LEL), in relation to a flammable gas, vapour or mist, means the concentration of the gas, vapour or mist in air below which the propagation of a flame does not occur on contact with an ignition source.

maintain, in relation to plant or a structure in chapter 5 (Plant and structures), includes repair or servicing of plant or a structure.

major hazard facility means a facility—

(a) at which Schedule 15 chemicals are present or likely to be present in a quantity that exceeds their threshold quantity; or

(b) that is determined by the regulator under part 9.2 (Determinations about major hazard facilities) to be a major hazard facility.

major hazard facility licence means a licence granted under part 9.7 (Licensing of major hazard facilities) in relation to a major hazard facility.

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major incident, for chapter 9 (Major hazard facilities)—see section 531.

major incident hazard means a hazard that could cause, or contribute to causing, a major incident.

manifest means a written summary of the hazardous chemicals used, handled or stored at a workplace.

Note See sch 12 (Manifest requirements) for what a manifest must contain.

manifest quantity, in relation to a Schedule 11 hazardous chemical, means the manifest quantity referred to in Schedule 11, table 11.1, column 5 for that hazardous chemical.

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

materials hoist means a hoist that—

(a) consists of a car, bucket or platform cantilevered from, and travelling up and down outside, a face of the support of a structure; and

(b) is used for hoisting things and substances but not persons.

mechanical process, for chapter 7A (Crystalline silica)—see section 418A.

membrane filter method means the membrane filter method described in the Guidance Note on the Membrane Filter Method for Estimating Airborne Asbestos Fibres [NOHSC:3003 (2005)].

mixture, for part 7.1 (Hazardous chemicals), means a combination of, or a solution composed of, 2 or more substances that do not react with each other.

mobile crane means a crane capable of travelling over a supporting surface without the need for fixed runways and relying only on gravity for stability.

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modification, of a facility—see section 534.

musculoskeletal disorder—

(a) means an injury to, or disease of, the musculoskeletal system, whether occurring suddenly or over time; but

(b) does not include an injury caused by crushing, entrapment or cutting resulting principally from the mechanical operation of plant.

NATA means the National Association of Testing Authorities, Australia.

Note The National Association of Testing Authorities is accessible at www.nata.com.au.

NATA-accredited laboratory means a testing laboratory accredited by NATA, or recognised by NATA either solely or with someone else.

naturally occurring asbestos means the natural geological occurrence of asbestos minerals found in association with geological deposits including rock, sediment or soil.

non-friable asbestos means material containing asbestos that is not friable asbestos, including material containing asbestos fibres reinforced with a bonding compound.

Note Non-friable asbestos may become friable asbestos through deterioration (see def ***friable asbestos***).

non-slewing mobile crane—

(a) means a mobile crane incorporating a boom or jib that cannot be slewed; and

(b) includes—

(i) an articulated mobile crane; and

(ii) a locomotive crane; but

(c) does not include vehicle tow trucks.

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notice of satisfactory assessment means a notice stating that the person to whom it is issued has successfully completed a specified VET course.

operator, of a facility or a proposed facility—see section 533.

operator protective device, includes a roll-over protective structure, falling object protective structure, operator restraining device and seat belt.

order-picking forklift truck, in schedule 3 (High risk work licences and classes of high risk work) and schedule 4 (High risk work licences—competency requirements), means a forklift truck where the operator's controls are incorporated with the lifting media and elevate with the lifting media.

packaged hazardous chemicals means Schedule 11 hazardous chemicals in a container with—

(a) a capacity not exceeding 500L; or

(b) a net mass not exceeding 500kg.

packing group, for schedule 15—see schedule 15, section 15.1.

passenger ropeway—

(a) means a powered ropeway used for transporting, in a horizontal or inclined plane, passengers moved by a carrier that is—

(i) attached to or supported by a moving rope; or

(ii) attached to a moving rope but supported by a standing rope or other overhead structure; and

(b) includes, in relation to the powered ropeway—

(i) the prime mover; and

(ii) any associated transmission machinery; and

(iii) any supporting structure and equipment; but

(c) does not include the following:

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(i) a cog railway;

(ii) a cable car running on rails;

(iii) a flying fox or similar device;

(iv) an elevating system for vehicles or boat style carriers associated with amusement devices.

Example

an elevating system for a log ride or boat flume ride

personal protective equipment means anything used or worn by a person to minimise risk to the person's health and safety, including air-supplied respiratory equipment.

personnel and materials hoist means a hoist that is—

(a) a cantilever hoist, a tower hoist or several winches configured to operate as a hoist; and

(b) intended to carry goods, materials or people.

pipeline means pipe work that crosses a boundary of a workplace, beginning or ending at the nearest fluid or slurry control point (along the axis of the pipeline) to the boundary.

pipe work means a pipe or assembly of pipes, pipe fittings, valves and pipe accessories used to convey a hazardous chemical.

placard means a sign or notice—

(a) displayed or intended for display in a prominent place, or next to a container or storage area for hazardous chemicals at a workplace; and

(b) that contains information about the hazardous chemical stored in the container or storage area.

placard quantity, in relation to a Schedule 11 hazardous chemical, means the placard quantity referred to in Schedule 11, table 11.1 column 4 for the Schedule 11 hazardous chemical.

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plant, in part 5.2 (Additional duties relating to registered plant and plant designs) and part 5.3 (Registration of plant designs and items of plant), includes a structure.

platform height, in relation to an inflatable device (continuously blown), means the height of the highest part of the device designed to support persons using it (the ***platform***), as measured from the surface supporting the device to the top surface of the platform when the device is inflated but unloaded.

portal boom crane means a boom crane or a jib crane that is mounted on a portal frame that, in turn, is supported on runways along which the crane travels.

powered mobile plant means plant that is provided with some form of self-propulsion that is ordinarily under the direct control of an operator.

precautionary statement means a phrase prescribed by the GHS that describes measures that are recommended to be taken to prevent or minimise—

(a) the adverse effects of exposure to a hazardous chemical; or

(b) improper handling of a hazardous chemical.

presence-sensing safeguarding system includes—

(a) a sensing system that uses 1 or more forms of radiation either self-generated or otherwise generated by pressure; and

(b) the interface between the final switching devices of the sensing system and the machine primary control elements; and

(c) the machine stopping capabilities, by which the presence of a person or part of a person within the sensing field will cause the dangerous parts of a machine to be brought to a safe state.

present or likely to be present, in relation to hazardous chemicals, including Schedule 15 chemicals, at a facility or proposed facility—see section 532.

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pressure equipment means boilers, pressure vessels and pressure piping.

pressure piping—

(a) means an assembly of pipes, pipe fittings, valves and pipe accessories subject to internal or external pressure and used to contain or convey fluid or to transmit fluid pressure; and

(b) includes distribution headers, bolting, gaskets, pipe supports and pressure containing accessories; but

(c) does not include a boiler or pressure vessel.

pressure vessel—

(a) means a vessel subject to internal or external pressure; and

(b) includes—

(i) interconnected parts and components, valves, gauges and other fittings up to the first point of connection to connecting piping; and

(ii) fired heaters; and

(iii) gas cylinders; but

(c) does not include a boiler or pressure piping.

primary emergency service organisation means fire and rescue service.

Note ***Fire and rescue service***—see the Legislation Act, dictionary, pt 1.

principal contractor, in relation to a construction project, for chapter 6 (Construction work)—see section 293.

product identifier means the name or number used to identify a product on a label or in a safety data sheet.

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prohibited carcinogen means a substance—

(a) listed in schedule 10, table 10.1, column 2; and

(b) present in a concentration of—

(i) for a solid or liquid—0.1% or more, determined as a weight/weight (w/w) concentration; and

(ii) for a gas—0.1% or more, determined as a volume/volume (v/v) concentration.

proposed facility means—

(a) an existing workplace that is to become a facility due to the introduction of Schedule 15 chemicals; or

(b) a facility that is being designed or constructed.

proposed major hazard facility means—

(a) an existing facility or other workplace that is to become a major hazard facility due to the introduction of Schedule 15 chemicals or the addition of further Schedule 15 chemicals; or

(b) a major hazard facility that is being designed or constructed.

quantity, for chapter 7 (Hazardous chemicals), means—

(a) for a hazardous chemical that is not a liquid or a gas or a gas under pressure and is in a container or storage or handling system—the mass in kilograms of the hazardous chemical in the container or storage or handling system; and

(b) for a hazardous chemical that is a liquid and is not a gas under pressure and is in a container or storage or handling system—the net capacity in litres of the container or storage or handling system; and

(c) for a hazardous chemical that is a gas or gas under pressure in a container or storage or handling system—the water capacity in litres of the container or storage or handling system; and

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(d) for a hazardous chemical that is not a liquid and is in bulk and not in a container—the undivided mass in kilograms; and

(e) for a hazardous chemical that is a thing and is not a gas—the net capacity of the part of the thing that comprises a hazardous chemical.

reach stacker means a powered reach stacker that incorporates an attachment for lifting and lowering a shipping container.

reciprocating steam engine—

(a) means equipment that is driven by steam acting on a piston causing the piston to move; and

(b) includes an expanding (steam) reciprocating engine.

registered medical practitioner means a doctor.

Note ***Doctor***—see the Legislation Act, dictionary, pt 1.

registered training organisation (RTO) means a training organisation listed as a registered training organisation on the National Register established under the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

Note The *National Vocational Education and Training Regulator Act 2011* (Cwlth) does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The Act is available at www.legislation.gov.au.

research chemical means a substance or mixture that—

(a) is manufactured in a laboratory for genuine research; and

(b) is not for use or supply for a purpose other than analysis or genuine research.

respirable asbestos fibre means an asbestos fibre that—

(a) is less than 3µm wide; and

(b) is more than 5µm long; and

(c) has a length to width ratio of more than 3:1.

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respiratory protective equipment, for chapter 7A (Crystalline silica)—see section 418A.

restricted carcinogen means a substance—

(a) listed in Schedule 10, table 10.2, column 2 for a use listed in column 3; and

(b) present in a concentration of—

(i) for a solid or liquid—0.1% or more, determined as a weight/weight (w/w) concentration; and

(ii) for a gas—0.1% or more, determined as a volume/volume (v/v) concentration.

retailer means a person whose principal business is supplying consumer products to members of the public who are not engaged in the further supply of those products.

rigging work means—

(a) the use of mechanical load shifting equipment and associated gear to move, place or secure a load using plant, equipment or members of a structure to ensure the stability of those members; or

(b) the setting up or dismantling of cranes or hoists.

RTO (registered training organisation)—see registered training organisation.

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.

safety data sheet means a safety data sheet prepared under section 330 (Manufacturer or importer to prepare and provide safety data sheets) or section 331 (Safety data sheets—research chemical, waste product or sample for analysis).

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Safe Work Australia means Safe Work Australia established under the *Safe Work Australia Act 2008* (Cwlth), section 5.

Note The *Safe Work Australia Act 2008* (Cwlth) does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The Act is available at www.legislation.gov.au.

safe work method statement means—

(a) in relation to electrical work on energised electrical equipment—a safe work method statement prepared under section 161 (How the work is to be carried out); and

(b) in relation to high risk construction work—a safe work method statement mentioned in section 299 (Safe work method statement required for high risk construction work) (as revised under section 302 (Review of safe work method statement)).

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

scaffolding work means erecting, altering or dismantling a temporary structure that is or has been erected to support a platform and from which a person or object could fall more than 4m from the platform or the structure.

Schedule 11 hazardous chemical means a hazardous chemical or combination of hazardous chemicals specified in schedule 11, table 11.1.

Schedule 15 chemical means a hazardous chemical that—

(a) is specified in schedule 15, table 15.6.2; or

(b) belongs to a class, type or category of hazardous chemicals specified in schedule 15, table 15.6.3.

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self-erecting tower crane means a crane—

(a) that is not disassembled into a tower element and a boom or jib element in the normal course of use; and

(b) where the erection and dismantling processes are an inherent part of the crane's function.

SEMSOG—see the *Emergencies Act 2004*, section 141 (Security and Emergency Management Senior Officials Group).

shaft means a vertical or inclined way or opening, from the surface downwards or from any underground working, the dimensions of which (apart from the perimeter) are less than its depth.

signal word means the word 'danger' or 'warning' used on a label to indicate to a label reader the relative severity level of a hazard, and to alert the reader to a potential hazard, under the GHS.

slewing mobile crane means a mobile crane incorporating a boom or jib that can be slewed, but does not include the following when configured for crane operation:

(a) a front-end loader;

(b) a backhoe;

(c) an excavator;

(d) other earth moving equipment.

slinging techniques means the exercising of judgment in relation to the suitability and condition of lifting gear and the method of slinging, by consideration of the nature of the load, its mass and its centre of gravity.

specified VET course means—

(a) in relation to general construction induction training—the VET course *Work Safely in the Construction Industry* or a corresponding subsequent VET accredited course; or

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(b) in relation to Class A asbestos removal work—the VET course *Remove friable asbestos*; or

(c) in relation to Class B asbestos removal work—the VET course *Remove non-friable asbestos*; or

(d) in relation to the supervision of asbestos removal work—the VET course *Supervise asbestos removal*; or

(e) in relation to asbestos assessor work—the VET course *Conduct asbestos assessment associated with removal*; or

(f) in relation to high risk work—the relevant VET course specified in schedule 4.

Standard for the Uniform Scheduling of Medicines and Poisons means the current Poisons Standard under the *Therapeutic Goods Act 1989* (Cwlth).

steam turbine means equipment that is driven by steam acting on a turbine or rotor to cause a rotary motion.

structure, for chapter 6 (Construction work)—see section 290.

subsidiary risk, for schedule 15—see schedule 15, section 15.1.

substance, in part 7.1 (Hazardous chemicals), means a chemical element or compound in its natural state or obtained or generated by a process—

(a) including any additive necessary to preserve the stability of the element or compound and any impurities deriving from the process; but

(b) excluding any solvent that may be separated without affecting the stability of the element or compound, or changing its composition.

surrounding area, in relation to a facility, means the area surrounding the facility in which the health and safety of persons could potentially be adversely affected by a major incident occurring.

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suspended scaffold means a scaffold incorporating a suspended platform that is capable of being raised or lowered when in use.

technical name, in the definition of ***chemical identity***, means a name that is—

(a) ordinarily used in commerce, regulations and codes to identify a substance or mixture, other than an International Union of Pure and Applied Chemistry or Chemical Abstracts Service name; and

(b) recognised by the scientific community.

temporary work platform means—

(a) a fixed, mobile or suspended scaffold; or

(b) an elevating work platform; or

(c) a mast climbing work platform; or

(d) a work box supported by a crane, hoist, forklift truck or other form of mechanical plant; or

(e) building maintenance equipment, including a building maintenance unit; or

(f) a portable or mobile fabricated platform; or

(g) any other temporary platform that—

(i) provides a working area; and

(ii) is designed to prevent a fall.

theatrical performance means acting, singing, playing a musical instrument, dancing or otherwise performing literary or artistic works or expressions of traditional custom or folklore.

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threshold quantity, in relation to a Schedule 15 chemical, means—

(a) the threshold quantity of a specific hazardous chemical as determined under schedule 15, section 15.3; or

(b) the aggregate threshold quantity of 2 or more hazardous chemicals as determined under schedule 15, section 15.4.

tower crane—

(a) means a boom crane or a jib crane mounted on a tower structure; and

(b) in schedule 3 (High risk work licences and classes of high risk work)—

(i) for a jib crane—means the crane may be a horizontal or luffing jib type crane; and

(ii) means the tower structure may be demountable or permanent; but

(iii) does not include a self-erecting tower crane.

tractor—

(a) means a motor vehicle, whether wheeled or track mounted, designed to provide power and movement to any attached machine or implement by a transmission shaft, belt or linkage system; but

(b) does not include earthmoving machinery.

trench means a horizontal or inclined way or opening—

(a) the length of which is greater than its width and greater than or equal to its depth; and

(b) that commences at and extends below the surface of the ground; and

(c) that is open to the surface along its length.

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tunnel means an underground passage or opening that—

(a) is approximately horizontal; and

(b) commences at the surface of the ground or at an excavation.

UN number—see the ADG Code, Attachment 2.

vehicle hoist means a device to hoist vehicles designed to provide access for under-chassis examination or service.

vehicle loading crane means a crane mounted on a vehicle for the purpose of loading and unloading the vehicle.

VET course—see the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

Note The *National Vocational Education and Training Regulator Act 2011* (Cwlth) does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The Act is available at www.legislation.gov.au.

wet dust suppression method, for chapter 7A (Crystalline silica)—see section 418A.

WHS management plan, in relation to a construction project, means a management plan prepared or revised under part 6.4 (Additional duties of principal contractor).

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

work positioning system means any plant or structure, other than a temporary work platform, that enables a person to be positioned and safely supported at a location for the duration of the relevant work being carried out.

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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 are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

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

A = Act
AF = Approved form
am = amended
amdt = amendment
AR = Assembly resolution
ch = chapter
CN = Commencement notice
def = definition
DI = Disallowable instrument
dict = dictionary
disallowed = disallowed by the Legislative Assembly
div = division
exp = expires/expired
Gaz = gazette
hdg = heading
IA = Interpretation Act 1967
ins = inserted/added
LA = Legislation Act 2001
LR = legislation register
LRA = Legislation (Republication) Act 1996
mod = modified/modification
NI = Notifiable instrument
o = order
om = omitted/repealed
ord = ordinance
orig = original
par = paragraph/subparagraph
pres = present
prev = previous
(prev...) = previously
pt = part
r = rule/subrule
reloc = relocated
renum = renumbered
R[X] = Republication No
RI = reissue
s = section/subsection
sch = schedule
sdiv = subdivision
SL = Subordinate law
sub = substituted
<u>underlining</u> = whole or part not commenced or to be expired

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3 Legislation history

Work Health and Safety Regulation 2011 SL2011-36

notified LR 19 December 2011
s 1, s 2 commenced 19 December 2011 (LA s 75 (1))
div 4.7.4, ss 168-170 commenced 1 July 2012 (s 2 (2))
s 53, s 164, s 165, ss 171-175, div 4.8.3, div 4.8.4, div 5.2.2, div 5.2.3, s 235, pt 5.3, ss 309-311, s 313 commenced 1 January 2013 (s 2 (3))
sch 3, table 3.1, item 23, sch 4, table 4.1, item 23 commenced 1 July 2013 (s 2 (4))
remainder commenced 1 January 2012 (s 2 (1) and see Work Health and Safety Act 2011 A2011-35, s 2 and CN2011-12)

as amended by

Work Health and Safety Amendment Regulation 2012 (No 1) SL2012-9

notified LR 19 March 2012
s 1, s 2 taken to have commenced 1 January 2012 (LA s 75 (2))
remainder taken to have commenced 1 January 2012 (s 2)

Work Health and Safety Amendment Regulation 2012 (No 2) SL2012-31

notified LR 5 July 2012
s 1, s 2 taken to have commenced 1 January 2012 (LA s 75 (2))
remainder taken to have commenced 1 January 2012 (s 2)

Statute Law Amendment Act 2013 (No 2) A2013-44 sch 3 pt 3.25

notified LR 11 November 2013
s 1, s 2 commenced 11 November 2013 (LA s 75 (1))
sch 3 pt 3.25 commenced 25 November 2013 (s 2)

Work Health and Safety Amendment Regulation 2013 (No 1) SL2013-33

notified LR 20 December 2013
s 1, s 2 commenced 20 December 2013 (LA s 75 (1))
remainder commenced 1 January 2014 (s 2)

Statute Law Amendment Act 2014 A2014-18 sch 3 pt 3.26

notified LR 20 May 2014
s 1, s 2 commenced 20 May 2014 (LA s 75 (1))
sch 3 pt 3.26 commenced 10 June 2014 (s 2 (1))

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Work Health and Safety Amendment Regulation 2014 (No 1) SL2014-10

notified LR 25 June 2014
s 1, s 2 commenced 25 June 2014 (LA s 75 (1))
remainder commenced 30 September 2014 (s 2)

Work Health and Safety Amendment Regulation 2014 (No 2) SL2014-20

notified LR 26 August 2014
s 1, s 2 commenced 26 August 2014 (LA s 75 (1))
remainder commenced 2 September 2014 (s 2)

Work Health and Safety Amendment Regulation 2014 (No 3) SL2014-27

notified LR 30 October 2014
s 1, s 2 commenced 30 October 2014 (LA s 75 (1))
remainder commenced 31 October 2014 (s 2)

Work Health and Safety (Asbestos) Amendment Regulation 2014 (No 1) SL2014-32

notified LR 4 December 2014
s 1, s 2 commenced 4 December 2014 (LA s 75 (1))
s 6, so far as it inserts s 460 (1), s 493 (1) (c), s 494 (1) (c), s 498 (a) (ii), s 499 (b), s 518 (a) (i) commenced 1 July 2015 (s 2 (1))
s 6, so far as it inserts s 493 (1) (e), s 498 (b), s 520 (1) (e), and s 10 commenced 1 January 2016 (s 2 (2))
remainder commenced 1 January 2015 (s 2 (3))

Dangerous Substances (Loose-fill Asbestos Eradication) Legislation Amendment Act 2015 A2015-6 sch 1 pt 1.9

notified LR 31 March 2015
s 1, s 2 commenced 31 March 2015 (LA s 75 (1))
sch 1 pt 1.9 commenced 17 April 2015 (s 2 and CN2015-6)

Planning, Building and Environment Legislation Amendment Act 2015 A2015-12 pt 9

notified LR 20 May 2015
s 1, s 2 commenced 20 May 2015 (LA s 75 (1))
pt 9 commenced 21 May 2015 (s 2)

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Planning, Building and Environment Legislation Amendment Act 2016 (No 2) A2016-24 pt 13

notified LR 11 May 2016
s 1, s 2 commenced 11 May 2016 (LA s 75 (1))
pt 13 commenced 12 May 2016 (s 2 (1))

Emergencies Amendment Act 2016 A2016-33 sch 1 pt 1.25

notified LR 20 June 2016
s 1, s 2 commenced 20 June 2016 (LA s 75 (1))
sch 1 pt 1.25 commenced 21 June 2016 (s 2)

Work Health and Safety Amendment Regulation 2016 (No 1) SL2016-29

notified LR 8 September 2016
s 1, s 2 commenced 8 September 2016 (LA s 75 (1))
remainder commenced 9 September 2016 (s 2)

Statute Law Amendment Act 2017 A2017-4 sch 3 pt 3.37

notified LR 23 February 2017
s 1, s 2 commenced 23 February 2017 (LA s 75 (1))
sch 3 pt 3.37 commenced 9 March 2017 (s 2)

Road Transport Reform (Light Rail) Legislation Amendment Act 2017 A2017-21 sch 1 pt 1.17

notified LR 8 August 2017
s 1, s 2 commenced 8 August 2017 (LA s 75 (1))
sch 1 pt 1.17 commenced 15 August 2017 (s 2)

Work Health and Safety Amendment Regulation 2017 (No 1) SL2017-24

notified LR 17 August 2017
s 1, s 2 commenced 17 August 2017 (LA s 75 (1))
remainder commenced 18 August 2017 (s 2)

Work Health and Safety Amendment Regulation 2018 (No 1) SL2018-2

notified LR 28 March 2018
s 1, s 2 commenced 28 March 2018 (LA s 75 (1))
remainder commenced 29 March 2018 (s 2 and see Work Health and Safety Legislation Amendment Act 2018 A2018-8 s 2)

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Work Health and Safety Amendment Act 2018 A2018-26 pt 3
notified LR 15 August 2018
s 1, s 2 commenced 15 August 2018 (LA s 75 (1))
pt 3 commenced 1 January 2019 (s 2)

Work Health and Safety Amendment Regulation 2019 (No 1) SL2019-3
notified LR 21 February 2019
s 1, s 2 commenced 21 February 2019 (LA s 75 (1))
remainder commenced 1 July 2019 (s 2)

Loose-fill Asbestos Legislation Amendment Act 2020 A2020-20 sch 1 pt 1.10
notified LR 27 May 2020
s 1, s 2 commenced 27 May 2020 (LA s 75 (1))
sch 1 pt 1.10 commenced 1 July 2020 (s 2)

Work Health and Safety Amendment Regulation 2020 (No 1) SL2020-27
notified LR 30 June 2020
s 1, s 2 commenced 30 June 2020 (LA s 75 (1))
s 4, s 30 commenced 1 July 2020 (s 2 (2))
s 5, ss 27-29 commenced 1 February 2021 (s 2 (3))
remainder commenced 3 August 2020 (s 2 (1))

Employment and Workplace Safety Legislation Amendment Act 2020 A2020-30 sch 1 pt 1.4
notified LR 9 July 2020
s 1, s 2 commenced 9 July 2020 (LA s 75 (1))
sch 1 pt 1.4 commenced 10 July 2020 (s 2 (1))

Work Health and Safety Amendment Regulation 2021 (No 1) SL2021-1
notified LR 29 January 2021
s 1, s 2 commenced 29 January 2021 (LA s 75 (1))
remainder commenced 1 February 2021 (s 2 and see Work Health and Safety Amendment Regulation 2020 (No 1) SL2020-27 s 2 (3))

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Work Health and Safety Amendment Regulation 2022 (No 1)
SL2022-12

notified LR 30 June 2022
s 1, s 2 commenced 30 June 2022 (LA s 75 (1))
s 10, s 11 commenced 1 July 2022 (s 2 (2))
sch 1 awaiting commencement
remainder commenced 14 July 2022 (s 2 (1))

Work Health and Safety Amendment Regulation 2022 (No 2)
SL2022-13

notified LR 17 October 2022
s 1, s 2 commenced 17 October 2022 (LA s 75 (1))
sch 1 awaiting commencement
remainder commenced 18 October 2022 (s 2 (1))

Work Health and Safety Amendment Regulation 2022 (No 3)
SL2022-15

notified LR 1 November 2022
s 1, s 2 commenced 1 November 2022 (LA s 75 (1))
s 4, s 5 commenced 31 January 2023 (s 2 (2))
sch 1 awaiting commencement
remainder commenced 2 November 2022 (s 2 (1))

Workplace Legislation Amendment Act 2022 A2022-23 pt 5

notified LR 9 December 2022
s 1, s 2 commenced 9 December 2022 (LA s 75 (1))
pt 5 commenced 9 June 2023 (s 2 (2))

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4 Amendment history

Commencement
s 2 om LA s 89 (4)

Meaning of *person conducting a business or undertaking*—persons excluded—Act, s 5 (6)
s 7 am A2013-44 amdt 3.205

Application of the Act to dangerous goods—Act, sch 1, s 6, definition of *dangerous goods*
s 10A ins SL2018-2 s 4

Documents incorporated as in force when incorporated
s 13 am A2022-23 s 47

Disapplication of Legislation Act, s 47 (5) and (6)
s 15 sub SL2018-2 s 5

Training for health and safety representatives—Act, s 72 (1) and s 72A (2)
s 21 hdg sub A2018-26 s 22
s 21 am SL2014-20 s 4; SL2016-29 s 4, s 5; SL2017-24 s 4; A2018-26 s 23, s 24

Establishing a health and safety committee—major construction project—Act, s 75 (1) (b)
s 21A ins A2018-26 s 25

Training for health and safety committee members—major construction project—Act, s 79A (2)
s 21B ins A2018-26 s 25

Training requirements for WHS entry permits—Act, s 131 and s 133
s 25 am SL2014-20 s 5

Duty to prepare, maintain and implement emergency plan
s 43 am SL2014-20 s 6

Remote or isolated work—Act, s 19
s 48 am A2017-4 amdt 3.218

Exposure standards
s 48A ins SL2020-27 s 4

Application to emergency services workers
s 63 hdg sub A2017-4 amdt 3.219
s 63 am A2017-4 amdt 3.220

Exceptions
s 82 am SL2014-20 s 7, s 8

Evidence of licence—duty of person conducting business or undertaking
s 85 am SL2014-20 ss 9-11

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Application for high risk work licence
s 87 am SL2014-20 s 12, s 13

Conditions of licence
s 91A ins SL2014-20 s 14
am SL2020-27 s 5

Licence document
s 93 am SL2014-20 s 15

Notice of change of address
s 96 am SL2016-29 s 6

Replacement licence document
s 98 am SL2016-29 s 7

Application for renewal
s 101 am SL2014-20 s 16

Provisions relating to renewal of licence
s 104 am SL2014-20 s 17, s 18

Suspension or cancellation of licence
s 106 am SL2014-20 ss 19-21

Notice to and submissions by licence-holder
s 108 sub SL2014-20 s 22

Notice of decision
s 109 am SL2014-20 s 23

Notice of demolition work
s 142 am SL2014-27 ss 4-7; A2015–6 amdt 1.19; A2017-4 amdt 3.221; A2020-20 amdt 1.24

Application—div 4.7.4
s 152 am SL2014-20 s 24

How the work is to be carried out
s 161 am SL2014-20 s 25

Duty of person conducting a business or undertaking
s 166 am A2016-24 s 67

Purpose—pt 4.8
s 167 am SL2014-20 s 26

Certificate of medical fitness
s 169 am SL2014-20 s 27

Competence of worker—general diving work—qualifications—Act, s 44
s 171 hdg sub SL2020-27 s 6
s 171 sub SL2014-20 s 28
am SL2020-27 ss 7-9

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Competence of worker—general diving work—knowledge and skill—Act, s 44

s 171A hdg	sub SL2020-27 s 10
s 171A	ins SL2014-20 s 28
	am SL2020-27 s 11, s 12

Competence of worker—incidental diving work—Act, s 44

s 172	am SL2014-20 s 29

Competence of worker—limited scientific diving work—Act, s 44

s 173	am SL2014-20 s 30; SL2020-27 s 13

Competence of competent person supervising general diving work—Act, s 44

s 174	am SL2014-20 s 31

Duties of person conducting business or undertaking—Act, s 44

s 183	am SL2020-27 s 14

Duty of worker—competence—Act, s 44

s 184	am SL2020-27 s 14

Powered mobile plant—specific control measures

s 215	am SL2014-20 s 32

Protective structures on earthmoving machinery

s 217	om SL2014-20 s 33

Lasers

s 223	am SL2022-12 s 4

Major inspection of registered mobile cranes and tower cranes

s 235	am SL2014-20 ss 34-36

Control measures for amusement devices and passenger ropeways

sdiv 5.2.4.2 hdg	sub SL2014-20 s 37

Operation of amusement devices and passenger ropeways

s 238	sub SL2014-20 s 38
	am A2022-23 s 48

Storage of amusement devices and passenger ropeways

s 239	sub SL2014-20 s 38

Maintenance, inspection and testing of amusement devices and passenger ropeways

s 240	sub SL2014-20 s 38

Annual inspection of amusement devices and passenger ropeways

s 241	sub SL2014-20 s 38

Log book and manuals for amusement device

s 242	am A2022-23 ss 49-53

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Altered plant designs to be registered—Act, s 42
s 244 am SL2014-20 s 39

Who can be the design verifier
s 252 am SL2014-20 s 40

Application for registration
s 266 am SL2014-20 s 41, s 42

Decision on application
s 269 am SL2014-20 s 43

Replacement registration document
s 288 am SL2016-29 s 8

Cancellation of registration
div 5.3.6 hdg ins SL2014-20 s 44

Application—div 5.3.6
s 288A ins SL2014-20 s 44

Regulator may cancel registration
s 288B ins SL2014-20 s 44

Cancellation process
s 288C ins SL2014-20 s 44

Registration holder to return registration document
s 288D ins SL2014-20 s 44

Meaning of *high risk construction work*—ch 6
s 291 am SL2014-32 s 4; A2017-21 amdt 1.39, amdt 1.40; SL2022-15 s 4, s 5

Meaning of *construction project*—ch 6
s 292 sub SL2014-32 s 5
am A2015–6 amdt 1.20; A2020-20 amdt 1.25

Recognition of general construction induction training cards issued in other jurisdictions
s 318 sub SL2014-20 s 45

Duty of worker—competence—Act, s 44
s 319 am SL2020-27 s 15

Hazardous chemicals
ch 7 hdg ins SL2018-2 s 6

Hazardous chemicals
pt 7.1 hdg ins SL2018-2 s 6

Application—pt 7.1
div 7.1.1 hdg ins SL2018-2 s 6

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Application—pt 7.1
s 328 ins SL2018-2 s 6

Obligations relating to safety data sheets and other matters
div 7.1.2 hdg ins SL2018-2 s 6

Obligations of manufacturers and importers
sdiv 7.1.2.1 hdg ins SL2018-2 s 6

Classification of hazardous chemicals
s 329 ins SL2018-2 s 6

Manufacturer or importer to prepare and provide safety data sheets
s 330 ins SL2018-2 s 6

Safety data sheets—research chemical, waste product or sample for analysis
s 331 ins SL2018-2 s 6

Emergency disclosure of chemical identities to registered medical practitioner
s 332 ins SL2018-2 s 6

Emergency disclosure of chemical identities to emergency service worker
s 333 ins SL2018-2 s 6

Packing hazardous chemicals
s 334 ins SL2018-2 s 6

Labelling hazardous chemicals
s 335 ins SL2018-2 s 6

Obligations of suppliers
sdiv 7.1.2.2 hdg ins SL2018-2 s 6

Restriction on age of person who can supply hazardous chemicals
s 336 ins SL2018-2 s 6

Retailer or supplier packing hazardous chemicals
s 337 ins SL2018-2 s 6

Supplier labelling hazardous chemicals
s 338 ins SL2018-2 s 6
am SL2022-12 s 5

Supplier to provide safety data sheets
s 339 ins SL2018-2 s 6

Supply of prohibited and restricted carcinogens
s 340 ins SL2018-2 s 6

Obligations of persons conducting businesses or undertakings
sdiv 7.1.2.3 hdg ins SL2018-2 s 6

Labelling hazardous chemicals—general requirement
s 341 ins SL2018-2 s 6

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am SL2022-12 s 6

Labelling hazardous chemicals—containers
s 342 ins SL2018-2 s 6
am SL2022-12 s 7, s 8

Labelling hazardous chemicals—pipe work
s 343 ins SL2018-2 s 6

Person conducting business or undertaking to obtain and give access to safety data sheets
s 344 ins SL2018-2 s 6

Changes to safety data sheets
s 345 ins SL2018-2 s 6

Register and manifest of hazardous chemicals
div 7.1.3 hdg ins SL2018-2 s 6

Hazardous chemicals register
sdiv 7.1.3.1 hdg ins SL2018-2 s 6

Hazardous chemicals register
s 346 ins SL2018-2 s 6

Manifest of Schedule 11 hazardous chemicals
sdiv 7.1.3.2 hdg ins SL2018-2 s 6

Manifest of hazardous chemicals
s 347 ins SL2018-2 s 6

Regulator must be notified if manifest quantities to be exceeded
s 348 ins SL2018-2 s 6

Placards
div 7.1.4 hdg ins SL2018-2 s 6

Outer warning placards—requirement to display
s 349 ins SL2018-2 s 6

Placard—requirement to display
s 350 ins SL2018-2 s 6

Control of risk—obligations of persons conducting businesses or undertakings
div 7.1.5 hdg ins SL2018-2 s 6

General obligations relating to management of risk
sdiv 7.1.5.1 hdg ins SL2018-2 s 6

Management of risks to health or safety—Act, s 19
s 351 ins SL2018-2 s 6

Review of control measures
s 352 ins SL2018-2 s 6

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Safety signs
s 353 ins SL2018-2 s 6

Identification of risk of physical or chemical reaction
s 354 ins SL2018-2 s 6

Specific control—fire and explosion
s 355 ins SL2018-2 s 6

Keeping hazardous chemicals stable
s 356 ins SL2018-2 s 6

Spills and damage
sdiv 7.1.5.2 hdg ins SL2018-2 s 6

Containing and managing spills
s 357 ins SL2018-2 s 6

Protecting hazardous chemicals from damage
s 358 ins SL2018-2 s 6

Emergency plans and safety equipment
sdiv 7.1.5.3 hdg ins SL2018-2 s 6

Fire protection and firefighting equipment
s 359 ins SL2018-2 s 6

Emergency equipment
s 360 ins SL2018-2 s 6

Emergency plans
s 361 ins SL2018-2 s 6

Safety equipment
s 362 ins SL2018-2 s 6

Storage and handling systems
sdiv 7.1.5.4 hdg ins SL2018-2 s 6

Control of risks from storage or handling systems
s 363 ins SL2018-2 s 6

Containers for hazardous chemicals used, handled or stored in bulk
s 364 ins SL2018-2 s 6

Stopping use and disposing of handling systems
s 365 ins SL2018-2 s 6

Stopping use of underground storage and handling systems
s 366 ins SL2018-2 s 6

Notification of abandoned tank
s 367 ins SL2018-2 s 6

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Health monitoring
div 7.1.6 hdg ins SL2018-2 s 6

Duty to provide health monitoring
s 368 ins SL2018-2 s 6

Duty to inform of health monitoring
s 369 ins SL2018-2 s 6

Duty to ensure that appropriate health monitoring is provided
s 370 ins SL2018-2 s 6

Duty to ensure health monitoring is supervised by registered medical practitioner with experience
s 371 ins SL2018-2 s 6

Duty to pay costs of health monitoring
s 372 ins SL2018-2 s 6

Information that must be provided to registered medical practitioner
s 373 ins SL2018-2 s 6

Duty to obtain health monitoring report
s 374 ins SL2018-2 s 6

Duty to give health monitoring report to worker
s 375 ins SL2018-2 s 6

Duty to give health monitoring report to regulator
s 376 ins SL2018-2 s 6

Duty to give health monitoring report to relevant persons conducting businesses or undertakings
s 377 ins SL2018-2 s 6

Health monitoring records
s 378 ins SL2018-2 s 6

Induction, information, training and supervision
div 7.1.7 hdg ins SL2018-2 s 6

Duty to provide supervision
s 379 ins SL2018-2 s 6

Prohibition, authorisation and restricted use
div 7.1.8 hdg ins SL2018-2 s 6

Using, handling and storing prohibited carcinogens
s 380 ins SL2018-2 s 6

Using, handling and storing restricted carcinogens
s 381 ins SL2018-2 s 6

Using, handling and storing restricted hazardous chemicals
s 382 ins SL2018-2 s 6

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Application for authorisation to use, handle or store prohibited and restricted carcinogens
s 383 ins SL2018-2 s 6

Authorisation to use, handle or store prohibited carcinogens and restricted carcinogens
s 384 ins SL2018-2 s 6

Changes to information in application to be reported
s 385 ins SL2018-2 s 6

Regulator may cancel authorisation
s 386 ins SL2018-2 s 6

Statement of exposure to be given to workers
s 387 ins SL2018-2 s 6

Records to be kept
s 388 ins SL2018-2 s 6

Pipelines
div 7.1.9 hdg ins SL2018-2 s 6

Management of risk by pipeline owner
s 389 ins SL2018-2 s 6

Pipeline builder's duties
s 390 ins SL2018-2 s 6

Management of risks to health and safety by pipeline operator—Act, s 19
s 391 ins SL2018-2 s 6

Lead
pt 7.2 hdg ins SL2018-2 s 6

Lead process
div 7.2.1 hdg ins SL2018-2 s 6

Meaning of *lead process*—pt 7.2
s 392 ins SL2018-2 s 6

Regulator may decide lead process
s 393 ins SL2018-2 s 6

Meaning of *lead risk work*—pt 7.2
s 394 ins SL2018-2 s 6
am SL2020-27 s 16, s 17

Duty to give information about health risks of lead process
s 395 ins SL2018-2 s 6

Control of risk
div 7.2.2 hdg ins SL2018-2 s 6

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Containment of lead contamination
s 396 ins SL2018-2 s 6

Cleaning methods
s 397 ins SL2018-2 s 6

Prohibition on eating, drinking and smoking
s 398 ins SL2018-2 s 6

Provision of changing and washing facilities
s 399 ins SL2018-2 s 6

Laundering, disposal and removal of personal protective equipment
s 400 ins SL2018-2 s 6

Review of control measures
s 401 ins SL2018-2 s 6

Lead risk work
div 7.2.3 hdg ins SL2018-2 s 6

Identifying lead risk work
s 402 ins SL2018-2 s 6

Notification of lead risk work
s 403 ins SL2018-2 s 6

Changes to information in notification of lead risk work
s 404 ins SL2018-2 s 6

Health monitoring
div 7.2.4 hdg ins SL2018-2 s 6

Duty to provide health monitoring before first commencing lead risk work
s 405 ins SL2018-2 s 6

Duty to ensure that appropriate health monitoring is provided
s 406 ins SL2018-2 s 6

Frequency of biological monitoring
s 407 ins SL2018-2 s 6
am SL2020-27 ss 18-22

Duty to ensure health monitoring is supervised by registered medical practitioner with relevant experience
s 408 ins SL2018-2 s 6

Duty to pay costs of health monitoring
s 409 ins SL2018-2 s 6

Information that must be provided to registered medical practitioner
s 410 ins SL2018-2 s 6

Duty to obtain health monitoring report
s 411 ins SL2018-2 s 6

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Duty to give health monitoring report to worker
s 412 ins SL2018-2 s 6

Duty to give health monitoring report to regulator
s 413 ins SL2018-2 s 6

Duty to give health monitoring report to relevant persons conducting businesses or undertakings
s 414 ins SL2018-2 s 6

Removal of worker from lead risk work
s 415 ins SL2018-2 s 6
am SL2020-27 s 23, s 24

Duty to ensure medical examination if worker removed from lead risk work
s 416 ins SL2018-2 s 6

Return to lead risk work after removal
s 417 ins SL2018-2 s 6
am SL2020-27 s 25, s 26

Health monitoring records
s 418 ins SL2018-2 s 6

Crystalline silica
ch 7A hdg ins SL2022-12 s 9

Definitions—ch 7A
s 418A ins SL2022-12 s 9
sub SL2022-13 s 4
am R37 LA
def ***additional crystalline silica control measure*** ins SL2022-13 s 4
om SL2022-15 s 6
def ***airborne crystalline silica*** ins SL2022-12 s 9
sub SL2022-13 s 4
def ***Class H vacuum*** ins SL2022-15 s 7
def ***Class H vacuum cleaner*** ins SL2022-12 s 9
om SL2022-13 s 4
def ***Class M vacuum*** ins SL2022-15 s 7
def ***Class M vacuum cleaner*** ins SL2022-12 s 9
om SL2022-13 s 4
def ***crystalline silica control measure*** ins SL2022-15 s 7
def ***crystalline silica material*** ins SL2022-15 s 7
def ***cut*** ins SL2022-12 s 9
sub SL2022-13 s 4
def ***engineered stone*** ins SL2022-13 s 4
def ***local exhaust ventilation system*** ins SL2022-12 s 9
om SL2022-13 s 4
def ***material containing crystalline silica*** ins SL2022-12 s 9
sub SL2022-13 s 4

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om SL2022-15 s 8
def ***mechanical process*** ins SL2022-13 s 4
def ***respiratory protective equipment*** ins SL2022-12 s 9
sub SL2022-13 s 4
def ***wet dust suppression method*** ins SL2022-13 s 4
am SL2022-15 s 9, s 10

Uncontrolled dry cutting of engineered stone
s 418B ins SL2022-12 s 9
sub SL2022-13 s 4; SL2022-15 s 11

Uncontrolled dry cutting of other crystalline silica material
s 418BAA ins SL2022-15 s 11

Uncontrolled dry cutting of material containing crystalline silica—transitional
s 418BA ins SL2022-13 s 4
exp 1 November 2022 (s 418BA (3))

Effective control measures for cutting engineered stone
s 418C ins SL2022-12 s 9
am SL2022-13 s 5
sub SL2022-15 s 12

Effective control measures for cutting other crystalline silica material
s 418CAA ins SL2022-15 s 12

Effective control measures for cutting material containing crystalline silica—transitional
s 418CA ins SL2022-13 s 6
exp 1 November 2022 (s 418CA (3))

Asbestos
ch 8 hdg ins SL2014-10 s 4
sub SL2014-32 s 6

Prohibitions and authorised conduct
pt 8.1 hdg ins SL2014-32 s 6

Work involving asbestos or ACM—prohibitions and exceptions
s 419 ins SL2014-32 s 6
am A2020-30 amdt 1.13

General duty
pt 8.2 hdg ins SL2014-32 s 6

Exposure to airborne asbestos at workplace—Act, s 19
s 420 ins SL2014-32 s 6

Management of asbestos and associated risks
pt 8.3 hdg ins SL2014-32 s 6

Application—pt 8.3
s 421 ins SL2014-32 s 6

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Asbestos to be identified or assumed at workplace
s 422 ins SL2014-32 s 6

Asbestos risk assessment
s 422A ins SL2014-32 s 6

Asbestos risk assessment—review
s 422B ins SL2014-32 s 6

Analysis of sample
s 423 ins SL2014-32 s 6

Presence and location of asbestos to be indicated
s 424 ins SL2014-32 s 6

Asbestos register
s 425 ins SL2014-32 s 6

Review of asbestos register
s 426 ins SL2014-32 s 6

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def ***exposure standard*** am SL2018-2 s 27
sub SL2020-27 s 30
def ***facility*** ins SL2018-2 s 28

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def ***female of reproductive capacity*** ins SL2018-2 s 28
def ***fire risk hazardous chemical*** ins SL2018-2 s 28
def ***fitness criteria*** am SL2020-27 s 31
def ***flammable gas*** sub SL2018-2 s 29
def ***flammable liquid*** ins SL2018-2 s 30
def ***friable asbestos*** ins SL2014-32 s 12
def ***gantry crane*** am SL2014-20 s 66
def ***genuine research*** ins SL2014-32 s 12
def ***GHS*** ins SL2014-32 s 12
sub SL2018-2 s 31
am SL2022-12 s 28
def ***GHS 3*** ins SL2022-12 s 29
def ***hazard category*** ins SL2018-2 s 32
def ***hazard class*** ins SL2018-2 s 32
def ***hazardous area*** sub SL2014-20 s 67
def ***hazardous chemical*** ins SL2018-2 s 32
sub SL2022-12 s 30
def ***hazard pictogram*** ins SL2018-2 s 32
def ***hazard statement*** ins SL2018-2 s 32
def ***Hazchem Code*** ins SL2018-2 s 32
def ***health monitoring*** ins SL2014-32 s 12
def ***IBC*** ins SL2018-2 s 32
def ***incidental diving work*** am SL2014-20 s 68
def ***independent*** ins SL2014-32 s 12
def ***inflatable device (constantly blown)*** ins SL2014-20 s 69
def ***in situ asbestos*** ins SL2014-32 s 12
def ***intermediate bulk container*** ins SL2018-2 s 32
def ***in transit*** ins SL2018-2 s 32
def ***lead*** ins SL2018-2 s 32
def ***lead process*** ins SL2018-2 s 32
def ***lead process area*** ins SL2018-2 s 32
def ***lead risk work*** ins SL2018-2 s 32
def ***licence-holder*** sub SL2014-32 s 13
am SL2018-2 s 33
def ***licensed asbestos assessor*** ins SL2014-32 s 14
def ***licensed asbestos removalist*** ins SL2014-32 s 14
def ***licensed asbestos removal work*** ins SL2014-32 s 14
def ***licensed major hazard facility*** ins SL2018-2 s 34
def ***lift*** am SL2016-29 s 22
def ***local community*** ins SL2018-2 s 34
def ***local exhaust ventilation system*** ins SL2022-12 s 31
om SL2022-13 s 10
def ***major hazard facility*** ins SL2018-2 s 34
def ***major hazard facility licence*** ins SL2018-2 s 34
def ***major incident*** ins SL2018-2 s 34
def ***major incident hazard*** ins SL2018-2 s 34

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def ***manifest*** ins SL2018-2 s 34
def ***manifest quantity*** ins SL2018-2 s 34
def ***material containing crystalline silica*** ins SL2022-12 s 31
om SL2022-15 s 15
def ***mechanical process*** ins SL2022-13 s 11
def ***membrane filter method*** ins SL2014-32 s 15
def ***mixture*** ins SL2018-2 s 34
def ***modification*** ins SL2018-2 s 34
def ***NATA*** ins SL2014-32 s 15
def ***NATA-accredited laboratory*** ins SL2014-32 s 15
def ***naturally occurring asbestos*** ins SL2014-32 s 15
def ***non-friable asbestos*** ins SL2014-32 s 15
def ***operator*** ins SL2018-2 s 34
def ***packaged hazardous chemicals*** ins SL2018-2 s 34
def ***packing group*** ins SL2018-2 s 34
def ***passenger ropeway*** ins SL2014-20 s 69
def ***pipe work*** ins SL2018-2 s 34
def ***placard*** ins SL2018-2 s 34
def ***placard quantity*** ins SL2018-2 s 34
def ***platform height*** ins SL2014-20 s 69
def ***precautionary statement*** ins SL2018-2 s 34
def ***present or likely to be present*** ins SL2018-2 s 34
def ***pressure piping*** am SL2016-29 s 23
def ***primary emergency service organisation*** ins SL2018-2 s 34
def ***product identifier*** ins SL2018-2 s 34
def ***prohibited carcinogen*** ins SL2018-2 s 34
def ***proposed facility*** ins SL2018-2 s 34
def ***proposed major hazard facility*** ins SL2018-2 s 34
def ***quantity*** ins SL2018-2 s 34
def ***registered training organisation (RTO)*** am SL2018-2 s 35
def ***research chemical*** ins SL2018-2 s 36
def ***respirable asbestos fibre*** ins SL2014-27 s 9
def ***respiratory protective equipment*** ins SL2022-12 s 31
def ***restricted carcinogen*** ins SL2018-2 s 36
def ***retailer*** ins SL2018-2 s 36
def ***safety data sheet*** ins SL2018-2 s 36
def ***Safe Work Australia*** ins SL2014-32 s 15
am SL2018-2 s 37
def ***Schedule 11 hazardous chemical*** ins SL2018-2 s 38
def ***Schedule 15 chemical*** ins SL2018-2 s 38
def ***SEMSOG*** ins SL2018-2 s 38
def ***signal word*** ins SL2018-2 s 38
def ***specified VET course*** sub SL2014-20 s 70; SL2014-32 s 16

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def ***steam turbine*** ins SL2016-29 s 24
def ***Standard for the Uniform Scheduling of Medicines and Poisons*** ins SL2018-2 s 38
def ***subsidiary risk*** ins SL2018-2 s 38
def ***substance*** ins SL2018-2 s 38
def ***surrounding area*** ins SL2018-2 s 38
def ***technical name*** ins SL2018-2 s 38
def ***tower crane*** am SL2016-29 s 25
def ***turbine*** om SL2016-29 s 26
def ***threshold quantity*** ins SL2018-2 s 38
def ***UN number*** ins SL2018-2 s 38
def ***VET course*** am SL2018-2 s 39
def ***wet dust suppression method*** ins SL2022-13 s 11

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5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Jan 2012	1 Jan 2012– 30 June 2012	not amended	new regulation
R1 (RI) 19 Mar 2012	1 Jan 2012– 30 June 2012	not amended	reissue for retrospective amendments by SL2012-9
R1 (RI No 2) 5 July 2012	1 Jan 2012– 30 June 2012	not amended	further reissue for retrospective amendments by SL2012-31
R2 1 July 2012	1 July 2012– 31 Dec 2012	not amended	commenced provisions
R2 (RI) 5 July 2012	1 July 2012– 31 Dec 2012	not amended	reissue for retrospective amendments by SL2012-31
R3 1 Jan 2013	1 Jan 2013– 1 Jan 2013	not amended	commenced provisions
R4 2 Jan 2013	2 Jan 2013– 30 June 2013	not amended	expired provisions (ss 801-803, pt 20.3 (ss 806-810)
R5 1 July 2013	1 July 2013– 24 Nov 2013	not amended	commenced provisions
R6 25 Nov 2013	25 Nov 2013– 31 Dec 2013	A2013-44	amendments by A2013-44
R7 1 Jan 2014	1 Jan 2014– 1 Jan 2014	SL2013-33	amendments by SL2013-33

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Republication No and date	Effective	Last amendment made by	Republication for
R8 2 Jan 2014	2 Jan 2014– 9 June 2014	SL2013-33	expiry of transitional provision (s 804)
R9 10 June 2014	10 June 2014– 1 Sept 2014	A2014-18	amendments by A2014-18
R10 2 Sept 2014	2 Sept 2014– 29 Sept 2014	SL2014-20	amendments by SL2014-20
R11 30 Sept 2014	30 Sept 2014– 1 Oct 2014	SL2014-20	amendments by SL2014-10
R12 2 Oct 2014	2 Oct 2014– 30 Oct 2014	SL2014-20	expiry of provisions (pt 20.4)
R13 31 Oct 2014	31 Oct 2014– 31 Dec 2014	SL2014-27	amendments by SL2014-27
R14 1 Jan 2015	1 Jan 2015– 1 Jan 2015	SL2014-32	amendments by SL2014-32
R15 2 Jan 2015	2 Jan 2015– 16 Apr 2015	SL2014-32	expiry of transitional provisions (ch 20)
R16 17 Apr 2015	17 Apr 2015– 20 May 2015	A2015-6	amendments by A2015-6
R17 21 May 2015	21 May 2015– 30 June 2015	A2015-12	amendments by A2015-12
R18 1 July 2015	1 July 2015– 31 Dec 2015	A2015-12	amendments by SL2014-32
R19 1 Jan 2016	1 Jan 2016– 11 May 2016	A2015-12	amendments by SL2014-32
R20 12 May 2016	12 May 2016– 20 June 2016	A2016-24	amendments by A2016-24
R21 21 June 2016	21 June 2016– 8 Sept 2016	A2016-33	amendments by A2016-33
R22 9 Sept 2016	9 Sept 2016– 8 Mar 2017	SL2016-29	amendments by SL2016-29
R23 9 Mar 2017	9 Mar 2017– 14 Aug 2017	A2017-4	amendments by A2017-4

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5 Earlier republications

Republication No and date	Effective	Last amendment made by	Republication for
R24 15 Aug 2017	15 Aug 2017– 17 Aug 2017	A2017-21	amendments by A2017-21
R25 18 Aug 2017	18 Aug 2017– 28 Mar 2018	SL2017-24	amendments by SL2017-24
R26 29 Mar 2018	29 Mar 2018– 31 Dec 2018	SL2018-2	amendments by SL2018-2
R27 1 Jan 2019	1 Jan 2019– 30 June 2019	A2018-26	amendments by A2018-26
R28 1 July 2019	1 July 2019– 1 Jan 2020	SL2019-3	amendments by SL2019-3
R29 2 Jan 2020	2 Jan 2020– 30 June 2020	SL2019-3	expiry of transitional provisions (ch 21)
R30 1 July 2020	1 July 2020– 9 July 2020	SL2020-27	amendments by A2020-20 and SL2020-27
R31 10 July 2020	10 July 2020– 2 Aug 2020	A2020-30	amendments by A2020-30
R32 3 Aug 2020	3 Aug 2020– 31 Jan 2021	A2020-30	amendments by SL2020-27
R33 1 Feb 2021	1 Feb 2021– 30 June 2022	SL2021-1	amendments by SL2020-27 and SL2021-1
R34 1 July 2022	1 July 2022– 13 July 2022	SL2022-12	amendments by SL2022-12
R35 14 July 2022	14 July 2022– 17 Oct 2022	SL2022-12	amendments by SL2022-12
R36 18 Oct 2022	18 Oct 2022– 1 Nov 2022	SL2022-13	amendments by SL2022-13

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Republication No and date	Effective	Last amendment made by	Republication for
R37 2 Nov 2022	2 Nov 2022– 30 Jan 2023	SL2022-15	amendments by SL2022-15 and expiry of transitional provisions (s 418BA and s 418CA)
R38 31 Jan 2023	31 Jan 2023– 8 June 2023	SL2022-15	amendments by SL2022-15

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6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation 'exp' followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

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