NORTHERN TERRITORY OF AUSTRALIA

WORK HEALTH AND SAFETY (NATIONAL UNIFORM LEGISLATION) REGULATIONS

As in force at 24 December 2014

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ENDNOTES

NORTHERN TERRITORY OF AUSTRALIA

As in force at 24 December 2014

WORK HEALTH AND SAFETY (NATIONAL UNIFORM LEGISLATION) REGULATIONS

Regulations under the *Work Health and Safety (National Uniform Legislation) Act*

Chapter 1 Preliminary

Part 1.1 Introductory matters

1 Citation

These Regulations may be cited as the *Work Health and Safety (National Uniform Legislation) Regulations*.

2 Commencement

These Regulations commence on 1 January 2012.

3 Authorising provisions

Note for regulation 3

Regulation 3 appears in some corresponding WHS laws but is not required in the Territory.

4 Repeal

Note for regulation 4

Regulation 4 appears in some corresponding WHS laws but is not required in the Territory.

5 Definitions

(1) In these Regulations:

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.

accredited assessor means:

(a) a person who is accredited under Part 4.5 to conduct assessments; or

(b) the regulator.

ADG Code means the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, 7th edition, approved by the Australian Transport Council.

*Note for definition **ADG Code***

The ADG Code is accessible 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.

airborne contaminant means a contaminant in the form of a fume, mist, gas, vapour or dust, and includes micro-organisms.

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

(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.

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 are wholly or partly dependent on the shape or design.

asbestos means the asbestiform varieties of mineral silicates belonging to the serpentine or amphibole groups of rock forming minerals including the following:

(a) actinolite asbestos;

(b) grunerite (or amosite) asbestos (brown);

(c) anthophyllite asbestos;

(d) chrysotile asbestos (white);

(e) crocidolite asbestos (blue);

(f) tremolite asbestos;

(g) a mixture that contains 1 or more of the minerals referred to in paragraphs (a) to (f).

asbestos containing material (***ACM***) means any material or thing that, as part of its design, contains asbestos.

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 regulation 429 or 432.

asbestos register, see regulation 425.

asbestos-related work means work involving asbestos (other than asbestos removal work to which Part 8.7 applies) that is permitted under the exceptions set out in regulation 419(3), (4) and (5).

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, Class A asbestos removal work or Class B asbestos removal work.

asbestos removalist means a person conducting a business or undertaking who carries out 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.

boiler means:

(a) 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

(b) the superheaters, reheaters, economisers, boiler piping, supports, mountings, valves, gauges, fittings, controls, boiler setting and other equipment directly associated with those vessels;

but does not include:

(c) except in Schedules 3 and 4, 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

(d) for the purposes of Parts 5.2 and 5.3 and in Schedules 3 and 4, a boiler designed or manufactured to the following codes:

(i) AMBSC Part 1 – *Australian Miniature Boiler Safety Committee Code for Copper Boilers*;

(ii) AMBSC Part 2 – *Australian Miniature Boiler Safety Committee Code for Steel Boilers*;

(iii) AMBSC Part 3 – *Australian Miniature Boiler Safety Committee Code for Sub-miniature Boilers*;

(iv) AMBSC Part 4 – Australian Miniature Boiler Safety Committee Code for Duplex Steel Boilers; or

(e) in Schedules 3 and 4:

(i) a direct fired process heater; or

(ii) boilers with less than 5 m^2 heating surface or 150 kW output; or

(iii) unattended boilers certified in compliance with AS 2593:2004 (Boilers – Safety management and supervision systems).

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.

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 500 L or net mass of more than 500 kg; or

(b) if the hazardous chemical is a solid – an undivided quantity exceeding 500 kg.

capacity, of a container (in Chapter 7), 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 regulation 169.

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.

certified safety management system, for Chapter 8, 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.

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.

class means:

(a) in relation to high risk work – a class of work specified in Schedule 3;

(b) in relation to asbestos removal work – Class A asbestos removal work or Class B asbestos removal work.

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 regulation 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 regulation 487, but does not include Class A asbestos removal work.

class label means a pictogram described in the ADG Code for a class, or division of a class, of dangerous goods.

clearance certificate, see regulation 474.

clearance inspection, see regulation 473.

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 air; and

(c) able to form an explosive mixture with air at atmospheric pressure and normal temperature.

combustible liquid means a flammable liquid with a flash point greater than 60ºC but not more than 93ºC.

combustible substance means a substance that is combustible, and includes dust, fibres, fumes, mists or vapours produced by the substance.

Examples for definition ***combustible substances***

Wood, paper, oil, iron filings.

competency assessment, for Part 4.5, means an assessment in relation to the completion of a specified VET course to carry out a class of high risk work.

competent person means:

(a) for electrical work on energised electrical equipment or energised electrical installations (other than testing referred to in regulations 150 and 165) – a person who holds an electrical contractor's licence or electrical worker's licence under the *Electrical Workers and Contractors Act*;

(b) for general diving work – see regulations 174 and 177;

(c) for a major inspection of a mobile crane or a tower crane under regulation 235 – see regulation 235;

(d) for inspection of amusement devices and passenger ropeways under regulation 241 – see regulation 241;

(e) for design verification under regulation 252 – a person who has the skills, qualifications, competence and experience to design the plant or verify the design;

(f) for a clearance inspection under regulation 473 – a person who has acquired through training or experience the knowledge and skills of relevant asbestos removal industry practice and holds:

(i) a certification in relation to the specified VET course for asbestos assessor work; or

(ii) a tertiary qualification in occupational health and safety, occupational hygiene, science, building, construction or environmental health;

(g) 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 a knuckle 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.

confined space means an enclosed or partially enclosed space that:

(a) is not designed or intended primarily to be occupied by a person; and

(b) is, or is designed or intended to be, at normal atmospheric pressure while any person is in the space; and

(c) is or is likely to be a risk to health and safety from:

(i) an atmosphere that does not have a safe oxygen level; or

(ii) contaminants, including airborne gases, vapours and dusts, that may cause injury from fire or explosion; or

(iii) harmful concentrations of any airborne contaminants; or

(iv) engulfment;

but does not include a mine shaft or the workings of a mine.

confined space entry permit means a confined space entry permit issued under regulation 67.

construction project, see regulation 292.

construction work, see regulation 289.

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 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:

(a) an endless belt, rope or chain or other similar means; or

(b) buckets, trays or other containers or fittings moved by an endless belt, rope, chain or similar means; or

(c) a rotating screw; or

(d) a vibration or walking beam; or

(e) a powered roller conveyor if the rollers are driven by an endless belt, rope or chain or other similar means;

and 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.

*Note for definition **correct classification***

Schedule 9, Part 1 sets out when a hazardous chemical is correctly classified.

crane means an appliance intended for raising or lowering a load and moving it horizontally including the supporting structure of the crane and its foundations, but does not include any of the following:

(a) an industrial lift truck;

(b) earthmoving machinery;

(c) an amusement device;

(d) a tractor;

(e) an industrial robot;

(f) a conveyor;

(g) building maintenance equipment;

(h) a suspended scaffold;

(i) a lift.

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.

current risk management plan, for Chapter 10, see regulation 609.

demolition work 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 does not include:

(a) the dismantling of formwork, falsework, or other structures designed or used to provide support, access or containment during construction work; or

(b) 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.

designer, in relation to plant, a substance or a structure, has the same meaning as it has in section 22 of the Act.

determined major hazard facility means a facility that has been determined under regulation 541 or 542 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.

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, means a person referred to in regulation 32.

EANx, for Part 4.8, means a mixture of oxygen and nitrogen in which the volume of oxygen is at least 22%.

earthmoving machinery means operator controlled plant used to excavate, load, transport, compact or spread earth, overburden, rubble, spoil, aggregate or similar material, but does not include a tractor or industrial lift truck.

electrical equipment, see regulation 144 (and regulation 148 for Part 4.7, Division 3).

electrical installation, see regulation 145 (and regulation 148 for Part 4.7, Division 3).

electrical risk means risk to a person of death, shock or other injury caused directly or indirectly by electricity.

electrical work, see regulation 146.

electricity supply authority means:

(a) Power and Water Corporation under the *Power and Water Corporation Act*; or

(b) a person licensed under Part 3 of the *Electricity Reform Act* to carry on operations in the electricity supply industry.

emergency service organisation means any of the following:

(a) Northern Territory Emergency Service mentioned in section 52 of the *Emergency Management Act*;

(b) Northern Territory Fire and Rescue Service under the *Fire and Emergency Act*;

(c) Police Force of the Northern Territory under the *Police Administration Act*.

emergency service worker means a member of an emergency service organisation.

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.

excavation means a trench, tunnel or shaft, but does not include:

(a) a mine; or

(b) a bore to which the *Water Act* 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, means an exposure standard in the Workplace Exposure Standard for Airborne Contaminants.

exposure standard for noise, see regulation 56.

external review means an external review under Part 11.1.

extra-low voltage means voltage that does not exceed 50 volts alternating current (50 V AC) or 120 volts ripple-free direct current (120 V ripple-free DC).

facility, for Chapter 9, 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.

*Example for definition **fall arrest system***

An industrial safety net, a catch platform, 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, for Part 7.2, means a female other than a female who provides information stating that she is not of reproductive capacity.

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 specified in clause M4 of Appendix M to AS/NZS 2299.1:2007 (Occupational diving operations – Standard operational practice).

flammable gas has the same meaning as it has in the GHS.

flammable liquid means a flammable liquid within the meaning of the GHS that has a flash point of less than 93°C.

flash point means the lowest temperature (corrected to a standard pressure of 101.3 kPA) at which the application of an ignition source causes the vapours of a liquid to ignite under specified test conditions.

forklift truck, for Schedules 3 and 4, 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 900 mm or more above the ground, but does not include a pedestrian-operated truck or a pallet truck.

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:

(a) that does not exceed 3000 L water capacity and is without openings or integral attachments on the shell other than at the ends; and

(b) that is designed for the storage and transport of gas under pressure; and

(c) that is covered by AS 2030.1:2009 (Gas cylinders – General requirements).

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) in Part 6.5, Division 2 – a general construction induction training card issued under that Division;

(b) in any other case – a general construction induction training card issued:

(i) under Part 6.5, Division 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 diving work means work carried out in or under water while breathing compressed gas, and includes:

(a) incidental diving work; and

(b) limited scientific diving work;

but 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 Harmonised System of Classification and Labelling of Chemicals, Third revised edition, published by the United Nations as modified under Schedule 6.

*Note for definition **GHS***

The Schedule 6 tables replace some tables in the GHS.

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.

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.

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 chemical means a substance, mixture or article that satisfies the criteria for a hazard class in the GHS (including a classification referred to in Schedule 6), but does not include a substance, mixture or article that satisfies the criteria solely for one of the following hazard classes:

(a) acute toxicity – oral – category 5;

(b) acute toxicity – dermal – category 5;

(c) acute toxicity – inhalation – category 5;

(d) skin corrosion/irritation – category 3;

(e) serious eye damage/eye irritation – category 2B;

(f) aspiration hazard – category 2;

(g) flammable gas – category 2;

(h) acute hazard to the aquatic environment – category 1, 2 or 3;

(i) chronic hazard to the aquatic environment – category 1, 2, 3 or 4;

(j) hazardous to the ozone layer.

*Note for definition **hazardous chemical***

The Schedule 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 one 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 for definition **hazardous manual task***

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.

Hazchem Code means a Hazchem Code under the ADG Code, also known as an Emergency Action Code.

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:

(a) in Chapter 7 or 8 – because of exposure to certain substances; or

(b) in Chapter 10 – because of exposure to a mine site hazard.

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.

*Examples for definition **heritage boiler***

1 Historical activity: a historical display, parade, demonstration or re-enactment.

2 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, see regulation 291.

high risk diving work means work:

(a) carried out in or under water or any other liquid while breathing compressed gas; and

(b) involving one or more of the following:

(i) construction work;

(ii) work of the kind described in regulation 289(3)(d);

(iii) inspection work carried out in order to determine whether or not work described in subparagraph (i) or (ii) is necessary;

(iv) the recovery or salvage of a large structure or large item of plant for commercial purposes;

but 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.

*Notes for definition **high risk diving work***, paragraph (b)(i)

1 Subparagraph (ii) includes some additional construction-related activities.

2 For construction work generally, see Chapter 6. For the meaning of construction work, see regulation 289.

high risk work means any work set out in Schedule 3 as being within the scope of a high risk work licence.

high risk work licence means any of the licences listed in Schedule 3.

hoist means an appliance intended for raising or lowering a load or people, and includes an elevating work platform, a mast climbing work platform, personnel and materials hoist, scaffolding hoist and serial hoist, but does not include a lift or building maintenance equipment.

ignition source means a source of energy capable of igniting flammable or combustible substances.

importer, in relation to plant, a substance or a structure, has the same meaning as it has in section 24 of the Act.

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

(b) involves limited diving.

*Example for definition **incidental diving work**, paragraph (a)*

Acting underwater is incidental to the business or undertaking of filming.

independent, in relation to clearance inspections and air monitoring under Chapter 8, 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 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 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 (***IBC***) has the same meaning as IBC has in the ADG Code.

internal review means an internal review under Part 11.1.

in transit, in relation to a thing, means that the thing:

(a) is supplied to, or stored at, a workplace in containers that are not opened at the workplace; and

(b) is not used at the workplace; and

(c) is 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, see regulation 392.

lead process area means a workplace or part of a workplace where a lead process is carried out.

lead risk work, see regulation 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 Class A asbestos removal work; and

(ii) to carry out clearance inspections of Class A asbestos removal work; and

(iii) to issue clearance certificates in relation to Class A asbestos removal work; or

(c) in the case of an asbestos removal licence – the person conducting the business or undertaking to whom the licence is granted; or

(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 these Regulations 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 major hazard facility means a major hazard facility that is licensed under Part 9.7.

lift 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 includes:

(a) a chairlift, escalator, moving walkway and stairway lift; and

(b) 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 30 m;

(b) the need for a decompression stop;

(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 authority, in relation to a facility, means the local authority for the local authority area in which the facility and the surrounding area are located.

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, 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 to be a major hazard facility.

major hazard facility licence means a licence granted under Part 9.7 in relation to a major hazard facility.

major incident, see regulation 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 for definition **manifest***

See Schedule 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.

manufacturer, in relation to plant, a substance or a structure, has the same meaning as it has in section 23 of the Act.

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.

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)].

mine operator, for Chapter 10, see regulation 610.

mine site, for Chapter 10, see regulation 609.

mine site hazard, for Chapter 10, see regulation 609.

mining activity, for Chapter 10, see regulation 609.

mining authorisation, for Chapter 10, see regulation 609.

mixture, in Part 7.1, 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.

modification, in relation to a facility, see regulation 534.

musculoskeletal disorder means an injury to, or disease of, the musculoskeletal system, whether occurring suddenly or over time, but 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.

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 for definition ***non-friable asbestos***

Non-friable asbestos may become friable asbestos through deterioration (see definition ***friable asbestos****).*

non-slewing mobile crane means a mobile crane incorporating a boom or jib that cannot be slewed, and includes:

(a) an articulated mobile crane; or

(b) a locomotive crane;

but does not include vehicle tow trucks.

notice of satisfactory assessment means a notice stating that the person to whom it is issued has successfully completed a specified VET course.

operator, in relation to a facility or a proposed facility, see regulation 533.

operator protective device, includes a roll-over protective structure, falling object protective structure, operator restraining device and seatbelt.

order-picking forklift truck, for Schedules 3 and 4, 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 500 L; or

(b) a net mass not exceeding 500 kg.

passenger ropeway means a powered ropeway used for transporting, in a horizontal or inclined plane, passengers moved by a carrier that is:

(a) attached to or supported by a moving rope; or

(b) attached to a moving rope but supported by a standing rope or other overhead structure;

including, in relation to the powered ropeway, the prime mover, any associated transmission machinery and any supporting structure and equipment, but does not include any of the following:

(c) a cog railway;

(d) a cable car running on rails;

(e) a flying fox or similar device;

(f) an elevating system for vehicles or boat style carriers associated with amusement devices.

*Example for definition **passenger ropeway**, paragraph (f)*

An elevating system for a log ride or boat flume ride.

person with management or control of plant at a workplace has the same meaning as it has in section 21 of the Act.

person with management or control of a workplace has the same meaning as it has in section 20 of the Act.

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:

(a) that is a cantilever hoist, a tower hoist or several winches configured to operate as a hoist; and

(b) that is 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.

plant, for Parts 5.2 and 5.3, 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 one 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.

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 liquid or to transmit liquid pressure; and

(b) includes distribution headers, bolting, gaskets, pipe supports and pressure containing accessories; but

(c) does not include:

(i) a boiler or pressure vessel; or

(ii) any piping that is regulated under the *Energy Pipelines Act*.

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 the Police Force of the Northern Territory under the *Police Administration Act*.

principal contractor, in relation to a construction project, see regulation 293.

product identifier means the name or number used to identify a product on a label or in a safety data sheet.

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, 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

(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 means equipment that is driven by steam acting on a piston causing the piston to move, and includes an expanding (steam) reciprocating engine.

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student).

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* (Cth).

related activity, for Chapter 10, see regulation 609.

relevant fee, in relation to a matter, means the fee specified in Schedule 2 for that matter.

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 3 µm wide; and

(b) more than 5 µm long; and

(c) has a length to width ratio of more than 3:1.

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.

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

Safe Work Australia means Safe Work Australia as established under section 5 of the *Safe Work Australia Act 2008* (Cth).

safe work method statement means:

(a) in relation to electrical work on energised electrical equipment – a safe work method statement prepared under regulation 161;

(b) in relation to high risk construction work – a safe work method statement referred to in regulation 299 (as revised under regulation 302).

safety data sheet means a safety data sheet prepared under regulation 330 or 331.

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 4 m 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 15.1; or

(b) belongs to a class, type or category of hazardous chemicals specified in Schedule 15, table 15.2.

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.

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:

(a) a front end loader; or

(b) a backhoe; or

(c) an excavator; or

(d) other earth moving equipment;

when configured for crane operation.

slinging techniques means the exercising of judgement 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

(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.

structure, for Chapter 6, see regulation 290.

substance, for Part 7.1, 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.

supplier, in relation to plant, a substance or a structure, has the same meaning as it has in section 25 of the Act.

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.

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 ***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.

the Act means the *Work Health and Safety (National Uniform Legislation) Act*.

theatrical performance means acting, singing, playing a musical instrument, dancing or otherwise performing literary or artistic works or expressions of traditional custom or folklore.

threshold quantity, in relation to a Schedule 15 chemical, means:

(a) the threshold quantity of a specific hazardous chemical as determined under Schedule 15, clause 3; or

(b) the aggregate threshold quantity of 2 or more hazardous chemicals as determined under Schedule 15, clause 4.

tower crane means:

(a) a boom crane or a jib crane mounted on a tower structure; and

(b) in Schedule 3:

(i) the crane, if a jib crane, may be a horizontal or luffing jib type; and

(ii) the tower structure may be demountable or permanent;

but, in Schedule 3, does not include a self erecting tower crane.

tractor 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 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.

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.

turbine means equipment that is driven by steam acting on a turbine or rotor to cause a rotary motion.

UN number has the same meaning as it has in Attachment 2 of the ADG Code.

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 has the same meaning as it has in the *National Vocational Education and Training Regulator Act 2011* (Cth).

WHS management plan, in relation to a construction project, means a management plan prepared or revised under Part 6.4.

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.

(2) Unless the context otherwise requires:

(a) a reference in these Regulations to a Chapter by a number must be construed as reference to the Chapter, designated by that number, of these Regulations; and

(b) a reference in these Regulations to a Part by a number must be construed as reference to the Part, designated by that number, of these Regulations.

6 Determination of safety management system

The regulator may make a determination for the purposes of the definition ***certified safety management system***.

6A Meaning of *corresponding WHS law*

(1) For section 4 of the Act, definition ***corresponding WHS law***, the following laws are prescribed to be corresponding WHS laws:

(a) *Work Health and Safety Act 2011* (ACT);

(b) *Work Health and Safety Act 2011* (Cth);

(c) *Work Health and Safety Act 2011* (NSW);

(d) *Work Health and Safety Act 2011* (Qld);

(e) *Work Health and Safety Act 2012* (SA);

(f) Work Health and Safety Act 2012 (Tas).

(2) For section 4 of the Act, definition ***corresponding WHS law***, the following laws are prescribed to be corresponding WHS laws in relation to Parts 4.5, 5.3 and 8.10 and regulation 318:

(a) *Occupational Health and Safety Act 2004* (Vic);

(b) *Occupational Health and Safety Act 1984* (WA).

7 Meaning of *person* conducting *a business or undertaking* – persons excluded

(1) For the purposes of section 5(6) of the Act, 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) Subregulation (1) does not apply if the strata title body corporate engages any worker as an employee.

(3) For the purposes of section 5(6) of the Act, 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 one 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.

(4) In this regulation:

strata title body corporate means:

(a) a body corporate under the *Unit Title Schemes Act*; or

(b) a building management corporation under the *Unit Titles Act*.

8 Meaning of *supply*

For the purposes of section 6(3)(b) of the Act, 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 for regulation 8

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

If a note at the foot of a provision of these Regulations states "WHS (NUL) 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 for regulation 9

A failure to comply with a duty or obligation under a section of the Act referred to in a "WHS (NUL) Act" note is an offence to which a penalty applies.

Part 1.2 Application

10 Application of the Act to dangerous goods and high risk plant

(1) The following provisions of the Act are excluded from the operation of Schedule 1 to the Act:

(a) Part 5, Divisions 2 to 8;

(b) Part 6;

(c) Part 7.

(2) For the purposes of Schedule 1 of the Act, clause 6, definition ***dangerous goods***, the goods listed in table 328 in regulation 328 are prescribed to be dangerous goods for Schedule 1 of the Act if the quantity of the goods at a place is more than the relevant threshold quantity listed in that table.

11 Application of these Regulations

A duty imposed on a person under a provision of these Regulations 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 these Regulations.

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

If these Regulations require 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.

Part 1.3 Incorporated documents

13 Documents incorporated as in force when incorporated

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

14 Inconsistencies between provisions

If a provision of any document applied, adopted or incorporated by, or referred to in, these Regulations is inconsistent with any provision in these Regulations, the provision of these Regulations prevails.

15 References to standards

(1) In these Regulations, a reference consisting of the words "Australian Standard" or the letters "AS" followed in either case by a number or a number accompanied by a reference to a calendar year is a reference to the standard so numbered published by or on behalf of Standards Australia.

(2) In these Regulations, a reference consisting of the expression "Australian/New Zealand Standard" or "AS/NZS" followed in either case by a number or a number accompanied by a reference to a calendar year is a reference to the standard so numbered published jointly by or on behalf of Standards Australia and the Standards Council of New Zealand.

Chapter 2 Representation and participation

Part 2.1 Representation

Division 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 for regulation 16

Under the Act, a work group may be determined for workers at more than 1 workplace (section 51(3)) or for workers carrying out work for 2 or more persons conducting businesses or undertakings at one or more workplaces (Part 5, Division 3, Subdivision 3 of the Act).

17 Matters to be taken into account in negotiations

For the purposes of sections 52(6) and 56(4) of the Act, 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;

(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, for example as an employee or as a contractor;

(k) the pattern of work carried out by workers, for example whether the work is full-time, part-time, casual or 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.

Division 2 Health and safety representatives

18 Procedures for election of health and safety representatives

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

(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.

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.

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

Note for regulation 19

Strict liability applies to each physical element of this offence. See section 12B of the Act.

20 Removal of health and safety representatives

(1) For the purposes of section 64(2)(d) of the Act, 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 referred to in subregulation (2)(a) and the majority of members of the work group have been informed of the removal.

21 Training for health and safety representatives

(1) For the purposes of section 72(1) of the Act, 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.

(1A) An application for approval of a course of training must:

(a) be made in the manner and form required by the regulator; and

(b) be accompanied by the relevant fee.

(2) In approving a course of training in work health and safety for the purposes of section 72(1) of the Act, 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.

Notes for regulation 21

1 This regulation 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.

2 Under the Interpretation Act the power to approve a course of training includes a power to revoke or vary the approval.

Part 2.2 Issue resolution

22 Agreed procedure – minimum requirements

(1) This regulation 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 regulation 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 subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

23 Default procedure

(1) This regulation sets out the default procedure for issue resolution for the purposes of section 81(2) of the Act.

(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.

(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 for subregulation (6)

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 section 80 of the Act).

(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.

Part 2.3 Cessation of unsafe work

24 Continuity of engagement of worker

For the purposes of section 88 of the Act, 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 one 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.

Part 2.4 Workplace entry by WHS entry permit holders

25 Training requirements for WHS entry permits

(1) The prescribed training for the purposes of sections 131 and 133 of the Act is training, that is provided or approved by the regulator, in relation to the following:

(a) the right of entry requirements under Part 7 of the Act;

(b) the issue resolution requirements under the Act and these Regulations;

(c) the duties under, and the framework of, the Act and these Regulations;

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

(e) the definition ***reasonably practicable*** as set out in section 18 of the Act;

(f) the relationship between the Act and these Regulations and the Fair Work Act.

(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 these Regulations.

(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

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

Note for regulation 25

Under the Interpretation Act the power to approve training includes a power to revoke or vary 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 Part 7 of the Act 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;

(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 regulation 28, 29 or 30 (as applicable).

28 Additional requirements – entry under section 117

A notice of entry under section 119 of the Act in relation to an entry under section 117 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 for regulation 28

Section 130 of the Act 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.

29 Additional requirements – entry under section 120

A notice of entry under section 120 of the Act 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 for regulation 29

Section 130 of the Act 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.

30 Additional requirements – entry under section 121

A notice of entry under section 122 of the Act in relation to an entry under section 121 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 for regulation 30

Section 130 of the Act 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

For the purposes of section 151 of the Act, 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.

Chapter 3 General risk and workplace management

Part 3.1 Managing risks to health and safety

32 Application of Part 3.1

This Part applies to a person conducting a business or undertaking who has a duty under these Regulations to manage risks to health and safety.

33 Specific requirements must be complied with

Any specific requirements under these Regulations for the management of risk must be complied with when implementing the requirements of this Part.

Examples for regulation 33

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.

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 regulation 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 regulation.

(3) The duty holder must minimise risks, so far as is reasonably practicable, by doing one 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 for regulation 36

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

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 these Regulations so as to maintain, so far as is reasonably practicable, a work environment that is without risks to health or safety.

(2) Without limiting subregulation (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;

(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 these Regulations indicate that a review is necessary;

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

Examples for subregulation (2)(a)

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

2 A notifiable incident occurs because of the risk.

(3) Without limiting subregulation (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 referred to in subregulation (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.

Part 3.2 General workplace management

Division 1 Information, training and instruction

39 Provision of information, training and instruction

(1) This regulation applies for the purposes of section 19 of the Act 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The person must ensure, so far as is reasonably practicable, that the information, training and instruction provided under this regulation 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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;

(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.

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

Note for regulation 40

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) The person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that the facilities provided under subregulation (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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) For the purposes of this regulation, 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 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) For the purposes of this regulation, 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 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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) For the purposes of subregulations (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.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 5 Personal protective equipment

44 Provision to workers and use of personal protective equipment

(1) This regulation 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 regulation 36.

(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.

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

Example for subregulation (2)

Equipment that has been provided by a labour hire company.

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Note for regulation 44

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 section 273 of the Act).

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.

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

Note for regulation 45

Strict liability applies to each physical element of this offence. See section 12B of the Act.

46 Duties of worker

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

Maximum penalty:

(a) in the case of an individual – $3 600.

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

(3A) Section 12B of the Act does not apply to an offence against subregulation (2).

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 47

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 6 Remote or isolated work

48 Remote or isolated work

(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.

Note for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) In this regulation:

assistance includes rescue, medical assistance and the attendance of emergency service 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.

Division 7 Managing risks from airborne contaminants

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.

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

Note for regulation 49

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A person conducting a business or undertaking at a workplace must ensure that the results of air monitoring carried out under subregulation (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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) A person conducting a business or undertaking at a workplace must ensure that the results of air monitoring carried out under subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 8 Hazardous atmospheres

51 Managing risks to health and safety

(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.

Note for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 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

(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.

Note for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 9).

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

Division 9 Storage of flammable or combustible substances

53 Flammable and combustible material 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) In this regulation:

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 10 Falling objects

54 Management of risk of falling objects

A person conducting a business or undertaking at a workplace must manage, in accordance with Part 3.1, 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 for regulation 54

WHS (NUL) Act – section 19 (see regulation 9).

55 Minimising risk associated with falling objects

(1) This regulation applies if it is not reasonably practicable to eliminate the risk referred to in regulation 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 regulation.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 for subregulation (3)

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.

Chapter 4 Hazardous work

Part 4.1 Noise

56 Meaning of *exposure standard for noise*

(1) In these Regulations:

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 regulation:

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

$L_{C,peak}$ means the C-weighted peak sound pressure level in decibels (dB(C)) referenced to 20 µPa, 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

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

Note for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 9).

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

58 Audiometric testing

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) In this regulation:

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.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 subregulation (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.

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

Note for subregulation (6)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Part 4.2 Hazardous manual tasks

60 Managing risks to health and safety

(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.

Note for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 9).

(2) In determining the control measures to implement under subregulation (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.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) If it is not reasonably practicable to comply with subregulation (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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) If it is not reasonably practicable to comply with subregulation (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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (6)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 subregulation (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.

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

Note for subregulation (7)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 subregulation (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.

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

Note for subregulation (8)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Part 4.3 Confined spaces

Division 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 service workers

Regulations 67 and 68 do not apply to the entry into a confined space by an emergency service 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.

Division 2 Duties of designer, manufacturer, importer, supplier, installer and constructor of plant or structure

64 Duty to eliminate or minimise risk

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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.

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

Note for regulation 65

Strict liability applies to each physical element of this offence. See section 12B of the Act.

66 Managing risks to health and safety

(1) A person conducting a business or undertaking must manage, in accordance with Part 3.1, 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 for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 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 subregulation (1).

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) For the purposes of subregulations (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.

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

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A confined space entry permit must:

(a) be completed by a competent person; and

(b) be in writing; and

(c) specify 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

(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 specified in a confined space permit must:

(a) be based on a risk assessment conducted under regulation 66; and

(b) include:

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

(ii) details of the system of work provided under regulation 69.

(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 referred to in subregulation (2)(d) is completed by the competent person.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

68 Signage

(1) A person conducting a business or undertaking must ensure that signs that comply with subregulation (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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(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.

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

Note for regulation 69

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) In this regulation:

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

Notes for regulation 71

1 Regulation 44 applies to the use of personal protective equipment, including the equipment provided under subregulation (2).

2 Regulation 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 73

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Note for regulation 74

See Part 3.2 for general provisions relating to first aid, personal protective equipment and emergency plans.

75 Personal protective equipment in emergencies

(1) This regulation 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 referred to in paragraph (a) or (b) while the worker is in the space.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Note for regulation 75

Regulation 44 applies to the use of personal protective equipment, including the equipment provided under this regulation.

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;

(e) emergency procedures.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) In subregulation (1):

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 regulation 74, but who is not required to enter the space; or

(b) any person supervising a worker referred to in paragraph (a).

77 Confined space entry permit and risk assessment must be kept

(1) This regulation applies if a person conducting a business or undertaking:

(a) prepares a risk assessment under regulation 66; or

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

(2) Subject to subregulation (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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Part 4.4 Falls

78 Management of risk of fall

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

Note for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 9).

(2) Subregulation (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 subregulation (1) applies is carried out on the ground or on a solid construction.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 referred to in subregulation (2).

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) In this regulation:

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 regulation 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 regulation 78 applies.

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

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 for subregulation (3)

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 for subregulation (3)

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

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

(a) the performance of stunt work;

(b) the performance of acrobatics;

(c) a theatrical performance;

(d) a sporting or athletic activity;

(e) horse riding.

Note for subregulation (4)

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

(5) In this regulation:

fall prevention device includes:

(a) a secure fence; and

(b) edge protection; and

(c) working platforms; and

(d) covers.

Note for regulation 79

*See regulation 5(1) for definitions **fall arrest system** and **work positioning system**.*

80 Emergency and rescue procedures

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

(2) Without limiting regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) In this regulation:

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.

Part 4.5 High risk work

Division 1 Licensing of high risk work

Subdivision 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 regulation 82.

Notes for regulation 81

1 See section 43 of the Act.

2 Schedule 3 sets out the high risk work licences and classes of high risk work that are within the scope of each licence. Schedule 4 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.

(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 regulation 91(2) 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 subregulation (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.

(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 for subregulation (4)

See Schedule 3 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) granted under a corresponding WHS law; and

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

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

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 regulation 82(1)provides direct supervision of the person except in the circumstances set out in subregulation (2).

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation:

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.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 referred to in regulation 82(1) unless the person sees written evidence provided by the worker that the worker is undertaking the course of training referred to in regulation 82(1)(a).

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 referred to in regulation 82(1A) unless the person sees written evidence provided by the worker that the worker:

(a) in the circumstances referred to in regulation 82(1A)(a) – holds a certification referred to in regulation 82(1A); and

(b) in the circumstances referred to in section 82(1A)(b):

(i) holds a certification referred to in regulation 82(1A); and

(ii) has applied for the relevant licence within the period referred to in regulation 82(1A)(b).

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (2A)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) A person conducting a business or undertaking at a workplace must not direct or allow a worker to supervise high risk work as referred to in regulations 82(1)and 84 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

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

(b) under subregulation (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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Subdivision 2 Licensing process

86 Who may apply for a licence

Only a person who holds a qualification set out in Schedule 4 may apply for a high risk work licence.

87 Application for high risk work licence

(1) An application for a high risk work licence must be made in the manner and form required by the regulator.

(2) The application must include the following information:

(a) the applicant's name and residential 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;

(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 these Regulations or under any corresponding WHS law;

(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

(iii) giving details of any suspension, cancellation or disqualification.

Note for subregulation (2)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) The application must be accompanied by the relevant fee.

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) specify the date (not being 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 under this regulation.

89 Decision on application

(1) Subject to subregulation (3), the regulator must grant a high risk work licence if satisfied about the matters referred to in subregulation (2).

(2) The regulator must be satisfied about the following:

(a) the application has been made in accordance with these Regulations;

(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 Territory; or

(ii) resides outside the Territory 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 regulation 87(2)(f);

(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 regulation 88, the regulator is taken to have refused to grant the licence applied for.

Note for regulation 89

A refusal to grant a high risk work licence (including under subregulation (5)) is a reviewable decision (see regulation 676).

90 Matters to be taken into account

For the purposes of regulation 89(2)(f), the regulator must have regard to all relevant matters, including the following:

(a) any offence under the Act or these Regulations or under a corresponding WHS law of which the applicant has been convicted or found guilty;

(b) in relation to any equivalent licence applied for or held by the applicant under the Act or these Regulations 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 these Regulations 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 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 subregulation (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 for regulation 91

A decision to refuse to grant a licence is a reviewable decision (see regulation 676).

91A Conditions of licence

(1) The regulator may impose any conditions it considers appropriate on a high risk work licence.

(2) Without limiting subregulation (1), the regulator may impose conditions in relation to one 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.

(3) The regulator must give the licence holder written notice of any conditions imposed on the licence.

Notes for regulation 91A

1 A person must comply with the conditions of a licence (see section 45 of the Act).

2 A decision to impose a condition on a licence is a reviewable decision (see regulation 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 subregulation (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.

(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 regulation 92, if a licence document is issued under subregulation (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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (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 regulation 97; or

(b) the licence holder has applied for, but has not received, a replacement licence document under regulation 98.

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 for regulation 95

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 3 Amendment of licence document

96 Notice of change of address

The licence holder of a high risk work licence must give written notice to the regulator of a change of residential address, within 14 days of the change occurring.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for regulation 96

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 specified in the request.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for regulation 97

Strict liability applies to each physical element of this offence. See section 12B of the Act.

98 Replacement licence document

(1) A licence holder 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) If a licence document is lost, stolen or destroyed, the licence holder may apply to the regulator for a replacement document.

Note for subregulation (2)

A licence holder is required to keep the licence document available for inspection (see regulation 94).

(3) An application for a replacement licence document must be made in the manner and form required by the regulator.

(4) The application must:

(a) include a declaration describing the circumstances in which the original document was lost, stolen or destroyed; and

(b) be accompanied by the relevant fee.

Note for subregulation (4)(a)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(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 for regulation 98

A decision to refuse to replace a licence is a reviewable decision (see regulation 676).

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 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) An application for renewal of a high risk work licence must be made in the manner and form required by the regulator.

(2) The application must include the following information:

(a) the name and residential 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 regulation 95.

Note for subregulation (2)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) The application must be accompanied by the relevant fee.

(4) 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 regulation 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 regulation, 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.

Notes for regulation 103

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 referred to in paragraph (a) or (b) would be an application for a new licence under regulation 87.

2 See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

104 Provisions relating to renewal of licence

(1) For the purposes of this Subdivision:

(a) regulation 88 applies as if a reference in that regulation to an application for a licence were a reference to an application to renew a licence; and

(b) regulations 89 (except subregulation (5)), 90, 91A and 92 apply as if a reference in those regulations to the grant of a licence were a reference to the renewal of a licence; and

(c) regulation 91 applies as if a reference in that regulation 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 for regulation 104

A refusal to renew a licence is a reviewable decision (see regulation 676).

105 Status of licence during review

(1) This regulation 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.

(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 Work Health Court makes a decision on the review.

(6) The licence continues to have effect under this regulation even if its expiry date passes.

Subdivision 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 one 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 regulation 95;

(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 or that was obtained improperly through a breach of a condition of accreditation by the accredited assessor who conducted the competency assessment.

(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 these Regulations 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 subregulation (3) takes effect when the suspension of the licence ends.

Notes for regulation 106

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 regulation 676).

2 A variation of licence conditions is a reviewable decision (see regulation 676).

107 Matters taken into account

(1) In making a decision under regulation 106, the regulator must have regard to:

(a) any submissions made by the licence holder under regulation 108; and

(b) any advice received from a corresponding regulator.

(2) For the purposes of regulation 106(1)(a), the regulator must have regard to all relevant matters, including the following:

(a) any offence under the Act or these Regulations or under a corresponding WHS law, of which the licence holder has been convicted or found guilty;

(b) in relation to any equivalent licence applied for or held by the licence holder under the Act or these Regulations 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 these Regulations 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 subregulation (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 specified 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.

109 Notice of decision

(1) The regulator must give the licence holder written notice of a decision under regulation 106 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 – the variation; and

(vi) if licence conditions are to be varied – 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

(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 these Regulations 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 referred to in regulation 106 without giving notice under regulation 108 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 regulation as applying in the corresponding jurisdiction.

(2) If the regulator decides to suspend a licence under this regulation:

(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 regulation 108 within 14 days after giving the notice under subregulation (2); and

(b) make its decision under regulation 106.

(4) If the regulator does not give notice under subregulation (3), the suspension ends at the end of the 14 day period.

(5) If the regulator gives notice under subregulation (3), the licence remains suspended until the decision is made under regulation 106.

111 Licence holder to return licence document

A licence holder, on receiving a notice under regulation 109, must return the licence document to the regulator in accordance with the notice.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for regulation 111

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

Division 2 Accreditation of assessors

Subdivision 1 Requirement to be accredited

113 Accreditation required to assess competency for high risk work licence

A person who is not an accredited assessor must not:

(a) conduct a competency assessment; or

(b) issue a notice of satisfactory assessment; or

(c) in any other way hold himself or herself out to be an accredited assessor.

Note for regulation 113

See section 43 of the Act.

114 Accredited assessor must act in accordance with accreditation

(1) An accredited assessor must not conduct a competency assessment unless:

(a) the competency assessment relates to a class of high risk work for which the assessor is accredited; and

(b) the accredited assessor conducts the competency assessment for or on behalf of an RTO.

(2) An accredited assessor must not issue a notice of satisfactory assessment unless the competency assessment relates to a class of high risk work for which the assessor is accredited.

(3) An accredited assessor who conducts a competency assessment must do so in accordance with the conditions of accreditation imposed under regulation 121.

(4) An accredited assessor who issues a notice of satisfactory assessment must do so in accordance with any conditions of accreditation imposed under regulation 121.

(5) Subregulations (1) to (4) do not apply if the regulator is the accredited assessor.

Note for regulation 114

See section 43 of the Act.

Subdivision 2 Accreditation process

115 Regulator may accredit assessors

The regulator may, under this Division, accredit persons to conduct assessments.

116 Application for accreditation

(1) An application for accreditation must be made in the manner and form required by the regulator.

(2) The application must include the following information:

(a) the name and residential address of the applicant;

(b) any other evidence of the applicant's identity required by the regulator;

(c) details of the class of high risk work to which the application relates;

(d) evidence that the applicant is qualified to conduct the type of competency assessment in relation to the class of high risk work to which the application relates;

(e) details of any current equivalent accreditation under a corresponding WHS law;

(f) a declaration as to whether or not the applicant has ever been convicted or found guilty of any offence under the Act or these Regulations or under any corresponding WHS law;

(g) details of any conviction or finding of guilt declared under paragraph (f);

(h) 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;

(i) details of any enforceable undertaking declared under paragraph (h);

(j) if the applicant has previously been refused an equivalent accreditation under a corresponding WHS law, a declaration giving details of that refusal;

(k) if the applicant has previously held an equivalent accreditation under a corresponding WHS law, a declaration:

(i) describing any condition imposed on that accreditation; and

(ii) stating whether or not that accreditation had been suspended or cancelled and, if so, whether or not the applicant had been disqualified from applying for any accreditation; and

(iii) giving details of any suspension, cancellation or disqualification.

Note for subregulation (2)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) The application must be accompanied by the relevant fee.

117 Additional information

(1) If an application for accreditation does not contain sufficient information to enable the regulator to make a decision whether or not to grant the accreditation, 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 taken to have been withdrawn.

(4) The regulator may make more than 1 request for additional information under this regulation.

118 Decision on application

(1) Subject to subregulation (3), the regulator must grant an accreditation if satisfied about the matters referred to in subregulation (2).

(2) The regulator must be satisfied that:

(a) the applicant:

(i) is qualified to conduct the competency assessment to which the application relates; and

(ii) is able to conduct the competency assessment to which the application relates competently; and

(iii) is able to ensure compliance with any conditions that will apply to the accreditation; or

(b) the applicant holds a current equivalent accreditation under a corresponding WHS law.

(3) The regulator must refuse to grant an accreditation if satisfied that:

(a) the applicant is disqualified under a corresponding WHS law from holding an equivalent accreditation; 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 accreditation, 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 regulation 117, the regulator is taken to have refused to grant the accreditation applied for.

(6) For the purposes of subregulation (2)(a)(i), an applicant is ***qualified*** to provide the competency assessment if:

(a) the applicant's competencies, skills and knowledge are in accordance with the *Standards for NVR Registered Training Organisations 2011* published by the Commonwealth; and

(b) the applicant holds a current high risk work licence for the class of high risk work to which the competency assessment relates.

Note for regulation 118

A refusal to grant accreditation (including a refusal under subregulation (5)) is a reviewable decision (see regulation 676).

119 Matters to be taken into account

For the purposes of regulation 118(2)(a)(ii) and (iii), the regulator must have regard to all relevant matters, including the following:

(a) any offence under the Act or these Regulations or under a corresponding WHS law of which the applicant has been convicted or found guilty;

(b) any enforceable undertaking the applicant has entered into under the Act or a corresponding WHS law;

(c) in relation to any equivalent accreditation applied for or held by the applicant under the Act or these Regulations or under a corresponding WHS law:

(i) any refusal to grant the accreditation; and

(ii) any condition imposed on the accreditation, if granted; and

(iii) any suspension or cancellation of the accreditation, if granted, including any disqualification from applying for any accreditation;

(d) the applicant's record in relation to any matters arising under the Act or these Regulations or under a corresponding WHS law.

120 Refusal to grant accreditation – process

(1) If the regulator proposes to refuse to grant an accreditation, 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 notice is given), make a submission to the regulator in relation to the proposed refusal.

(2) After the date specified in a notice under subregulation (1), the regulator must:

(a) if the applicant has made a submission in relation to the proposed refusal to grant the accreditation – consider that submission; and

(b) whether or not the applicant has made a submission – decide whether to grant or refuse to grant the accreditation; and

(c) within 14 days after making that decision, give the applicant written notice of the decision, including the reasons for the decision.

Note for regulation 120

A refusal to grant an accreditation is a reviewable decision (see regulation 676).

121 Conditions of accreditation

(1) The regulator may impose any conditions it considers appropriate on an accreditation.

(2) Without limiting subregulation (1), the regulator may impose conditions:

(a) relating to the competency assessments and assessment activities that may be carried out; and

(b) relating to the circumstances in which competency assessments or assessment activities may be carried out; and

(c) requiring the accredited assessor to keep specified information; and

(d) requiring the accredited assessor to give specified information to the regulator.

Notes for regulation 121

1 A person must comply with the conditions of accreditation (see section 45 of the Act).

2 A decision to impose a condition on an accreditation is a reviewable decision (see regulation 676).

122 Duration of accreditation

An accreditation takes effect on the day it is granted and, unless cancelled earlier, expires 3 years after that day.

123 Accreditation document

(1) If the regulator grants an accreditation, it must issue to the applicant an accreditation document in the form determined by the regulator.

(2) An accreditation document must include the following:

(a) the name of the accredited assessor;

(b) the class of high risk work to which the accreditation relates;

(c) any conditions imposed on the accreditation by the regulator;

(d) the date on which the accreditation was granted;

(e) the expiry date of the accreditation.

(3) If an assessor is accredited to conduct a competency assessment in relation to more than 1 class of high risk work, the regulator may issue to the accredited assessor 1 accreditation document in relation to some or all of those classes of high risk work.

(4) If 2 or more of the classes of high risk work referred to in subregulation (3) represent levels of the same type of work, it is sufficient if the accreditation document contains a description of the class of work that represents the highest level.

124 Accreditation document to be available

(1) An accredited assessor must keep the accreditation document available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) An accredited assessor must make the accreditation document available for inspection by any person in relation to whom the assessor is conducting, or is to conduct, a competency assessment.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) Subregulations (1) and (2) do not apply if the accreditation document is not in the accredited assessor's possession because:

(a) it has been returned to the regulator under regulation 126; or

(b) the accreditation assessor has applied for, but has not received, a replacement accreditation document under regulation 127.

Subdivision 3 Amendment of accreditation document

125 Changes to information

(1) An accredited assessor must give the regulator written notice of any change to any material particular in any information given at any time by the assessor to the regulator in relation to the accreditation within 14 days after the assessor becomes aware of the change.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (1) applies whether the information was given in the application for grant or renewal of the accreditation or in any other circumstance.

126 Accredited assessor to return accreditation document

If an accreditation is amended, the accredited assessor must return the accreditation 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.

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

Note for regulation 126

Strict liability applies to each physical element of this offence. See section 12B of the Act.

127 Replacement accreditation document

(1) An accredited assessor must give written notice to the regulator as soon as practicable if the accreditation document is lost, stolen or destroyed.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) If an accreditation document is lost, stolen or destroyed an accredited assessor may apply to the regulator for a replacement accreditation document.

Note for subregulation (2)

An accreditation holder is required to keep the accreditation document available for inspection (see regulation 124).

(3) An application for a replacement accreditation document must be made in the manner and form required by the regulator.

(4) The application must:

(a) include a declaration describing the circumstances in which the original document was lost, stolen or destroyed; and

(b) be accompanied by the relevant fee.

Note for subregulation (4)(a)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(5) The regulator must issue a replacement accreditation document if satisfied that the original document was lost, stolen or destroyed.

(6) If the regulator refuses to issue a replacement accreditation document, it must give the accredited assessor written notice of this decision, including the reasons for the decision, within 14 days after making the decision.

Note for regulation 127

A refusal to issue a replacement accreditation document is a reviewable decision (see regulation 676).

128 Voluntary surrender of accreditation

(1) An accredited assessor may voluntarily surrender the accreditation document to the regulator.

(2) The accreditation expires on the surrender of the accreditation document.

Subdivision 4 Renewal of accreditation

129 Regulator may renew accreditation

The regulator may renew an accreditation on the application of the accredited assessor.

130 Application for renewal

(1) An application for renewal of accreditation must be made in the manner and form required by the regulator.

(2) An application must:

(a) include the information referred to in regulation 116(2); and

(b) be accompanied by the relevant fee.

Note for subregulation (2)(a)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) The application must be made before the expiry of the accreditation.

131 Accreditation continues in force until application is decided

If an accredited assessor applies under regulation 130 for the renewal of accreditation, the accreditation is taken to continue in force from the day it would, apart from this regulation, have expired until the accredited assessor is given notice of the decision on the application.

132 Provisions relating to application

For the purposes of this Division:

(a) regulation 117 applies as if a reference in that regulation to an application for accreditation were a reference to an application to renew an accreditation; and

(b) regulations 118 (except subregulation (5)), 119, 121 and 122 apply as if a reference in those regulations to the grant of an accreditation were a reference to the renewal of an accreditation; and

(c) regulation 120 applies as if a reference in that regulation to a refusal to grant an accreditation were a reference to a refusal to renew an accreditation.

Note for regulation 132

A refusal to renew an accreditation is a reviewable decision (see regulation 676).

Subdivision 5 Suspension and cancellation

133 Regulator may suspend or cancel accreditation

(1) The regulator may, under this Division:

(a) suspend or cancel an accreditation; and

(b) if suspending an accreditation, vary the conditions of the accreditation, including by imposing different or additional conditions.

(2) If the regulator cancels an accreditation, the regulator may disqualify the accredited assessor from applying for a further accreditation for a specified period.

Note for regulation 133

A decision to suspend or cancel an accreditation, to vary the conditions of an accreditation or to disqualify an accredited assessor from applying for a further accreditation is a reviewable decision (see regulation 676).

134 Suspension or cancellation of accreditation

(1) The regulator may suspend or cancel an accreditation if satisfied about one or more of the following:

(a) the accredited assessor is no longer qualified to conduct the competency assessment specified in the assessor's accreditation document;

(b) the accredited assessor is not able to conduct the competency assessment to which the accreditation relates competently;

(c) the accredited assessor has failed to comply with a condition imposed on the accreditation under regulation 121;

(d) the accredited assessor, in the application for the grant or renewal of accreditation 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.

(2) In subregulation (1)(a):

qualified has the same meaning in relation to an accredited assessor as it has in regulation 118 in relation to an applicant for accreditation.

135 Matters to be taken into account

(1) In making a decision under regulation 133, the regulator must have regard to:

(a) any submissions made by the accredited assessor under regulation 136; and

(b) any advice received from a corresponding regulator.

(2) For the purposes of regulation 134(1)(b) and (c), the regulator must have regard to all relevant matters, including the following:

(a) any offence under the Act or these Regulations or under a corresponding WHS law, of which the accredited assessor has been convicted or found guilty;

(b) any enforceable undertaking the accredited assessor has entered into under the Act or a corresponding WHS law;

(c) in relation to any equivalent accreditation applied for or held by the accredited assessor under the Act or these Regulations or under a corresponding WHS law:

(i) any refusal to grant the accreditation; and

(ii) any condition imposed on the accreditation, if granted; and

(iii) any suspension or cancellation of the accreditation, if granted, including any disqualification from applying for any accreditation;

(d) any suspension of a high risk work licence held by the accredited assessor under the Act or these Regulations or under a corresponding WHS law;

(e) the accredited assessor's record in relation to any matters arising under the Act or these Regulations or under a corresponding WHS law.

136 Notice to and submissions by accredited assessor

Before suspending or cancelling an accreditation, the regulator must give the accreditation 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 accreditation holder that the accreditation holder 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.

137 Notice of decision

(1) The regulator must give the accredited assessor written notice of a decision under regulation 134 to suspend or cancel the accreditation within 14 days after making the decision.

(2) The notice must:

(a) state that the accreditation is to be suspended or cancelled; and

(b) if the accreditation 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 accredited assessor is required to undergo retraining or reassessment or take any other action before the suspension ends; and

(iv) whether any variation is to be made to the conditions of accreditation; and

(v) whether or not the accredited assessor is disqualified from obtaining a further accreditation during the suspension; and

(c) if the accreditation is to be cancelled, state:

(i) when the cancellation takes effect; and

(ii) the reasons for the cancellation; and

(iii) whether or not the accredited assessor is disqualified from applying for a further accreditation; and

(d) if the accredited assessor is to be disqualified from obtaining a further accreditation, state:

(i) when the disqualification begins and ends; and

(ii) the reasons for the disqualification; and

(iii) whether or not the accredited assessor is required to undergo retraining or reassessment or take any other action before the disqualification ends; and

(e) state when the accreditation document must be returned to the regulator.

138 Immediate suspension

(1) The regulator may suspend an accreditation on a ground referred to in regulation 134 without giving notice under regulation 136 if satisfied that a person may be exposed to an imminent serious risk to his or her health or safety if the accreditation were not suspended.

(2) If the regulator decides to suspend an accreditation under this regulation:

(a) the regulator must give the accredited assessor written notice of the suspension and the reasons for the suspension; and

(b) the suspension takes effect on the giving of the notice.

(3) The regulator must then:

(a) give notice under regulation 136 within 14 days after giving the notice under subregulation (2); and

(b) make its decision under regulation 134.

(4) If the regulator does not give notice under subregulation (3), the suspension ends at the end of the 14 day period.

(5) If the regulator gives notice under subregulation (3), the accreditation remains suspended until the decision is made under regulation 134.

139 Accredited assessor to return accreditation document

An accredited assessor, on receiving a notice under regulation 137, must return the accreditation document to the regulator in accordance with that notice.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for regulation 139

Strict liability applies to each physical element of this offence. See section 12B of the Act.

140 Regulator to return accreditation document after suspension

The regulator must return the accreditation document to the accredited assessor within 14 days after the suspension ends.

Subdivision 6 Agreements with RTOs

141 Regulator may enter into agreement with RTO

The regulator may enter into an agreement with an RTO to share information to assist the regulator in relation to the accreditation of assessors.

Part 4.6 Demolition work

Division 1 Notice of demolition work

142 Notice of demolition work

(1) Subject to subregulation (4), 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 regulation 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 6 m in height;

(b) demolition work involving load shifting machinery on a suspended floor;

(c) demolition work involving explosives.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Notes for subregulation (1)

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(2) The notice must be given in the manner and form required by the regulator.

(3) Subregulation (4) applies to an emergency service organisation in relation to demolition work carried out or proposed to be carried out by an emergency service worker at the direction of the emergency service organisation responding to an emergency.

(4) An emergency service organisation must give notice under subregulation (1) as soon as practicable (whether before or after the work is carried out).

(5) In this regulation 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.

Division 2 Licensing of demolition work

143 Demolition work required to be licensed

Note for regulation 143

Regulation 143 appears in some corresponding WHS laws but is not required in the Territory.

Part 4.7 General electrical safety in workplaces and energised electrical work

Division 1 Preliminary

144 Meaning of *electrical equipment*

(1) In this Part:

electrical equipment means any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that:

(a) is used for controlling, generating, supplying, transforming or transmitting electricity at a voltage greater than extra-low voltage; or

(b) is operated by electricity at a voltage greater than extra-low voltage; or

(c) 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

(d) 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).

(2) In this Part:

electrical equipment does not include any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that is part of a vehicle that is a motor car or motor cycle if:

(a) the equipment is part of a unit of the vehicle that provides propulsion for the vehicle; or

(b) the electricity source for the equipment is a unit of the vehicle that provides propulsion for the vehicle.

motor car, see section 5(1) of the *Motor Vehicles Act*.

motor cycle, see section 5(1) of the *Motor Vehicles Act*.

145 Meaning of *electrical installation*

(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.

(3) In subregulation (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*

In this Part:

electrical work, see section 4 of the *Electrical Workers and Contractors Act*.

Division 2 General risk management

147 Risk management

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.

Example for regulation 147

Electrical risks associated with the design, construction, installation, protection, maintenance and testing of electrical equipment and electrical installations at a workplace.

Note for regulation 147

WHS (NUL) Act – section 19 (see regulation 9).

Division 3 Electrical equipment and electrical installations

148 Electrical equipment and electrical installations to which this Division applies

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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) For the purposes of this regulation, 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 subregulation (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.

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

Notes for subregulation (2)

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 However, electrical equipment that is unsafe must not be used (see regulation 149).

(3) The person must ensure that a record of any testing carried out under subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) The record of testing:

(a) must specify 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

(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 regulation 150; and

(b) has not been tested.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for regulation 151

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 4 Electrical work on energised electrical equipment

152 Application of Division 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 to which this Division applies

In this Division (except regulations 156, 159 and 160), 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.

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.

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

Note for regulation 154

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Notes for subregulation (1)

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 Regulation 157 allows electrical testing to be carried out on electrical equipment for the purposes of this regulation. Regulation 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

(b) each high-voltage exposed part is earthed after being de-energised.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 156

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

(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 regulation 155; or

(d) there is no reasonable alternative means of carrying out the work.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Example for subregulation (1)(a)

It may be necessary that life-saving equipment remain energised and operating while electrical work is carried out on the equipment.

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) The electrical work that may be carried out under subregulation (1)(a), (b) and (d) may include testing of the energised electrical equipment.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) For the purposes of subregulation (1)(a), the risk assessment must be:

(a) conducted by a competent person; and

(b) recorded.

Note for subregulation (2)

Regulation 12 permits risk assessments to be conducted, in certain circumstances, in relation to a class of hazards, tasks, things or circumstances.

(3) Subregulation (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.

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

Note for regulation 159

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 160

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 subregulation (5), with a safety observer present who has the competence and qualifications specified in subregulation (4).

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) For the purposes of subregulation (1)(b), the safe work method statement must:

(a) identify the electrical work; and

(b) specify 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 subregulation (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 regulation 158(1)(a) that shows that there is no serious risk associated with the proposed work.

162 Record keeping

(1) This regulation applies if a person conducting a business or undertaking prepares:

(a) a risk assessment under regulation 158; or

(b) a safe work method statement under regulation 161.

(2) Subject to subregulation (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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) The person must ensure that, for the period for which the assessment or statement must be kept under this regulation, 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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) For the purposes of subregulation (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 these Regulations has the same meaning as it has in the Act or these Regulations.

(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 subregulation (2).

Division 6 Residual current devices

164 Use of socket outlets in hostile operating environment

(1) This regulation 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.

(2) In a circumstance set out in subregulation (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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) Without limiting subregulation (2), the residual current device must have a tripping current that does not exceed 30 mA if electricity is supplied to the equipment through a socket outlet not exceeding 20 A.

(4) Subregulation (2) does not apply if the supply of electricity to the electrical equipment:

(a) does not exceed 50 V alternating current; or

(b) is direct current; 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 for regulation 164

The use of residual current devices is also regulated under the Electricity Reform Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 – regulations 11 to 15 of the *Electricity Reform (Safety and Technical) Regulations*.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) An electricity supply authority is taken to have complied with this regulation in relation to an overhead or underground electric line if the authority has complied with regulations 11 to 15 of the *Electricity Reform (Safety and Technical) Regulations*.

Part 4.8 Diving work

Division 1 Preliminary

167 Purpose of Part 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 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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.

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

Note for regulation 170

Strict liability applies to each physical element of this offence. See section 12B of the Act.

171 Competence of worker – general diving work – general qualifications

(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 regulation does not apply in relation to incidental diving work or limited diving work.

(3) In subregulation (1):

relevant competencies means the competencies specified in AS/NZS 4005.2: 2000 (Training and certification of recreational divers) or AS/NZS 2815 (Training and certification of occupational divers) that are relevant to the type of general diving work to which subregulation (1) applies.

Note for regulation 171

See section 44 of the Act.

171A Competence of worker – general diving work – additional knowledge and skill

(1) In addition to regulation 171, 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.

Note for subregulation (1)

See section 44 of the Act.

(2) This regulation does not apply in relation to incidental diving work or limited scientific diving work.

172 Competence of worker – incidental diving work

(1) A person must not carry out incidental diving work unless the person:

(a) has the knowledge and skill referred to in regulation 171A; and

(b) has relevant diving experience; and

(c) is accompanied and supervised in the water by a person who has the competencies referred to in regulation 171.

Note for subregulation (1)

See section 44 of the Act.

(2) In this regulation, 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 10 m 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

(1) A person who is not permanently resident in Australia must not carry out limited scientific diving work unless the person has:

(a) the training, qualification or experience referred to in regulation 171A; and

(b) relevant diving experience, including relevant diving experience obtained outside Australia.

Note for subregulation (1)

See section 44 of the Act.

(2) In this regulation, 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 10 m 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

A person appointed under regulation 177 must not perform any function associated with that appointment unless the person has:

(a) the qualification specified in regulation 171; and

(b) experience in the type of diving work to be supervised.

Note for regulation 174

See section 44 of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A person conducting a business or undertaking at a workplace must not direct or allow a person appointed under regulation 177 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 regulation 174.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) A person conducting a business or undertaking must keep the written evidence given to the person:

(a) under subregulation (1) – for at least 1 year after the diving work is carried out; or

(b) under subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 3 Managing risks – general diving work

176 Management of risks to health and safety

(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.

Note for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 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 subregulation (1).

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

177 Appointment of competent person to supervise diving work

A person conducting a business or undertaking at a workplace must appoint one 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.

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

Notes for regulation 177

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 See regulation 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 regulation 177; or

(b) has been prepared by a competent person appointed under regulation 177 on an earlier occasion for a similar dive.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A person conducting a business or undertaking must ensure that a competent person appointed by the person under regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 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;

(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.

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

Note for regulation 180

Strict liability applies to each physical element of this offence. See section 12B of the Act.

181 Use of dive safety log

(1) This regulation 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

(b) a competent person appointed under regulation 177 to supervise the diving work.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) In this regulation, 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 regulation applies if a person conducting a business or undertaking prepares:

(a) a risk assessment under regulation 176; or

(b) a dive plan under regulation 178.

(2) Subject to subregulation (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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) The person must ensure that, for the period for which the assessment or dive plan must be kept under this regulation, 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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) The person must ensure that, for the period for which the assessment or dive plan must be kept under this regulation, a copy is available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 4 High risk diving work

183 Duties of person conducting business or undertaking

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 2299.1:2007 (Occupational diving operations – Standard operational practice):

(a) the fitness of persons carrying out the work;

(b) the competence of persons carrying out the work;

(c) the carrying out of the work.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Notes for regulation 183(b)

See section 44 of the Act.

Note for regulation 183

Strict liability applies to each physical element of this offence. See section 12B of the Act.

184 Duty of worker – competence

A person must not carry out high risk diving work unless the person has the qualifications, knowledge, skills and experience required by AS/NZS 2299.1:2007 (Occupational diving operations – Standard operational practice) for work of the kind to be carried out by the person.

Note for regulation 184

See section 44 of the Act.

Chapter 5 Plant and structures

Part 5.1 General duties for plant and structures

Division 1 Preliminary

185 Application of Part 5.1 to plant

(1) Subject to this regulation, this Part applies to all plant.

(2) Subject to subregulation (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 of Part 5.1 to structures

This Part applies to structures as provided in this Part.

Division 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

(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.

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

Notes for regulation 187

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 A designer also has duties under section 22 of the Act.

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 the 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

(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.

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

Notes for regulation 188

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 A designer also has duties under section 22 of the Act.

189 Guarding

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(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 referred to 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 referred to 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (6)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(6) Despite anything to the contrary in this regulation, 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.

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

Note for subregulation (6)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

192 Warning devices

(1) This regulation 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 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 3 Duties of persons conducting businesses or undertakings that manufacture plant

193 Control of risk

(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 these Regulations;

(b) if the information provided to the manufacturer by the designer of the plant under the Act and these Regulations 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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A manufacturer of plant must ensure that, if it is not possible to inform the designer about the hazard in accordance with subregulation (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 for subregulation (2)

WHS (NUL) Act – section 23 (see regulation 9).

(3) A manufacturer to whom subregulation (1)(c) applies must not manufacture the plant until:

(a) the designer gives the manufacturer the revised information or written instruction under regulation 188; or

(b) the manufacturer eliminates or minimises the risk under subregulation (2).

Note for subregulation (3)

WHS (NUL) Act – section 23 (see regulation 9).

(4) If the designer notifies a manufacturer of plant under regulation 188, the manufacturer may proceed in accordance with the designer's original information.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 section 22(4)(a) and (c) of the Act and regulations 187 and 188; 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 section 22(4)(a) and (c) of the Act and regulation 187; and

(c) if the manufacturer acts in accordance with regulation 193(1)(c), 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 section 22(4)(a) and (c) of the Act and regulation 188.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for regulation 195

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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 section 23(4)(a) and (c) of the Act; and

(ii) the information that would be required to be provided by the designer of the plant to the manufacturer under regulations 187 and 188; 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.

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

Note for regulation 196

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

(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.

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

Note for regulation 197

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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 section 23(4)(a) and (c) of the Act and these Regulations; and

(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.

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

Note for regulation 198

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 subregulation (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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) This regulation 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.

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

Note for regulation 200

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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 regulation 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 these Regulations; 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

202 Duties of persons conducting businesses or undertakings that install, construct or commission structures

(1) This regulation 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 these Regulations; 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 7 General duties of a person conducting a business or undertaking involving the management or control of plant

Note for Division 7

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 definition ***person with management or control of plant at a workplace*** *in regulation 5(1) and section 21 of the Act.*

Subdivision 1 Management of risks

203 Management of risks to health and safety

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.

Note for regulation 203

WHS (NUL) Act – section 21 (see regulation 9).

Subdivision 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 205

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation 39.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 207

Strict liability applies to each physical element of this offence. See section 12B of the Act.

208 Guarding

(1) This regulation 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 referred to 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 referred to 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) Despite anything to the contrary in this regulation, 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

(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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 209

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

212 Warning devices

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 3 Additional control measures for certain plant

Note for Subdivision 3

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 definition ***person with management or control of plant at a workplace*** *in regulation 5(1) and section 21 of the Act.*

214 Powered mobile plant – general control of risk

The person with management or control of powered mobile plant at a workplace must in accordance with Part 3.1, 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 for regulation 214

WHS (NUL) Act – section 21 (see regulation 9).

215 Powered mobile plant – specific control measures

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) Without limiting subregulation (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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation 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 560 kg or a mass of 15 000 kg or more; or

(c) being used for a historical purpose or activity.

(4) In this regulation:

historical purpose or activity, in relation to the use of a tractor, includes an activity ancillary to a historical activity.

Examples for definition ***historical purpose of activity***

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 for regulation 216

Regulations 214 and 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 subregulation (2)(b).

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Note for regulation 218

Regulations 214 and 215 also apply to an industrial lift truck.

219 Plant that lifts or suspends loads

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation 220.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(b) within the safe working limits of the plant.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (6)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (7)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

220 Exception – plant not specifically designed to lift or suspend a person

(1) For the purposes of regulation 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 regulation does not apply to plant used in connection with:

(a) the performance of stunt work; or

(b) the performance of acrobatics; or

(c) theatrical performances.

Note for subregulation (2)

Part 4.4 (except regulation 79) applies to the matters in subregulation (2).

221 Plant used in connection with tree lopping

(1) Regulation 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 climbing a tree; and

(b) the tree lopping is carried out by a person who is a competent person in the use of the harness referred to 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 regulation:

harness means a work positioning harness that is designed and certified, in accordance with AS/NZS 1891.1:2007 (Industrial fall-arrest systems – Harnesses and ancillary equipment), for the purpose of lifting and suspending a person.

222 Industrial robots

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

223 Lasers

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(6) The person must ensure that Class 3B and Class 4 lasers (within the meaning of AS 2397:1993 – Safe use of lasers in the building and construction industry) are not used in construction work.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (6)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

225 Scaffolds

(1) This regulation 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 4 m.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Example for subregulation (5)

Danger tags and other warning signs.

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 subregulation (2).

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Part 5.2 Additional duties relating to registered plant and plant designs

Notes for Part 5.2

*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 definition **person with management or control of plant at a workplace** in regulation 5(1) and section 21 of the Act.*

2 This Part applies in addition to Part 5.1.

*3 In this Part, plant includes a structure (see definition **plant** in regulation 5(1)).*

Division 1 Application of Part 5.2

227 Application of Part 5.2

This Part applies to:

(a) plant that is required to be registered under Part 5.3; or

(b) plant the design of which is required to be registered under Part 5.3.

Division 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, 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

(b) a copy of the information provided to a manufacturer under section 22 of the Act in relation to that plant; and

(c) a copy of the information provided to a manufacturer under regulation 187 in relation to that plant; and

(d) if applicable, a copy of the information provided to a manufacturer under regulation 188 in relation to that plant.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for regulation 228

Strict liability applies to each physical element of this offence. See section 12B of the Act.

229 Record of standards or engineering principles used

(1) If the design of plant is required to be registered under Part 5.3, 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

230 Records to be available for inspection

(1) A designer of plant must ensure that the records made under regulations 228 and 229 are kept available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A designer of plant must ensure that the records made under regulations 228 and 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) A designer of plant must keep the records made under regulations 228 and 229 for the design life of the plant.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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 specified in Schedule 5, Part 1 unless the design of that plant is registered under Part 5.3.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 231

Strict liability applies to each physical element of this offence. See section 12B of the Act.

232 Duty of persons conducting businesses or undertakings that import plant

An importer must not supply plant specified in Schedule 5, Part 1 unless the design of that plant is registered under Part 5.3.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 232

Strict liability applies to each physical element of this offence. See section 12B of the Act.

233 Duty of persons conducting businesses or undertakings that supply plant

A supplier must not supply plant specified in Schedule 5, Part 1 unless the design of that plant is registered under Part 5.3.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 233

Strict liability applies to each physical element of this offence. See section 12B of the Act.

234 Duty of persons conducting businesses or undertakings that commission plant

(1) This regulation 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 specified in Schedule 5, Part 2 for use in a workplace unless that item of plant is registered under Part 5.3.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) Nothing in subregulation (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.

Division 4 Duties of a person conducting a business or undertaking involving the management or control of plant

Subdivision 1 Control measures for registered plant

235 Major inspection of registered mobile cranes and tower cranes

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation.

(4) In this regulation, a ***competent person*** is a person who:

(a) complies with both of the following:

(i) has acquired through training, qualification or experience the knowledge and skills to carry out a major inspection of the plant; and

(ii) is, or is eligible to be:

(A) registered on the National Professional Engineers Register administered by Engineers Australia; or

(B) a member of Engineers Australia with the status of Chartered Professional Engineer; 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 subregulation (4)(b) if the regulator considers that exceptional circumstances exist.

(6) In this regulation:

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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The person must ensure that there is fixed, in a prominent place in the lift, a sign that states the safe working load specified in the design of the lift.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

237 Records of plant

(1) This regulation applies in relation to plant that is required to be registered under Part 5.3.

(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 subregulation (3).

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Subdivision 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation 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 these Regulations (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 subregulation (3), the new date is the date from which future annual inspections of the amusement device or passenger ropeway are determined.

(5) In this regulation, a ***competent person*** is a person who:

(a) in the case of an inflatable device (continuously blown) with a platform height less than 9 metres – has acquired through training, qualification or experience the knowledge and skills to inspect the device; or

(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; and

(ii) is, or is eligible to be:

(A) registered on the National Professional Engineers Register administered by Engineers Australia; or

(B) a member of Engineers Australia with the status of Chartered Professional Engineer; or

(c) in the case of any amusement device or passenger ropeway – 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 subregulation (5)(c) 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 regulation.

242 Logbook and manuals for amusement devices

(1) The person with management or control of an amusement device at a workplace, in addition to complying with the record-keeping requirements of regulation 237, must ensure that:

(a) details of the erection or storage of the amusement device (including the date of erection) are recorded in the logbook for the amusement device on each occasion on which it is erected or stored; and

(b) the logbook 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 logbook for the amusement device in which details concerning erection, storage, operation and maintenance of the amusement device are recorded; and

(b) the operating and maintenance manuals for the amusement device.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Note for regulation 242

Regulation 237(5) requires the person with management or control of the amusement device to give the logbook and maintenance records to the person being supplied with the plant.

Part 5.3 Registration of plant designs and items of plant

Note for Part 5.3

*In this Part, plant includes a structure (see definition **plant** in regulation 5(1)).*

Division 1 Plant designs to be registered

243 Plant design to be registered

The design of an item of plant specified in Schedule 5, Part 1 must be registered under this Part.

Note for regulation 243

See section 42 of the Act.

244 Altered plant designs to be registered

(1) If the design of an item of plant specified in Schedule 5, Part 1 that is registered under this Part is altered, the altered design must be registered under this Part.

Note for subregulation (1)

See section 42 of the Act.

(2) In this regulation a reference to the alteration of a design is a reference to an alteration that may affect health or safety.

(3) This regulation 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.

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 referred to in subregulation (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 2 Items of plant to be registered

246 Items of plant to be registered

(1) An item of plant specified in Schedule 5, Part 2 must be registered under this Part.

Note for subregulation (1)

See section 42 of the Act.

(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 3 Registration process for plant designs

248 Application of Division 3

This Division applies to the registration of a design of an item of plant specified in Schedule 5, Part 1.

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) An application for registration of the design of an item of plant must be made in the manner and form required by the regulator.

(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 section 22 of the Act in relation to the design; and

(ii) specifying the published technical standards and engineering principles used in the design;

(f) a design verification statement that accords with regulation 251;

(g) representational drawings of the design;

(h) a declaration that the applicant does not hold an equivalent registration under a corresponding WHS law.

Note for subregulation (2)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) Any drawings or other documents provided with the application must be capable of being kept in an electronic form.

(4) The application must be accompanied by the relevant fee.

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 specified 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 subregulation (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.

253 Duty of design verifier

A design verifier of the design of an item of plant specified in Schedule 5, Part 1 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.

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

Note for regulation 253

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 specified in Schedule 5, Part 1 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.

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

Note for regulation 254

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

(2) A request for additional information must:

(a) specify the date (not being 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 taken to have been withdrawn.

(4) The regulator may make more than 1 request for additional information under this regulation.

256 Decision on application

(1) Subject to subregulation (3), the regulator must grant the registration if satisfied about the matters referred to in subregulation (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 Territory; or

(ii) resides outside the Territory 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 Territory; or

(ii) is located outside the Territory 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.

(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 regulation 255, the regulator is taken to have refused to grant the registration applied for.

Note for regulation 256

A refusal to grant a registration (including under subregulation (5)) is a reviewable decision (see regulation 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 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 subregulation (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 for regulation 257

A refusal to grant a registration is a reviewable decision (see regulation 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 subregulation (1), the regulator may impose conditions in relation to one 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.

Notes for regulation 258

1 A person must comply with the conditions of registration (see section 45 of the Act).

2 A decision to impose a condition on a registration is a reviewable decision (see regulation 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 regulation 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.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) The manufacturer, supplier or importer of plant to whom a plant design registration number is given under this regulation 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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (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 regulation 287; or

(b) the registration holder has applied for, but has not received, a replacement registration document under regulation 288.

263 Disclosure of design information

(1) Subject to this regulation, 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 4 Registration process for an item of plant

264 Application of Division 4

This Division applies in relation to the registration of an item of plant specified in Schedule 5, Part 2 as requiring registration.

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) An application for registration of an item of plant must be made in the manner and form required by the regulator.

(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;

(j) a declaration that the applicant does not hold an equivalent registration under a corresponding WHS law.

Note for subregulation (2)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) The application must be accompanied by the relevant fee.

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) specify the date (not being 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 taken to have been withdrawn.

(4) The regulator may make more than 1 request for additional information under this regulation.

269 Decision on application

(1) Subject to subregulation (3), the regulator must grant the registration if satisfied about the matters referred to in subregulation (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 Territory; or

(ii) located outside the Territory and circumstances exist that justify the grant of the registration;

(d) if the applicant is an individual, the applicant:

(i) resides in the Territory; or

(ii) resides outside the Territory 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 Territory; or

(ii) is located outside the Territory 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

(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 regulation 268, the regulator is taken to have refused to grant the registration applied for.

Note for regulation 269

A refusal to grant a registration (including under subregulation (5)) is a reviewable decision (see regulation 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 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 subregulation (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 for regulation 270

A refusal to grant a registration is a reviewable decision (see regulation 676).

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 subregulation (1), the regulator may impose conditions in relation to one 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.

Notes for regulation 271

1 A person must comply with the conditions of registration (see section 45 of the Act).

2 A decision to impose a condition on a registration is a reviewable decision (see regulation 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 regulation 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 subregulation (2).

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (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 regulation 287; or

(b) the registration holder has applied for, but has not received, a replacement registration document under regulation 288.

276 Regulator may renew registration

The regulator may, on application, renew the registration of an item of plant.

277 Application for renewal

(1) An application for renewal of a registration of an item of plant must be made in the manner and form required by the regulator.

(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;

(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 regulation 213.

Note for subregulation (2)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) The application must be accompanied by the relevant fee.

(4) 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 regulation 277 for the renewal of a registration, the registration is taken to continue in force from the day it would, apart from this regulation, 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 regulation 213.

(2) For the purposes of this Division:

(a) regulation 268 applies as if a reference in that regulation to an application for registration were a reference to an application to renew registration; and

(b) regulations 269 (except subregulation (5)), 271 and 272 apply as if a reference in those regulations to the grant of a registration were a reference to the renewal of a registration; and

(c) regulation 270 applies as if a reference in that regulation to a refusal to grant a registration were a reference to a refusal to renew a registration.

Note for regulation 279

A refusal to renew a registration is a reviewable decision (see regulation 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 regulation.

(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.

(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 Work Health Court makes a decision on the review.

(6) The registration continues to have effect under this regulation even if its expiry date passes.

Division 5 Changes to registration and registration documents

281 Application of Division

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 referred to in regulation 250, 255(1), 266 or 268(1) within 14 days after the registration holder becomes aware of the change.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (1) applies whether the information was given in the application for grant of the registration or in any other circumstance.

(3) Without limiting subregulation (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 specified period (being not less than 28 days from the date of the notice).

(3) After the date specified in a notice under subregulation (2), the regulator must:

(a) if the registration holder has made a submission in relation to the proposed amendment – consider that submission; and

(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) specifies 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 for regulation 283

A decision to amend a registration is a reviewable decision (see regulation 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

(b) advising the registration holder that the registration holder 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 subregulation (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 regulation.

(4) If the regulator makes the amendment applied for, the notice under subregulation (3)(c) must specify 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 subregulation (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 for regulation 284

A refusal to make the amendment applied for, or a decision to make a different amendment, is a reviewable decision (see regulation 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.

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 specified in the request.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for regulation 287

Strict liability applies to each physical element of this offence. See section 12B of the Act.

288 Replacement registration document

(1) A registration holder must give written notice to 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) If a registration document is lost, stolen or destroyed, the registration holder may apply to the regulator for a replacement document.

Note for subregulation (2)

A registration holder is required to keep a registration document available for inspection (see regulation 275).

(3) An application for a replacement registration document must be made in the manner and form required by the regulator.

(4) The application must:

(a) include a declaration describing the circumstances in which the original document was lost, stolen or destroyed; and

(b) be accompanied by the relevant fee.

Note for subregulation (4)(a)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(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 for regulation 288

A refusal to issue a replacement registration document is a reviewable decision (see regulation 676).

Division 6 Cancellation of registration

288A Application of Division

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

(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 for regulation 288B

A decision to cancel a registration is a reviewable decision (see regulation 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 specified period (being not less than 28 days from the date of the notice).

(2) After the date specified in a notice under subregulation (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

(iii) specifies the date on which the cancellation, if any, takes effect.

288D Registration holder to return registration document

A registration holder who receives a cancellation notice under regulation 288C must return the registration document to the regulator at the written request of the regulator within the time specified in the request.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for regulation 288D

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Chapter 6 Construction work

Part 6.1 Preliminary

289 Meaning of *construction work*

(1) In this Chapter:

construction work 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.

(2) Without limiting subregulation (1), ***construction work*** includes the following:

(a) any installation or testing carried out in connection with an activity referred to in subregulation (1);

(b) the removal from the workplace of any product or waste resulting from demolition;

(c) the prefabrication or testing of elements, at a place specifically established for the construction work, for use in construction work;

(d) the assembly of prefabricated elements to form a structure, or the disassembly of prefabricated elements forming part of a structure;

(e) the installation, testing or maintenance of an essential service in relation to a structure;

(f) any work connected with an excavation;

(g) any work connected with any preparatory work or site preparation (including landscaping as part of site preparation) carried out in connection with an activity referred to in subregulation (1);

(h) an activity referred to in subregulation (1), that is carried out on, under or near water, including work on buoys and obstructions to navigation.

(3) In this Chapter, ***construction work*** does not include any of the following:

(a) the manufacture of plant;

(b) the prefabrication of elements, other than at a place specifically established for the construction work, for use in construction work;

(c) the construction or assembly of a structure that once constructed or assembled is intended to be transported to another place;

(d) testing, maintenance or repair work of a minor nature carried out in connection with a structure;

(e) mining or the exploration for or extraction of minerals.

290 Meaning of *structure*

(1) In this Chapter:

structure has the same meaning as it has in the Act.

*Examples for definition **structure***

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.

5 An airfield.

6 A dock, harbour, channel, bridge, viaduct, lagoon or dam.

7 A sewer or sewerage or drainage works.

(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 for regulation 290

This Chapter does not apply to the manufacture of plant (see regulation 289(3)(a)).

291 Meaning of *high risk construction work*

In this Chapter:

high risk construction work means construction work that:

(a) involves a risk of a person falling more than 2 m; or

(b) is carried out on a telecommunication tower; or

(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 1.5 m; 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, 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

(q) is carried out in or near water or other liquid that involves a risk of drowning; or

(r) involves diving work.

292 Meaning of *construction project*

In this Chapter, a ***construction project*** is a project that involves construction work where the cost of the construction work is $250 000 or more.

293 Meaning of *principal contractor*

(1) In this Chapter, a person conducting a business or undertaking that commissions a construction project is, subject to this regulation, the ***principal contractor*** for the project.

(2) If the person referred to in subregulation (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 for regulation 293

A person with management or control of a workplace must comply with section 20 of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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 specifies 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 referred to in subregulation (1) in relation to that design.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 296

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Part 6.3 Duties of person conducting business or undertaking

Note for Part 6.3

As a principal contractor is a person conducting a business or undertaking, this Part also applies to a principal contractor.

Division 1 General

297 Management of risks to health and safety

A person conducting a business or undertaking must manage risks associated with the carrying out of construction work in accordance with Part 3.1.

Note for regulation 297

WHS (NUL) Act – section 19 (see regulation 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) In complying with subregulation (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

(c) to the extent that unauthorised access to the workplace cannot be prevented – how to isolate hazards within the workplace.

Example for subregulation (2)(b)

The proximity of the workplace to places frequented by children, including schools, parks and shopping precincts.

Division 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A safe work method statement must:

(a) identify the work that is high risk construction work; and

(b) specify 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.

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(b) resumed only in accordance with the statement.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 301

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 38.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for regulation 302

Strict liability applies to each physical element of this offence. See section 12B of the Act.

303 Safe work method statement must be kept

(1) Subject to subregulation (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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The person must ensure that for the period for which the statement must be kept under this regulation, 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 3 Excavation work

304 Excavation work – underground essential services information

(1) This regulation 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 referred to in subregulation (1) before directing or allowing the excavation work to commence.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The person with management or control of the workplace must provide the information obtained under subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) The person with management or control of the workplace and any person conducting a business or undertaking who is given information under subregulation (3) must have regard to the information referred to in subregulation (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.

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

Notes for subregulation (4)

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 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 referred to in subregulation (2) is available for inspection under the Act for the period specified in subregulation (6).

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation:

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

(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.

Note for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 9).

(2) The risks this regulation 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;

(d) a person working in an excavation being exposed to an airborne contaminant.

(3) In complying with subregulation (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 1.5 m 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) In complying with subregulation (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 one or more of the following:

(a) shoring by shielding or other comparable means;

(b) benching;

(c) battering.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) Subregulation (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 subregulation (4):

(a) may be subject to a condition that specified natural occurrences may create a risk of collapse; and

(b) must state the period of time to which the advice applies.

Part 6.4 Additional duties of principal contractor

307 Application of Part 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.

Note for regulation 307

As a principal contractor has management or control of a workplace, the principal contractor is also subject to duties imposed by the Act and these Regulations 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.

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

Note for regulation 308

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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, cooperation and the coordination of activities in relation to compliance with their duties under the Act and these Regulations;

(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.

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 regulation 313.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for regulation 310

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Notes for regulation 312

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 The WHS management plan contains arrangements for cooperation between persons conducting a business or undertaking at the construction project workplace, including in relation to the preparation of safe work method statements (see regulation 309(2)(b) and (e)).

313 Copy of WHS management plan must be kept

(1) Subject to subregulation (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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The person must ensure that, for the period for which the WHS management plan must be kept under this regulation, 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) The person must ensure that for the period for which the WHS management plan must be kept under this regulation, a copy is available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) In this regulation:

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) Part 3.2, Division 2;

(b) Part 3.2, Division 3;

(c) Part 3.2, Division 4;

(d) Part 3.2, Division 5;

(e) Part 3.2, Division 7;

(f) Part 3.2, Division 8;

(g) Part 3.2, Division 9;

(h) Part 3.2, Division 10;

(i) Part 4.4.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Notes for regulation 314

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 All persons conducting a business or undertaking at the construction project workplace have these same duties (see Part 3.2 of these Regulations and section 19 of the Act). Section 16 of the Act provides for situations in which more than 1 person has the same duty.

315 Further health and safety duties – specific risks

The principal contractor for a construction project must in accordance with Part 3.1 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 for regulation 315

WHS (NUL) Act – section 20 (see regulation 9).

Part 6.5 General construction induction training

Division 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.

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

Note for regulation 316

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 2), a reference to a general construction induction training card includes a reference to a similar card issued under a corresponding WHS law.

(2) Subregulation (1) does not apply to a card that is cancelled in the corresponding jurisdiction.

Division 2 General construction induction training cards

319 Issue of card

(1) A person who has successfully completed general construction induction training in the Territory may apply to the regulator for a general construction induction training card.

(2) The application must be made in the manner and form required by the regulator.

(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.

(4) The application must be accompanied by the relevant fee.

(5) 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 referred to in subregulation (3)(b)(ii), at any time after completion of the general construction induction training.

(6) The regulator must issue a general construction induction training card to the applicant if:

(a) the application has been made in accordance with this regulation; and

(b) the regulator is satisfied that the applicant has successfully completed general construction induction training.

(7) The regulator must make a decision on the application as soon as practicable.

(8) 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) the State in which the card was issued; 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 for subregulation (1)

A card holder is required to keep the card available for inspection under regulation 326.

(2) An application for a replacement general construction induction training card must be made in the manner and form required by the regulator.

(3) The application must:

(a) include a declaration about the circumstances in which the card was lost, stolen or destroyed; and

(b) be accompanied by the relevant fee.

Note for subregulation (3)(a)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(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 for regulation 322

A decision to refuse to issue or replace a general construction induction training card is a reviewable decision (see regulation 676).

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 for regulation 323

A decision to cancel a general construction induction training card is a reviewable decision (see regulation 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.

325 RTO may enter agreement to issue cards

(1) The regulator may enter into an agreement with an RTO that empowers the RTO to exercise the functions and powers of the regulator under regulations 319, 321 and 322, with any necessary alterations.

(2) If an RTO with whom the regulator has entered an agreement under this regulation exercises functions and powers of the regulator in accordance with the agreement, the exercise of those functions and powers has the same effect as if they had been

exercised by the regulator.

(3) Without limiting subregulation (2):

(a) a decision of an RTO in exercising a function or power of the regulator in accordance with the agreement is taken to be a decision of the regulator; and

(b) a general construction induction training card issued by the RTO is taken to have been issued by the regulator.

(4) Nothing in an agreement under this regulation prevents the regulator from exercising its functions and powers under this Division.

Division 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 regulation 319(5), 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A card holder, on receiving a cancellation notice under regulation 324(2), must return the card in accordance with the notice.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) Subregulation (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 regulation 321.

327 Alteration of general construction induction training card

(1) A person who holds a general construction induction training card must not intentionally or recklessly alter the card.

(2) Section 12B of the Act does not apply to an offence against subregulation (1).

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Chapter 7 Hazardous chemicals

Part 7.1 Hazardous chemicals

Note for Part 7.1

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 1 Application of Part 7.1

328 Application of Part 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 also applies to the handling or storage of dangerous goods (as defined in, and classified under, the ADG Code) listed in table 328, column 2, other than at a workplace, if the quantity of the dangerous goods is more than the relevant threshold quantity listed in column 3 of the table.

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 – 500 L (water capacity)
2	Dangerous goods Class 3	
	Packing Group 1	100 L
	Packing Group 2	1 000L
3	C1 combustible liquids	50 000 L

(2) This Part does not apply in relation to a pipeline that is regulated under the *Energy Pipelines Act*.

(3) This Part does not apply in relation to hazardous chemicals and explosives being transported by road, rail, sea or air if the transport is regulated under any of the following:

(a) the *Dangerous Goods Act*;

(b) the *Transport of Dangerous Goods by Road and Rail (National Uniform Legislation) Act*;

(c) *Radioactive Ores and Concentrates (Packaging and Transport) Act*;

(d) *Marine Act*;

(d) *Poisons and Dangerous Drugs Regulations*.

(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 25 kg or 25 L;

(d) hazardous chemicals in portable fire fighting or medical equipment for use in a workplace;

(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 regulations and Schedule 7, does not apply to substances, mixtures or articles categorised only as explosives under the GHS:

(a) regulation 329;

(b) regulation 330;

(c) regulation 339;

(d) regulation 344;

(e) regulation 345.

(6) This Part does not apply to the following:

(a) food and beverages within the meaning of the Food Standards Australia New Zealand Food Standards Code that are in a package and form intended for human consumption;

(b) tobacco or products made of tobacco;

(c) therapeutic goods within the meaning of the *Therapeutic Goods Act 1989* (Cth) at the point of intentional intake by or administration to humans;

(d) veterinary chemical products within the meaning of the Agvet Code at the point of intentional administration to animals.

(7) In subregulation (6)(d):

Agvet Code means the Agricultural and Veterinary Chemicals Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth).

Division 2 Obligations relating to safety data sheets and other matters

Subdivision 1 Obligations of manufacturers and importers

Notes for Subdivision 1

1 A manufacturer or importer of hazardous chemicals may also be a person conducting a business or undertaking at a workplace.

2 A manufacturer or importer is defined in section 23 or 24 of the Act 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

(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 1.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 329

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) The safety data sheet must comply with Schedule 7, clause 1 unless regulation 331 applies.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) Subregulations (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.

331 Safety data sheets – research chemical, waste product or sample for analysis

(1) This regulation 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, clause 1.

(2) The manufacturer or importer must prepare a safety data sheet for the hazardous chemical that complies with Schedule 7, clause 2.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

332 Emergency disclosure of chemical identities to registered medical practitioner

(1) This regulation 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

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 333

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 2, as soon as practicable after manufacturing or importing the hazardous chemical.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 334

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A hazardous chemical is ***correctly labelled*** if the selection and use of label elements is in accordance with the GHS and it complies with Schedule 9, Part 3.

(3) This regulation 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 2011 published by the Commonwealth, as in force or remade from time to time; and

(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 regulation does not apply to hazardous chemicals in transit.

(5) This regulation does not apply to a hazardous chemical that:

(a) is therapeutic goods within the meaning of the *Therapeutic Goods Act 1989* (Cth); and

(b) is in a form intended for human consumption, for administration to or by a person or use by a person for therapeutic purposes; and

(c) is labelled in accordance with that Act or an order made under that Act.

(6) This regulation does not apply to cosmetics and toiletries.

Subdivision 2 Obligations of suppliers

Notes for Subdivision 2

1 A supplier of hazardous chemicals may also be a person conducting a business or undertaking at a workplace.

2 A supplier is defined in section 25 of the Act as a person who conducts a business or undertaking of supplying.

3 An operator of a major hazard facility is required to notify certain quantities of hazardous chemicals under Part 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.

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

Note for regulation 336

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Examples for regulation 336

1 Decanting fuel into a fuel container.

2 Refuelling a car.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

338 Supplier labelling hazardous chemicals

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 regulation 335.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for regulation 338

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 for 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) This regulation 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 for regulation 339

A manufacturer or importer is required to prepare a safety data sheet under regulation 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 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 regulation 384; or

(ii) the regulator has granted an exemption under Part 11.2 to the person to use, handle or store the substance.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) The supplier of a restricted carcinogen referred to in an item in Schedule 10, table 10.2, 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 regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) A supplier under subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Subdivision 3 Obligations of persons conducting businesses or undertakings

341 Labelling hazardous chemicals – general requirement

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 regulation 335.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 341

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 335 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation 335 while the container contains the hazardous chemical.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) This regulation 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.

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.

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

Note for regulation 343

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 these Regulations 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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 for 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.

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

Note for regulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) Subregulations (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 subregulation (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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (6)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 330; 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.

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

Notes for regulation 345

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 330(3)(b)).

Division 3 Register and manifest of hazardous chemicals

Subdivision 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) This regulation 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 regulation 344.

Note for subregulation (4)(b)

See regulation 344(4).

Subdivision 2 Manifest of Schedule 11 hazardous chemicals

Note for Subdivision 2

Regulation 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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A manifest of Schedule 11 hazardous chemicals must comply with Schedule 12.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) The notice under subregulation (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 subregulation (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;

(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 regulation 347;

(f) in the case of a notice under subregulation (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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) The notice under subregulation (4) must include the information referred to in subregulation (3)(a), (b) and (d).

(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.

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

Note for subregulation (6)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) An outer warning placard must comply with Schedule 13.

(3) This regulation 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A placard must comply with Schedule 13.

(3) This regulation 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

(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.

Division 5 Control of risk – obligations of persons conducting businesses or undertakings

Subdivision 1 General obligations relating to management of risk

351 Management of risks to health or safety

(1) A person conducting a business or undertaking must manage, in accordance with Part 3.1, risks to health and safety associated with using, handling, generating or storing a hazardous chemical at a workplace.

Note for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 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.

352 Review of control measures

In addition to the circumstances in regulation 38, 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) following 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 6 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 his or her 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 regulation 50 determines that the airborne concentration of the hazardous chemical at the workplace exceeds the relevant exposure standard;

(d) at least once every 5 years.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 352

Strict liability applies to each physical element of this offence. See section 12B of the Act.

353 Safety signs

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation:

safety sign does not include a placard.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Examples for subregulation (3)

Personal use products:

1 cosmetics

2 face washer.

(4) Subregulation (3) does not apply to the use of a hazardous chemical for agricultural purposes when used in accordance with *Agricultural and Veterinary Chemicals (Northern Territory) Act*.

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.

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

Note for regulation 355

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) This regulation 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.

Subdivision 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) In subregulation (2):

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.

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

Note for regulation 358

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Subdivision 3 Emergency plans and safety equipment

359 Fire protection and fire fighting 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 fire fighting 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 fire fighting equipment is compatible with fire fighting equipment used by the primary emergency service organisation;

(c) the fire protection and fire fighting 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) If a part of the fire protection and fire fighting 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The person must ensure that the fire protection and fire fighting equipment is returned to full operation as soon as practicable.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Notes for regulation 360

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 A person conducting a business or undertaking must comply with Part 3.2, Division 4.

361 Emergency plans

(1) This regulation 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 Part 3.2, Division 4 for the workplace to the primary emergency service organisation.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

362 Safety equipment

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Subdivision 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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Example for subregulation (2)

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

(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.

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

Note for regulation 364

Strict liability applies to each physical element of this offence. See section 12B of the Act.

365 Stopping use and disposing of handling systems

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Notes for regulation 365

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 For correctly labelling hazardous chemicals, see Division 2, Subdivision 3.

366 Stopping use of underground storage and handling systems

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

367 Notification of abandoned tank

(1) This regulation 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) In this regulation:

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 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) and either:

(i) valid techniques are available to detect the effect on the worker's health; or

(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.

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

Notes for regulation 368

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 The biological exposure standard is published by Safe Work Australia.

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.

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

Note for regulation 369

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 368 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.

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

Note for regulation 370

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 368 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 368.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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.

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

Note for regulation 373

Strict liability applies to each physical element of this offence. See section 12B of the Act.

374 Duty to obtain health monitoring report

(1) A person conducting a business or undertaking who commissions health monitoring referred to in regulation 368 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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;

(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.

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

Note for regulation 375

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

(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.

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

Note for regulation 376

Strict liability applies to each physical element of this offence. See section 12B of the Act.

377 Duty to give health monitoring report to relevant persons conducting businesses or undertakings

The person who commissioned health monitoring for a worker under regulation 368 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.

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

Note for regulation 377

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

(b) for at least 30 years after the record is made.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) Subregulation (2) does not apply if the record is disclosed under regulation 376 or 377 or to a person who must keep the record confidential under a duty of professional confidentiality.

Division 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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation 39.

Note for regulation 379

In addition, section 19(3)(f) of the Act requires the provision of information, training, instruction and supervision.

Division 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

(b) the regulator has authorised the use, handling or storage of the prohibited carcinogen under regulation 384.

Note for regulation 380

See section 43 of the Act.

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 regulation 384.

Note for regulation 381

See section 43 of the Act.

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.

(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

(b) for disposal purposes; or

(c) for genuine research and analysis.

Note for regulation 382

See section 43 of the Act.

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 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;

(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 regulation 383, the regulator may grant an authorisation to use, handle or store a prohibited carcinogen or restricted carcinogen under this regulation.

(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 these Regulations.

(5) The regulator must refuse to authorise the use, handling or storage of the carcinogen for a use not referred to in this regulation.

Note for regulation 384

A decision to refuse an authorisation is a reviewable decision (see regulation 676).

385 Changes to information in application to be reported

A person who applies under regulation 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.

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

Note for regulation 385

Strict liability applies to each physical element of this offence. See section 12B of the Act.

386 Regulator may cancel authorisation

The regulator may cancel an authorisation to use, handle or store a prohibited carcinogen or restricted carcinogen given under regulation 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 for regulation 386

A decision to cancel an authorisation is a reviewable decision (see regulation 676).

387 Statement of exposure to be given to workers

(1) This regulation applies if:

(a) a person conducting a business or undertaking at a workplace is authorised under regulation 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.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

388 Records to be kept

(1) This regulation applies if a person conducting a business or undertaking at a workplace is authorised under regulation 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

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Example for subregulation (1)

Risks associated with the testing, installation, commissioning, operation, maintenance and decommissioning of the pipeline.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

390 Pipeline builder's duties

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

391 Management of risks to health and safety by pipeline operator

(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, risks to health and safety associated with the transfer of the hazardous chemicals through the pipeline.

Note for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 9).

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Part 7.2 Lead

Note for Part 7.2

In workplaces where lead processes are carried out, this Part applies in addition to Part 7.1.

Division 1 Lead process

392 Meaning of *lead process*

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;

(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 m^2 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;

(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 regulation 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 for subregulation (2)

A decision that a process is a lead process is a reviewable decision (see regulation 676).

(3) The regulator must, within 14 days after a decision is made under subregulation (1), give written notice of the decision to the person conducting a business or undertaking at the workplace.

394 Meaning of *lead risk work*

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 – 10 µg/dL (0.48 µmol/L); or

(b) in any other case – 30 µg/dL (1.45 µmol/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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 4 of this Part.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 4 of this Part.

Division 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.

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

Note for regulation 396

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

(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 reused 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 reused for lead process work.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Example for subregulation (1)

Work boots.

(2) The person must ensure that a sealed container referred to in subregulation (1) is decontaminated before being removed from the lead process area.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Notes for subregulation (2)

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 Regulation 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 regulation; or

(b) disposed of.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 415;

(b) the person obtains a health monitoring report for a worker under Division 4 that contains:

(i) test results that indicate that the worker has reached or exceeded the relevant blood lead level for that worker under regulation 415; and

(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; and

(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;

(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 these Regulations indicate that a review is necessary;

(g) a health and safety representative requests a review under subregulation (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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Examples for subregulation (1)(c)

1 Results of any monitoring.

2 A notifiable incident occurs because of the risk.

(2) Without limiting subregulation (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 subregulation (1)(a), (b), (c), (d), (e) or (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 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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;

(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 subregulation (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 that the work is lead risk work.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A notice under this regulation must state the kind of lead process being carried out that includes the lead risk work.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) Subregulation (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 subregulation (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 regulation 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

406 Duty to ensure that appropriate health monitoring is provided

Subject to regulation 407, a person conducting a business or undertaking must ensure that health monitoring of a worker referred to in regulation 405 includes health monitoring of a type referred to in an item in Schedule 14, table 14.2 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.

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

Note for regulation 406

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 30 µg/dL (1.45 µmol/L) – 6 months after the last biological monitoring of the worker; or

(ii) if the last monitoring shows a blood lead level of 30 µg/dL (1.45 µmol/L) or more but less than 40 µg/dL (1.93 µmol/L) – 3 months after the last biological monitoring of the worker; or

(iii) if the last monitoring shows a blood lead level of 40 µg/dL (1.93 µmol/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 10 µg/dL (0.48 µmol/L) – 3 months after the last biological monitoring of the worker; or

(ii) if the last monitoring shows a blood lead level of 10 µg/dL (0.48 µmol/L) or more – 6 weeks after the last biological monitoring of the worker.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 subregulation (3) within 14 days after making the determination.

(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 subregulation (4).

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Note for regulation 407

A determination of a different frequency for biological monitoring is a reviewable decision (see regulation 676).

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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.

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

Note for regulation 410

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation 415;

(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;

(k) whether medical counselling is required for the worker in relation to the work that triggered the requirement for health monitoring.

Note for subregulation (2)(j)

The duty under regulation 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.

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.

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

Note for regulation 412

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 415; 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

(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.

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

Note for regulation 413

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 414

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 – 50 µg/dL (2.42 µmol/L); or

(ii) for females of reproductive capacity – 20 µg/dL (0.97 µmol/L); or

(iii) for females who are pregnant or breastfeeding – 15 µg/dL (0.72 µmol/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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) The person must notify the regulator as soon as practicable if a worker is removed from carrying out lead risk work under subregulation (1).

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

416 Duty to ensure medical examination if worker removed from lead risk work

(1) This regulation applies if a worker is removed from carrying out lead risk work under regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

417 Return to lead risk work after removal

(1) This regulation applies if:

(a) a worker is removed from carrying out lead risk work under regulation 415; 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.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 – 40 µg/dL (1.93 µmol/L); or

(ii) for females of reproductive capacity – 10 µg/dL (0.48 µmol/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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) Subregulation (2) does not apply if the record is disclosed under regulation 412, 413 or 414 or to a person who must keep the record confidential under a duty of professional confidentiality.

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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, or direct or allow a worker to carry out, work involving asbestos.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) In this regulation, work ***involves*** asbestos if the work involves manufacturing, supplying, transporting, storing, removing, using, installing, handling, treating, disposing of or disturbing asbestos or ACM.

(3) Subregulation (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 these Regulations;

(c) maintenance of, or service work on, non-friable asbestos or ACM, fixed or installed before 31 December 2003, in accordance with these Regulations;

(d) removal or disposal of asbestos or ACM, including demolition, in accordance with these Regulations;

(e) the transport and disposal of asbestos or asbestos waste in accordance with the *Waste Management and Pollution Control Act*;

(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 these Regulations 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 these Regulations.

(4) Subregulation (1) does not apply if the regulator approves the method adopted for managing risk associated with asbestos.

(5) Subregulation (1) does not apply to the following:

(a) soil that a competent person 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);

(b) naturally occurring asbestos managed in accordance with an asbestos management plan prepared under regulation 432.

Part 8.2 General duty

420 Exposure to airborne asbestos at workplace

(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 not reasonably practicable to eliminate exposure to airborne asbestos – exposure is minimised so far as is reasonably practicable.

Note for subregulation (1)

WHS (NUL) Act – section 19 (see regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) Subregulations (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 regulation 477; and

(b) in which negative pressure is used in accordance with that regulation.

Part 8.3 Management of asbestos and associated risks

421 Application of Part 8.3

(1) This Part does not apply to naturally occurring asbestos.

(2) Regulations 425, 426, 427, 428, 429 and 430 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 competent person.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A person with management or control of a workplace must:

(a) if material at the workplace cannot be identified but a competent person 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.

(3) Subregulation (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.

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

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 422 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.

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

Note for regulation 424

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The asbestos register must:

(a) record any asbestos or ACM identified at the workplace under regulation 422, 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) the location, type and condition of the asbestos or ACM; or

(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.

(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 subregulation (6), this regulation applies to buildings whenever constructed.

(6) This regulation 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

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 regulation 430; or

(b) further asbestos or ACM is identified at the workplace; or

(c) asbestos is removed from, or disturbed, sealed or enclosed at, the workplace.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for regulation 426

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 referred to 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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 428

Strict liability applies to each physical element of this offence. See section 12B of the Act.

429 Asbestos management plan

(1) This regulation applies if asbestos or ACM is:

(a) identified at a workplace under regulation 422; 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) An asbestos management plan must include information about the following:

(a) the identification of asbestos or ACM;

(b) decisions, and reasons for decisions, about the management of asbestos at the workplace;

(c) procedures for detailing incidents or emergencies involving asbestos or ACM at the workplace;

(d) workers carrying out work involving asbestos.

Example for subregulation (4)(a)

A reference or link to the asbestos register for the workplace and signage and labelling.

Example for subregulation (4)(b)

Safe work procedures and control measures.

Example for subregulation (4)(c)

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 referred to 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

(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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 subregulation (2);

(e) at least once every 5 years.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 referred to in subregulation (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 and control of the workplace has not adequately reviewed the asbestos management plan in response to the circumstance.

Part 8.4 Management of naturally occurring asbestos

431 Naturally occurring asbestos

The person with management or control of a workplace must manage, in accordance with Part 3.1, risks to health and safety associated with naturally occurring asbestos at the workplace.

Note for regulation 431

WHS (NUL) Act – section 20 (see regulation 9).

432 Asbestos management plan

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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;

(c) procedures for detailing incidents or emergencies involving naturally occurring asbestos at the workplace;

(d) workers carrying out work involving naturally occurring asbestos.

Example for subregulation (4)(b)

Safe work procedures and control measures.

Example for subregulation (4)(d)

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 referred to 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

(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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

433 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.

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

Note for regulation 433

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Example for regulation 433

A control measure is revised under regulation 38.

434 Training in relation to naturally occurring asbestos

A person conducting a business or undertaking must ensure that the training required under regulation 445 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.

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

Note for regulation 434

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Part 8.5 Asbestos at the workplace

Division 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 regulation 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) For the purposes of subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

436 Duty to ensure that appropriate health monitoring is provided

A person conducting a business or undertaking must ensure that the health monitoring of a worker referred to in regulation 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.

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

Note for regulation 436

Strict liability applies to each physical element of this offence. See section 12B of the Act.

437 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 regulation 435 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

438 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 regulation 435.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 439

Strict liability applies to each physical element of this offence. See section 12B of the Act.

440 Duty to obtain health monitoring report

(1) A person conducting a business or undertaking who commissioned health monitoring referred to in regulation 435 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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.

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

Note for regulation 441

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 referred to in regulation 435.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 442

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 443

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) Subregulation (2) does not apply if the record is disclosed under regulation 442 or 443 or to a person who must keep the record confidential under a duty of professional confidentiality.

Division 2 Training

445 Duty to train workers about asbestos

(1) In addition to the training required by Part 3.2, Division 1, a person conducting a business or undertaking must ensure that workers engaged by the person, whom the person reasonably believes may be involved in asbestos removal work or in the carrying out of asbestos-related work, are trained in the identification and safe handling of, and suitable control measures for, asbestos and ACM.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) This regulation does not apply in relation to a worker referred to in regulation 460.

(3) The person must ensure that a record is kept of the training undertaken by the worker:

(a) while the worker is carrying out the work; 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) The person must keep the record available for inspection under the Act.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Division 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (1)(a) does not apply to the use of a high pressure water spray for fire fighting 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) In subregulation (3), 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.

Part 8.6 Demolition and refurbishment

447 Application of Part 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 regulation:

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.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for regulation 448

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Example for regulation 448

The register identifies an inaccessible area that is likely to contain asbestos and the area is likely to be accessible because of demolition.

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.

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

Note for regulation 449

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for regulation 450

Strict liability applies to each physical element of this offence. See section 12B of the Act.

451 Determining presence of asbestos or ACM

(1) This regulation 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.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 competent person.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 competent person 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.

(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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

452 Identification and removal of asbestos before demolition

(1) This regulation applies if a structure or plant at a workplace is to be demolished.

(2) This regulation does not apply:

(a) in an emergency to which regulation 454 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

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) Subregulation (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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) This regulation does not apply in an emergency to which regulation 455 applies.

(3) Subregulation (1)(b) does not apply if the purpose of the demolition is to gain access to the asbestos.

454 Emergency procedure

(1) This regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) For the purposes of this regulation, 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 regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) For the purposes of this regulation, 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 regulation applies if a structure or plant at a workplace is to be refurbished.

(2) This regulation does not apply 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 refurbishment is identified; and

(b) so far as is reasonably practicable, that the asbestos is removed before the refurbishment is commenced.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

457 Refurbishment of residential premises

A person conducting a business or undertaking who is to carry out refurbishment of residential premises must ensure:

(a) that all asbestos that is likely to be disturbed by the refurbishment is identified; and

(b) so far as is reasonably practicable, that the asbestos is removed before the refurbishment is commenced.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 457

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Part 8.7 Asbestos removal work

Note for Part 8.7

In this Part some duties are placed on licensed asbestos removalists and some on asbestos removalists generally.

458 Duty to ensure asbestos removalist is licensed

(1) 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (1) does not apply if the asbestos to be removed is:

(a) 10 m^2 or less of non-friable asbestos or ACD associated with the removal of that amount of non-friable asbestos; or

(b) ACD that is not associated with the removal of friable or non-friable asbestos and is only a minor contamination.

(3) If subregulation (2) applies, the person conducting the business or undertaking that commissions the asbestos removal work must ensure that the work is carried out by a competent person who has been trained in accordance with regulation 445.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

459 Asbestos removal supervisor must be present or readily available

A licensed asbestos removalist must ensure that the nominated asbestos removal supervisor for asbestos removal work is:

(a) if the asbestos removal work requires a Class A licence – present at the asbestos removal area whenever the asbestos removal work is being carried out; and

(b) if the asbestos removal work requires a Class B licence – readily available to a worker carrying out asbestos removal work whenever the work is being carried out.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 459

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) In this regulation:

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 for regulation 460

Unless this regulation applies, the obligation to provide training to workers carrying out unlicensed asbestos removal work is set out in regulation 445.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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;

(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.

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

Note for regulation 462

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

465 Asbestos removal control plan to be kept and available

(1) Subject to subregulation (2), a licensed asbestos removalist must ensure that a copy of the asbestos removal control plan prepared under regulation 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The licensed asbestos removalist must ensure that, for the period for which the asbestos removal control plan must be kept under this regulation, 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Despite subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) A notice under subregulation (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 competent person or licensed asbestos assessor engaged to carry out a clearance inspection and issue a clearance certificate for the work;

(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;

(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 regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

468 Person with management or control of workplace must inform persons about asbestos removal work

(1) This regulation 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;

(b) the person who commissioned the asbestos removal work.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

469 Signage and barricades for asbestos removal work

An 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.

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

Note for regulation 469

Strict liability applies to each physical element of this offence. See section 12B of the Act.

470 Limiting access to asbestos removal area

(1) This regulation 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 subregulation (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;

(c) anyone allowed under these Regulations or another law to be in the asbestos removal area.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 referred to in subregulation (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 referred to in subregulation (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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

471 Decontamination facilities

(1) An 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;

(c) workers carrying out asbestos removal work;

(d) other persons who have access to the asbestos removal area under regulation 470(2)(b).

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) An 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

472 Disposing of asbestos waste and contaminated personal protective equipment

(1) Subject to subregulations (2) and (3), an 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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) An 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 reused for asbestos removal purposes; 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 reused for asbestos removal purposes.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Example for subregulation (2)

Work boots.

(3) An asbestos removalist must ensure that a sealed container referred to in subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

473 Clearance inspection

(1) This regulation 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, a clearance inspection of the asbestos removal area at the workplace is carried out by:

(a) if the asbestos removal work must be carried out by the holder of a Class A asbestos removal licence – an independent licensed asbestos assessor; or

(b) in any other case – an independent competent person.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) In this regulation, a ***clearance inspection*** is 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 for regulation 473

If it is not reasonably practicable for the licensed asbestos assessor or competent person to be independent, the person or licensed asbestos removalist may apply to the regulator for an exemption under Part 11.2 from the requirement that the assessor or competent person be independent.

474 Clearance certificates

(1) This regulation applies if a clearance inspection has been made in accordance with regulation 473.

(2) The licensed asbestos assessor or competent person who carried out the clearance inspection must issue a ***clearance certificate***, in accordance with this regulation, before the asbestos removal area at the workplace is reoccupied.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The licensed asbestos assessor or competent person 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) The licensed asbestos assessor or competent person 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

(b) if the assessor or competent person 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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) The clearance certificate must be in writing and must state that:

(a) the assessor or competent person 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 or competent person as part of the clearance inspection – the airborne asbestos fibre level was less than 0.01 asbestos fibres/mL.

Part 8.8 Asbestos removal requiring Class A licence

475 Air monitoring – asbestos removal requiring Class A 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The air monitoring must be carried out:

(a) immediately before the licensed asbestos removal work commences, unless glove bags are to be used for the removal; and

(b) while the licensed asbestos removal work is carried out.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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;

(g) other persons at the workplace.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(6) An independent licensed asbestos assessor, who undertakes air monitoring for the purposes of this regulation, must use the membrane filter method for the air monitoring.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (6)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 more than 0.02 fibres/ml – 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 more than 0.02 fibres/ml – immediately:

(i) order the asbestos removal work to stop; and

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) If the licensed removalist stops asbestos removal work requiring a Class A asbestos removal licence because the recorded respirable asbestos fibre level 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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) subject to subregulation (3), negative pressure is used;

(c) the wet method of asbestos removal is used;

(d) subject to subregulation (3), 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;

(f) any glove bag used to enclose the asbestos removal area is dismantled and disposed of safely.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) Subregulation (1)(b) and (d) do not apply if glove bags are used in the Class A asbestos removal work.

(4) 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

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) 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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(6) 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.

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

Note for subregulation (6)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Part 8.9 Asbestos-related work

478 Application of Part 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) For the purposes of subregulation (1), the person must ensure that the sample is analysed only by:

(a) a NATA-accredited laboratory accredited for the relevant test method; or

(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) Subregulation (1) does not apply if the person assumes that asbestos is present.

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.

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

Note for regulation 480

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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

(c) barricades are erected to delineate the asbestos-related work area.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 481

Strict liability applies to each physical element of this offence. See section 12B of the Act.

482 Air monitoring

(1) A person conducting a business or undertaking at a workplace must ensure that a competent person 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) If the competent person 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

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The person conducting the business or undertaking must ensure that information about exposure to respirable asbestos fibres, including the determination made by the competent person and the results of the air monitoring, is readily accessible to the workers and other persons referred to in subregulation (2).

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

484 Disposing of asbestos waste and contaminated personal protective equipment

(1) Subject to subregulation (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

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(ii) if it is not practicable to launder the clothing, is kept in the sealed container until it is reused 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 reused for the purposes of asbestos-related work.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Example for subregulation (2)

Work boots.

(3) The person must ensure that a sealed container referred to in subregulation (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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Part 8.10 Licensing of asbestos removalists and asbestos assessors

Division 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 regulation 486, ACD.

Note for subregulation (1)

See section 43(1) of the Act.

(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 regulation 486, ACD.

Note for subregulation (2)

See section 43(2) of the Act.

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:

(a) is associated with the removal of non-friable asbestos; or

(b) is not associated with the removal of friable or non-friable asbestos and is only a minor contamination.

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) more than 10 m^2 of non-friable asbestos or ACM;

(b) ACD associated with the removal of more than 10 m^2 of non-friable asbestos or ACM.

Note for subregulation (1)

See section 43(1) of the Act.

(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) more than 10 m^2 of non-friable asbestos or ACM;

(b) ACD associated with the removal of more than 10 m^2 of non-friable asbestos or ACM.

Note for subregulation (1)

See section 43(2) of the Act.

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.

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

Division 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 Class A asbestos removal work;

(b) clearance inspections for Class A asbestos removal work;

(c) issuing clearance certificates in relation to Class A asbestos removal work.

Note for regulation 489

See section 43(1) of the Act.

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.

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

Division 3 Licensing process

491 Who may apply for a 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 regulation 495 may apply for an asbestos assessor licence.

492 Application for asbestos removal licence or asbestos assessor licence

(1) An application for an asbestos removal licence or asbestos assessor licence must be made in the manner and form required by the regulator.

(2) The application must include the following information:

(a) the name and address of the applicant;

(ab) 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;

(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 these Regulations or under any corresponding WHS law; and

(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 *Waste Management and Pollution Control Act*, *Public and Environmental Health Act* or any other law of the Territory regulating environmental protection; 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 or under any corresponding WHS law; and

(vi) details of any enforceable undertaking declared under subparagraph (v); and

(vii) if the applicant has previously been refused an equivalent licence under a corresponding WHS law, a declaration giving details of that refusal; and

(viii) if the applicant has previously held an equivalent 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 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 regulation 493 or 494, as applicable;

(i) in the case of an asbestos assessor licence – the additional information referred to in regulation 495.

Note for subregulation (2)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) The application must be accompanied by the relevant fee.

493 Content of application – Class A asbestos removal licence

(1) For the purposes of regulation 492(2)(h), an application for a Class A asbestos removal licence must include the following:

(a) the names of one 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 subregulation (1)(b), (c) and (d) must relate to the applicant.

494 Content of application – Class B asbestos removal licence

(1) For the purposes of regulation 492(2)(h), an application for a Class B asbestos removal licence must include the following:

(a) the name of one 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 subregulation (1)(b), (c) and (d) must relate to the applicant.

495 Content of application – asbestos assessor licence

For the purposes of regulation 492(2)(i), 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 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

(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 (not being 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 subregulation (3), the regulator must grant an asbestos removal licence or asbestos assessor licence if satisfied about:

(a) the matters referred to in subregulation (2); and

(b) the additional matters referred to in regulation 498 or 499, as applicable.

(2) The regulator must be satisfied about the following:

(a) the application has been made in accordance with these Regulations;

(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 Territory; or

(ii) resides outside the Territory 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 Territory; or

(ii) is located outside the Territory 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.

(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 regulation 496, the regulator is taken to have refused to grant the licence applied for.

Note for regulation 497

A refusal to grant a licence (including under subregulation (5)) is a reviewable decision (see regulation 676).

498 Class A asbestos removal licence – regulator to be satisfied about additional matters

For the purposes of regulation 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

(iii) has at least 3 years of relevant industry experience; and

(b) the applicant has a certified safety management system in place.

499 Class B asbestos removal licence – regulator to be satisfied about additional matters

For the purposes of regulation 497(1)(b), 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 regulation 497(2)(e) and (f), the regulator must have regard to all relevant matters, including the following:

(a) any offence under the Act or these Regulations or under a corresponding WHS law of which the applicant has been convicted or found guilty;

(b) any offence in relation to the unlawful disposal of hazardous waste under the *Waste Management and Pollution Control* Act, Public *and Environmental Health Act* or any other law of the Territory regulating environmental protection of which the applicant has been convicted or found guilty;

(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 these Regulations 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 these Regulations or under a corresponding WHS law.

(2) For the purposes of regulation 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 subregulation (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 giving the notice), make a submission to the regulator in relation to the proposed refusal.

(2) After the date specified in a notice under subregulation (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 for regulation 501

A refusal to grant a licence is a reviewable decision (see regulation 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 subregulation (1), the regulator may impose conditions in relation to one 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.

Notes for regulation 502

1 A person must comply with the conditions of a licence (see section 45 of the Act).

2 A decision to impose a condition on a licence is a reviewable decision (see regulation 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 – that 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.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (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 regulation 512; or

(b) the licence holder has applied for, but has not received, a replacement licence document under regulation 513.

Division 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 licence holder becomes aware of the change.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (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 regulation 509 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 regulation 498 or 499.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) If the change referred to in subregulation (1) is to add a supervisor, that supervisor is not a nominated supervisor for the purposes of these Regulations until the regulator has approved the nomination.

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 giving the notice), make a submission to the regulator in relation to the proposed amendment.

(3) After the date specified in a notice under subregulation (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

(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 licence holder is given the notice) on which the amendment, if any, takes effect.

Note for regulation 508

A decision to amend a licence is a reviewable decision (see regulation 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 giving the notice), make a submission to the regulator in relation to the proposed refusal.

(3) After the date specified in a notice under subregulation (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

(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 regulation.

(4) If the regulator makes the amendment applied for, the notice under subregulation (3)(c) must specify the date (being not less than 28 days after 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 subregulation (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 for regulation 509

A refusal to make the amendment applied for, or a decision to make a different amendment, is a reviewable decision (see regulation 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.

511 Regulator to give amended licence to the 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.

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

Note for regulation 512

Strict liability applies to each physical element of this offence. See section 12B of the Act.

513 Replacement licence document

(1) A licence holder of an asbestos removal licence or an asbestos assessor licence 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) If a licence document is lost, stolen or destroyed, the licence holder may apply to the regulator for a replacement document.

Note for subregulation (2)

A licence holder is required to keep the licence document available for inspection (see regulation 505).

(3) An application for a replacement licence document must be made in the manner and form required by the regulator.

(4) The application must:

(a) include a declaration describing the circumstances in which the original document was lost, stolen or destroyed; and

(b) be accompanied by the relevant fee.

Note for subregulation (4)(a)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(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 for regulation 513

A refusal to issue a replacement licence document is a reviewable decision (see regulation 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 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.

516 Application for renewal

(1) An application for renewal of an asbestos removal licence or asbestos assessor licence must be made in the manner and form required by the regulator.

(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 regulation 502;

(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.

Note for subregulation (2)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) The application must be accompanied by the relevant fee.

(4) The application must be made before the expiry of the licence.

517 Provisions relating to renewal of licence

(1) For the purposes of this Division:

(a) regulation 496 applies as if a reference in that regulation to an application for a licence were a reference to an application to renew a licence; and

(b) regulations 497 (except subregulation (5)), 500, 502 and 503 apply as if a reference in those regulations to the grant of a licence were a reference to the renewal of a licence; and

(c) regulation 501 applies as if a reference in that regulation 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 regulation 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 regulation 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 subregulation, have expired until the licence holder is given notice of the decision on the application.

Note for regulation 517

A refusal to renew a licence is a reviewable decision (see regulation 676).

518 Renewal of asbestos removal licence – regulator to be satisfied about certain matters

For the purposes of regulation 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

(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 regulation 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 Work Health Court makes a decision on the review.

(6) The licence continues to have effect under this regulation even if its expiry date passes.

Division 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 one 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 has failed to have a certified safety management system in place.

(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 for subregulation (2)

Regulation 507 provides for a licence holder to notify the regulator of any change in a nominated supervisor.

(3) For the purposes of subregulation (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 these Regulations 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 for regulation 520

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 regulation 676).

521 Matters taken into account

(1) In making a decision under regulation 520, the regulator must have regard to:

(a) any submissions made by the licence holder under regulation 522; and

(b) any advice received from a corresponding regulator.

(2) For the purposes of regulation 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 these Regulations or under a corresponding WHS law, of which the licence holder has been convicted or found guilty;

(b) any enforceable undertaking the licence holder has entered into under the Act or a corresponding WHS law;

(c) in relation to any equivalent licence applied for or held by the licence holder under the Act or these Regulations 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 these Regulations or under a corresponding WHS law.

(3) For the purposes of regulation 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 subregulation (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 giving the notice), 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 regulation 520 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

(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 these Regulations that the licence holder is disqualified from applying for; and

(e) state when the licence document must be returned to the regulator.

524 Immediate suspension

(1) The regulator may suspend an asbestos removal licence or asbestos assessor licence on a ground referred to in regulation 520 without giving notice under regulation 522, 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 regulation as applying in the corresponding jurisdiction.

(2) If the regulator decides to suspend a licence under this regulation:

(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 regulation 522 within 14 days after giving the notice under subregulation (2); and

(b) make its decision under regulation 520.

(4) If the regulator does not give notice under subregulation (3), the suspension ends at the end of the 14 day period.

(5) If the regulator gives notice under subregulation (3), the licence remains suspended until the decision is made under regulation 520.

525 Licence holder to return licence document

A licence holder, on receiving a notice under regulation 523, must return the licence document to the regulator in accordance with the notice.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for regulation 525

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 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.

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.

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

Note for regulation 529

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Chapter 9 Major hazard facilities

Part 9.1 Preliminary

Division 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 *Petroleum (Submerged Lands) Act*.

(2) This Chapter does not apply in relation to the Port as defined in section 5(1) of the *Darwin Port Corporation Act*.

(3) This Chapter does not apply in relation to a pipeline to which the *Energy Pipelines Act* applies.

531 Meaning of *major incident*

(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 subregulation (1), an ***occurrence*** includes any of the following:

(a) escape, spillage or leakage;

(b) implosion, explosion or fire.

532 Meaning of hazardous chemicals that are *present or likely to be present*

(1) A reference in these Regulations 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) Subregulation (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.

533 Meaning of *operator* of a facility or proposed facility

(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 subregulation (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 it in a notification under regulation 536.

(5) The person selected under subregulation (3) is the ***operator*** of the facility for the purposes of this Chapter.

(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 subregulation (1) who is an individual;

(b) for each operator within the meaning of subregulation (1) that is a body corporate – each officer of the body corporate.

534 Meaning of *modification* of a facility

(1) In these Regulations, 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 subregulation (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;

(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 2 Requirement to be licensed

535 A major hazard facility must be licensed

(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.

Note for subregulation (1)

See section 41 of the Act.

(2) A facility that is determined to be a major hazard facility under regulation 541 must be licensed under Part 9.7.

Note for subregulation (2)

See section 41 of the Act.

(3) Despite subregulation (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.

(4) The operator of a licensed major hazard facility must hold the licence for the major hazard facility.

(5) In this regulation:

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 regulation 546;

(b) the end of the period for applying for a licence given under regulation 549, 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;

(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.

Notes for regulation 535

1 The licensing process is provided for in Part 9.7.

2 Under Part 9.2, an operator of a determined major hazard facility is taken to be a suitable operator if no determination is made under regulation 543.

3 Under Part 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.

4 Part 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.

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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 for regulation 536

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

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.

Notes for regulation 537

*1 See definition **proposed facility** in regulation 5(1).*

*2 For the meaning of **likely to be present**, see regulation 532.*

(2) Any notification under this regulation must include the information required by regulation 538 (with any necessary changes).

538 Content of notification

(1) A notification under regulation 536 must be made in the manner and form required by the 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 subregulation (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;

(e) any additional information required by the regulator.

Note for subregulation (2)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) The information given under subregulation (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 these Regulations or under any corresponding WHS law; and

(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 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; and

(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.

(4) The notification must be accompanied by the relevant fee.

539 When regulator may conduct inquiry

The regulator may conduct an inquiry under this Division if a notification under regulation 536 or 537 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).

540 Inquiry procedure

(1) This regulation sets out the procedure for an inquiry.

(2) The regulator must give a written notice to the person referred to in subregulation (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 subregulation (2) must be given:

(a) for an inquiry about a facility in relation to which a notification has been given under regulation 536 or 537 – 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 government department or agency with a regulatory role in relation to major hazard facilities; and

(c) decide whether or not to make a determination under regulation 541 or 542; and

(d) if it decides to make a determination under regulation 541 or 542 – decide whether or not to make a determination in relation to the operator under regulation 543.

541 Determination in relation to facility, on inquiry

(1) This regulation 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.

Notes for regulation 541

*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 definition **major hazard facility** in regulation 5(1).*

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 regulation 676).

542 Determination in relation to over-threshold facility

(1) This regulation applies if a notification under regulation 536 or 537 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 for subregulation (2)

A determination that a facility is a major hazard facility is a reviewable decision (see regulation 676).

543 Suitability of facility operator

(1) This regulation applies if the regulator determines a facility or a proposed facility to be a major hazard facility under regulation 541 or 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 regulation 540 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 regulation, 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 for regulation 543

A determination that a person is not a suitable operator is a reviewable decision (see regulation 676).

544 Conditions on determination of major hazard facility

(1) The regulator may impose any conditions it considers appropriate on a determination made under regulation 541 or 542.

(2) Without limiting subregulation (1), the regulator may impose conditions in relation to one 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.

(3) The operator of a determined major hazard facility, in relation to which conditions are imposed under this regulation, must ensure that the conditions are complied with.

Note for regulation 544

A decision to impose a condition on a determination is a reviewable decision (see regulation 676).

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 regulation 544.

(2) The notice must be given within 14 days of the making of the determination.

(3) The effect of a determination under regulation 543 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 regulation 535(3) does not apply to the determined major hazard facility.

Note for subregulation (3)

For the effect of a determination under regulation 541 or 542, see definition ***determined major hazard facility*** *in regulation 5(1).*

(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.

547 Re-notification if quantity of Schedule 15 chemicals increases

(1) This regulation 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 regulation 536 or 537; 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 regulation 541.

(2) The operator of the facility or proposed facility must renotify 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The provisions of this Part apply, to the extent that they relate to a re-notification under this regulation, as if the re-notification were a notification under regulation 536.

548 Notification by new operator

(1) This regulation applies:

(a) in relation to a determined major hazard facility that is proposed to be operated by a new operator;

(b) whether or not a determination under regulation 543 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 regulation 538(2) in relation to the proposed new operator.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The provisions of this Part apply, to the extent that they relate to the suitability of an operator, as if the notification under subregulation (2) were a notification under regulation 536.

549 Time in which major hazard facility licence must be applied for

(1) Subject to this regulation, 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.

Note for regulation 549

The exemption from the requirement to be licensed is conditional on an application for a licence being made within the time specified by this regulation (see regulation 535(3) and (5)).

Part 9.3 Duties of operators of determined major hazard facilities

Notes for Part 9.3

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.

2 The Act and Chapter 7 of these Regulations (Hazardous Chemicals) continue to apply to a determined major hazard facility.

Division 1 Application of Part 9.3

550 Application of Part 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 regulation 535.

Division 2 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.

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

Note for regulation 551

Strict liability applies to each physical element of this offence. See section 12B of the Act.

552 Content

A safety case outline provided under regulation 551 must include the following:

(a) a written plan for the preparation of the safety case, including key steps and time lines, 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 regulation 557;

(f) a summary of any arrangements that are to be made in relation to the security of the major hazard facility.

Example for regulation 552

Arrangements for preventing unauthorised access to the major hazard facility.

553 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 regulation 561, 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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) The operator must give the regulator a copy of a safety case outline that has been altered:

(a) under this regulation; or

(b) by the operator on the operator's initiative.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(6) The safety case outline as altered becomes the safety case outline for the major hazard facility.

Division 3 Management of risk

554 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) In complying with subregulation (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 government department or agency 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

555 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

556 Control of risk

(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 for subregulation (1)

WHS (NUL) Act – section 20 (see regulation 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 persons both on-site and off-site.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

557 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; and

(c) provides for testing of emergency procedures, including the frequency of testing.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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) in relation to the off-site health and safety consequences of a major incident occurring – the local authority.

(3) The operator must ensure that the emergency plan addresses any recommendation made by the emergency service organisations consulted under subregulation (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 the emergency service organisations will participate in the testing; and

(b) what incidents or events at the major hazard facility should be notified to the emergency service organisations.

(4) The operator must have regard to any other recommendation or advice given by a person consulted under subregulation (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 emergency service organisations consulted under subregulation (2); and

(ii) any other relevant emergency service organisations.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(6) The operator must test the emergency plan in accordance with the recommendations made by the emergency service organisations consulted under subregulation (2) before applying for a licence for the major hazard facility.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (6)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (7)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(8) The operator must notify the emergency service organisations consulted under subregulation (2) of the occurrence of an incident or event referred to in subregulation (3)(b).

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (8)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Note for regulation 557

This regulation applies in addition to regulation 43.

558 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 regulation.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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

(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; and

(e) be readily accessible to persons who use it.

559 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 regulation:

(a) the safety assessment conducted under regulation 555 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Without limiting subregulation (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 regulation 556 does not minimise the relevant risk so far as is reasonably practicable;

(c) a new major hazard risk is identified;

(d) the results of consultation by the operator under Part 9.5 indicate that a review is necessary;

(e) a health and safety representative requests a review under subregulation (4);

(f) the regulator requires the review.

Example for subregulation (2)(b)

An effectiveness test indicates a deficiency in the control measure.

(3) In reviewing and revising the emergency plan, the operator must consult with the emergency service organisations referred to in regulation 557(2).

(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 subregulation (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.

Division 4 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 regulation 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.

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

Note for regulation 560

Strict liability applies to each physical element of this offence. See section 12B of the Act.

561 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 regulation 554, including a list of all major incidents identified;

(b) a summary of the safety assessment conducted under regulation 555;

(c) a summary of the major hazard facility's emergency plan;

(d) a summary of the major hazard facility's safety management system;

(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 regulation 575 in the preparation of the safety case;

(g) the additional matters specified in Schedule 18.

(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 subregulations (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

(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 Territory.

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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) In complying with this regulation, 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.

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 regulation 559.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Notes for regulation 563

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 588).

Part 9.4 Licensed major hazard facilities – risk management

Note for Part 9.4

This Part applies to a major hazard facility that is licensed under Part 9.7.

564 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) In complying with subregulation (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 government department or agency 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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) All major incidents and major incident hazards identified and documented under regulation 554 in relation to the major hazard facility are taken to have been identified and documented under this regulation.

565 Safety assessment

The operator of a licensed major hazard facility must keep a copy of the safety assessment documented under regulation 555 as revised under Part 9.3 and this Part at the facility.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 565

Strict liability applies to each physical element of this offence. See section 12B of the Act.

566 Control of risk

(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 for subregulation (1)

WHS (NUL) Act – section 20 (see regulation 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.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

567 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 regulation 557 as revised under Part 9.3 and this Part at the facility.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) The operator must test the emergency plan in accordance with the recommendations made by the emergency service organisations referred to in regulation 557(2).

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) The operator must notify the regulator and the emergency service organisations referred to in regulation 557(2) of the occurrence of an incident or event referred to in regulation 557(3) as soon as practicable after the incident or event occurs.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

568 Safety management system

(1) The operator of a licensed major hazard facility must implement the major hazard facility's safety management system established under regulation 558 as revised under Part 9.3 and this Part.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 for regulation 568

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 regulation 588).

569 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 regulation:

(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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Without limiting subregulation (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 regulation 566 does not minimise the relevant risk so far as is reasonably practicable;

(c) a new major hazard risk is identified;

(d) the results of consultation by the operator under Part 9.5 indicate that a review is necessary;

(e) a health and safety representative requests a review under subregulation (5);

(f) the regulator requires the review;

(g) at least once every 5 years.

Example for subregulation (2)(a)

An effectiveness test indicates a deficiency in the control measure.

(3) In reviewing and revising the safety assessment, the operator must comply with the requirements set out in regulation 555(2), (3) and (4).

(4) In reviewing and revising the emergency plan, the operator must consult with the emergency service organisations referred to in regulation 557(2).

(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 subregulation (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 regulation 569.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Notes for regulation 570

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 regulation 588).

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.

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

Note for regulation 571

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 the local authority:

(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;

(f) a summary of the safety case for the major hazard facility.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) The operator must ensure that the information provided under subregulation (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 subregulation (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.

(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 his or her health or safety must give that person a copy of the information provided to the local community under this regulation.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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 subregulation (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 the local authority 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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) the local authority; and

(c) any government department or agency with a regulatory role in relation to major hazard facilities.

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 regulation 554; and

(b) the consideration of control measures in the conduct of the safety assessment under regulation 555; and

(c) the conduct of a review under regulation 559.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 regulation 569.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

575 Operator of major hazard facility must consult with workers

(1) For the purposes of section 49(f) of the Act, 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 regulation 559;

(e) the implementation of the workers' safety role under regulation 574(1);

(f) the preparation and review of the major hazard facility's safety case.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) For the purposes of section 49(f) of the Act, 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 regulation 569;

(d) the implementation of the workers' safety role under regulation 574(2);

(e) a review of the major hazard facility's safety case.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Notes for regulation 575

1 Strict liability applies to each physical element of this offence. See section 12B of the Act.

2 See section 49 of the Act for other consultation duties of a person conducting a business or undertaking.

Part 9.6 Duties of workers at licensed major hazard facilities

576 Duties

(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 his or her supervisor about any corrective action taken by the worker.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A worker is not required to comply with subregulation (1) if to do so would risk the health or safety of the worker or of another worker or other person.

Part 9.7 Licensing of major hazard facilities

Division 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 regulation 543 may apply for a major hazard facility licence for that facility.

578 Application for major hazard facility licence

(1) An application for a major hazard facility licence must be made in the manner and form required by the regulator.

(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 Part 9.3, Division 4;

(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 these Regulations or under any corresponding WHS law; and

(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 these Regulations 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;

(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 for subregulation (2)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) The application must be accompanied by the relevant fee.

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 (not being 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 regulation.

Note for regulation 579

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

580 Decision on application

(1) Subject to this regulation, the regulator must grant a major hazard facility licence if satisfied about the matters referred to in subregulation (2).

(2) The regulator must be satisfied about the following:

(a) the application has been made in accordance with these Regulations;

(b) the safety case for the facility has been prepared in accordance with Part 9.3, Division 4;

(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, it must notify the operator within 14 days after making the decision.

(6) If the regulator does not make a decision within 6 months after receiving the application or the additional information requested under regulation 579, the regulator is taken to have refused to grant the licence applied for.

Note for regulation 580

A refusal to grant a major hazard facility licence (including under subregulation (6)) is a reviewable decision (see regulation 676).

581 Matters to be taken into account

(1) For the purposes of regulation 580(3), 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 these Regulations or under a corresponding WHS law of which the operator has been convicted or found guilty;

(b) any enforceable undertaking the operator has entered into under the Act or under a corresponding WHS law;

(c) in relation to any equivalent licence applied for or held by the operator under the Act or these Regulations 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 a major hazard facility licence;

(d) the operator's record in relation to any matters arising under the Act or these Regulations or under a corresponding WHS law;

(e) any advice or recommendations received from any agency of the Crown with responsibility in relation to national security.

(2) For the purposes of regulation 580(3), if the operator is a body corporate, the regulator must have regard to all relevant matters, including the matters referred to in subregulation (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 regulation 579.

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 subregulation (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

(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 it considers appropriate on a major hazard facility licence.

(2) Without limiting subregulation (1), the regulator may impose conditions in relation to one 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.

Notes for regulation 584

1 A person must comply with the conditions of a licence (see section 45 of the Act).

2 A decision to impose a condition on a licence is a reviewable decision (see regulation 676).

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) Subregulation (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 regulation 593; or

(b) the operator has applied for, but has not received, a replacement licence under regulation 594.

Division 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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Example for subregulation (1)

A change to the quantity of the hazardous chemicals present or likely to be present at the facility.

(2) Subregulation (1) applies whether the information was given in the application for grant or renewal of the licence or in any other circumstance.

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 subregulation (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

(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 for regulation 589

A decision to amend a licence is a reviewable decision (see regulation 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 subregulation (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 regulation.

(4) If the regulator makes the amendment applied for, the notice under subregulation (3)(c) must specify the date (not being 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 subregulation (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 for regulation 590

A refusal to make the amendment applied for, or a decision to make a different amendment, is a reviewable decision (see regulation 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.

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.

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

Note for regulation 593

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(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 for subregulation (2)

An operator is required to keep the licence document available for inspection (see regulation 587).

(3) An application for a replacement licence document must be made in the manner and form required by the regulator.

(4) The application must:

(a) include a declaration describing the circumstances in which the original document was lost, stolen or destroyed; and

(b) be accompanied by the relevant fee.

Note for subregulation (4)(a)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(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 operator written notice of this decision, including the reasons for the decision, within 14 days after making the decision.

Note for regulation 594

A refusal to issue a replacement licence document is a reviewable decision (see regulation 676).

Division 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) An application for renewal of a major hazard facility licence must be made in the manner and form required by the regulator.

(2) The application must include a copy of the safety case for the major hazard facility as revised under regulation 570.

Note for subregulation (2)

See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

(3) The application must be accompanied by the relevant fee.

(4) 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 regulation 596 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 regulation, 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) regulation 579 applies as if a reference in that regulation to an application for a licence were a reference to an application to renew a licence; and

(b) regulations 580 (except subregulation (6)), 581, 584 and 585 apply as if a reference in those regulations to the grant of a licence were a reference to the renewal of a licence; and

(c) regulation 583 applies as if a reference in that regulation to a refusal to grant a licence were a reference to a refusal to renew a licence.

Note for regulation 598

A refusal to renew a licence is a reviewable decision (see regulation 676).

599 Status of major hazard facility licence during review

(1) This regulation applies if the regulator gives the operator written notice of its 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) the Work Health Court makes a decision on the review.

(4) The licence continues to have effect under this regulation even if its expiry date passes.

Division 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.

(2) An application must be:

(a) made in the manner and form required by the regulator; and

(b) accompanied by the relevant fee.

(3) 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.

(4) 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.

Notes for regulation 600

1 A decision to refuse to transfer a major hazard facility licence is a reviewable decision (see regulation 676).

2 See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

Division 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.

(2) An application must be:

(a) made in the manner and form required by the regulator; and

(b) accompanied by the relevant fee.

(3) The regulator must conduct an inquiry into the inventory and operations of the facility before deciding on an application to cancel a licence.

(4) 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.

(5) If the regulator, under this regulation, cancels the licence of a facility that was determined to be a major hazard facility under Part 9.2, the regulator must revoke the determination.

Notes for regulation 601

1 A decision to refuse to cancel a licence is a reviewable decision (see regulation 676).

2 See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

602 Suspension or cancellation of licence – on regulator's initiative

(1) The regulator, on its own initiative, may suspend or cancel a major hazard facility licence if satisfied about one 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.

(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 for regulation 602

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 regulation 676).

603 Matters to be taken into account

(1) In making a decision under regulation 602, the regulator must have regard to the following:

(a) any submissions made by the operator under regulation 604;

(b) any advice received from a corresponding regulator;

(c) any advice or recommendations received from any agency of the Crown with responsibility in relation to national security.

(2) For the purposes of regulation 602(1)(a) and (b), 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 these Regulations or under a corresponding WHS law, of which the operator has been convicted or found guilty;

(b) any enforceable undertaking the operator has entered into under the Act or a corresponding WHS law;

(c) in relation to any equivalent licence applied for or held by the operator under the Act or these Regulations 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 a major hazard facility licence;

(d) the operator's record in relation to any matters arising under the Act or these Regulations or under a corresponding WHS law.

(3) For the purposes of regulation 602(1)(a) and (b), if the operator is a body corporate, the regulator must have regard to all relevant matters, including the matters referred to in subregulation (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 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.

605 Notice of decision

(1) The regulator must give the operator of a major hazard facility written notice of a decision under regulation 602 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

(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 regulation 602 without giving notice under regulation 604 if satisfied that:

(a) a person may be exposed to an imminent serious risk to his or her 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 regulation as applying in the corresponding jurisdiction.

(2) If the regulator decides to suspend a licence under this regulation:

(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 regulation 604 within 14 days after giving the notice under subregulation (2); and

(b) make its decision under regulation 602.

(4) If the regulator does not give notice under subregulation (3), the suspension ends at the end of the 14 day period.

(5) If the regulator gives notice under subregulation (3), the licence remains suspended until the decision is made under regulation 602.

607 Operator to return licence document

An operator, on receiving a notice under regulation 605, must return the licence document to the regulator in accordance with the notice.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for regulation 607

Strict liability applies to each physical element of this offence. See section 12B of the Act.

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.

Chapter 10 Mines

Part 10.1 Preliminary matters

609 Definitions

In this Chapter:

current risk management plan, for a mine site, means the last risk management plan for the mine site given to the regulator under regulation 612 or 615(2).

mine operator, see regulation 610.

mine site means:

(a) in relation to mining activity for which a mining authorisation is required – the area of land to which the mining authorisation relates; or

(b) in relation to any other mining activity – the area of land on which the mining activity is carried on.

mine site hazard, for a mine site, means a hazard relating to mining activity or a related activity carried on at the mine site that could give rise to risks to health and safety.

mining activity means exploration for, or mining of, minerals (as defined in section 4 of the *Mining Management Act*).

mining authorisation means one of the following:

(a) a mineral title, as defined in section 11(1) of the *Mineral Titles Act*;

(b) a non-compliant existing interest, as defined in section 204(1) of the *Mineral Titles Act*;

(c) an authority under section 41 of the *Atomic Energy Act 1953* (Cth).

related activity means any of the following:

(a) processing of minerals, tailings, spoil heaps or waste dumps mined or created during the carrying on of mining activity;

(b) decommissioning or rehabilitation of land, plant or a structure used in carrying on mining activity or an activity mentioned in paragraph (a);

(c) an activity incidental or related to mining activity or an activity mentioned in paragraph (a) or (b);

(d) the care and maintenance of land, plant and structures used in carrying on mining activity or an activity mentioned in paragraph (a), (b) or (c) during a suspension of that activity.

*Examples for definition **related activity**, paragraph (c)*

1 Removal, handling, transport or storage of minerals or other material.

2 Construction, operation, maintenance or removal of plant or a structure.

610 Meaning of *mine operator*

(1) The ***mine operator*** for a mine site is:

(a) the person (the ***entitlement holder***) conducting the business or undertaking who:

(i) if a mining authorisation is required for the mining activity carried on at the mine site – holds the mining authorisation; or

(ii) otherwise – has a right or entitlement to carry on mining activity at the mine site; or

(b) the person conducting the business or undertaking who:

(i) has management and control of mining activity at the mine site; and

(ii) is appointed in writing by the entitlement holder to be the mine operator for the mine site.

(2) An appointment for subregulation (1)(b)(ii) is of no effect unless:

(a) the appointee consents in writing to the appointment; and

(b) copies of the appointment and consent have been given to the regulator.

(3) The appointment ceases to have effect if written notice is given to the regulator:

(a) by the entitlement holder that the appointment has been terminated; or

(b) by the appointee that it has withdrawn its consent.

Part 10.2 Mine operator's duty of care

611 Mine operator's duty of care

The mine operator for a mine site must manage risks to the health and safety of a worker at the mine site associated with mining activity or a related activity carried on at the mine site.

Note for regulation 611

WHS (NUL) Act – section 19 (see regulation 9).

Part 10.3 Risk management plan

Division 1 Requirement for risk management plan

612 Requirement for risk management plan

The mine operator for a mine site must not permit mining activity or a related activity to be carried on at the mine site unless the mine operator has given to the regulator a risk management plan for the mine site that has been certified in accordance with regulation 614.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 612

Strict liability applies to each physical element of this offence. See section 12B of the Act.

613 Content of risk management plan

The risk management plan for a mine site must set out the following:

(a) the mine site hazards identified by the mine operator under regulation 34, including high consequence, low probability events;

(b) the risks to health and safety at the mine site that could arise from those mine site hazards, including for each risk:

(i) the nature of the risk; and

(ii) the likelihood of the risk arising; and

(iii) the likely seriousness of the consequences if it does arise;

(c) the control measures to be implemented by the mine operator under regulations 35 and 36, including:

(i) what the measures are; and

(ii) how they will be implemented; and

(iii) how their effectiveness will be monitored and reviewed;

(d) a fitness to work program for the mine site setting out how the mine operator will manage risks to health and safety at the mine site that could arise from fatigue or the consumption of alcohol or drugs;

(e) a health monitoring program as mentioned in regulation 616;

(f) the emergency plan prepared by the mine operator for the mine site under regulation 43;

(g) the training to be provided to a worker at the mine site who may be exposed to a mine site hazard;

(h) the records particular to the risk management plan that must be kept;

(i) the management structure of the mine operator, including:

(i) the positions in the structure; and

(ii) the areas of responsibility and accountability of each position;

(j) the name and qualifications of the person who prepared the risk management plan.

Note for regulation 613

A risk management plan for a mine site relates only to work health and safety matters. Management of risk relating to other matters, such as environmental risks, is regulated under other legislation.

614 Certification of risk management plan

(1) A person must not certify a risk management plan for a mine site for regulation 612 or 615(2) unless the person is a competent person and is satisfied that:

(a) the mine operator has discharged its duty under regulation 34 to identify mine site hazards, including high consequence, low probability events; and

(b) the mine operator has identified the risks to health and safety at the mine site that could arise from those mine site hazards; and

(c) the mine site hazards and risks have been specified in accordance with regulation 613(a) and (b); and

(d) the specified control measures (including the fitness to work program), and specified method of monitoring and reviewing their effectiveness, are suitable and adequate to discharge the mine operator's duty under regulations 35 and 36; and

(e) the specified health monitoring program complies with regulation 616; and

(f) the specified training is suitable and adequate to discharge the mine operator's duties under regulation 39 to provide training to a worker who may be exposed to mine site hazards; and

(g) the specified records are suitable and adequate for the risk management plan; and

(h) the management structure of the mine operator is correctly specified in accordance with regulation 613(i).

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) In this regulation:

specified means set out in the risk management plan.

615 Review of risk management plan

(1) The mine operator for a mine site must review and as necessary revise the current risk management plan for the mine site if either of the following occurs:

(a) a new risk to health and safety at the mine site is identified;

(b) there is a change in the mine operator's control measures for managing risks to health and safety at the mine site.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) If the risk management plan is revised, the mine operator must give to the regulator as soon as practicable after the requirement to revise the plan arose a copy of the revised plan certified in accordance with regulation 614.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

616 Health monitoring program

(1) For regulation 613(e), a ***health monitoring program*** is a program setting out the health monitoring to be provided to a worker at the mine site:

(a) who carries out work as part of mining activity or a related activity carried on at the mine site; and

(b) whose normal work exposes the worker to a mine site hazard.

(2) The health monitoring program must require the following health monitoring to be provided to a worker:

(a) the worker's demographic, medical and occupational history;

(b) physical examination;

(c) audiometric testing (as defined in regulation 58(3));

(d) any other monitoring that forms part of the control measures to be implemented by the mine operator under regulations 35 and 36.

(3) The health monitoring program must require the health monitoring to be provided:

(a) for a worker:

(i) within 90 days after he or she becomes a worker at the mine site for whom monitoring is required to be provided; and

(ii) at least once every 2 years while the requirement for monitoring continues; and

(b) for a former worker who accepts an offer under regulation 618 – within 30 days after he or she ceases to be a worker at the mine site.

(4) However, a health monitoring program need not require the provision of health monitoring in relation to a mine site hazard if health monitoring is required to be provided in relation to that hazard under Chapter 7 or 8.

Note for subregulation (4)

Chapters 7 and 8 require health monitoring to be provided in relation to exposure to hazardous chemicals or asbestos in certain circumstances.

Division 2 Duties relating to risk management plan

Note for Division 2

Duties requiring the mine operator to identify hazards, manage risks and implement control measures are imposed by the Act and Part 3.1 of these Regulations. This Division imposes some additional duties.

617 Duty to provide health monitoring for workers and former workers

A mine operator must ensure that health monitoring is provided to a worker or former worker in accordance with the health monitoring program in the current risk management plan for the mine site.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 617

Strict liability applies to each physical element of this offence. See section 12B of the Act.

618 Duty to offer health monitoring to former worker

(1) This regulation applies if:

(a) a person is a worker for whom the mine operator is required to provide health monitoring; and

(b) the person ceases to be a worker at the mine site; and

(c) more than 12 months has elapsed since the person was last provided with that health monitoring.

(2) The mine operator must offer to provide health monitoring to the person.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The offer by the mine operator must be made before or when the person ceases to be a worker at the mine site.

(4) The offer may be accepted by the former worker no later than 7 days after he or she ceases to be a worker at the mine site.

619 How health monitoring to be provided

(1) A mine operator must pay all expenses relating to the provision of health monitoring required by the health monitoring program.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (1)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(2) A mine operator must ensure that health monitoring required by the health monitoring program is provided by a competent person.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (2)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(3) The person who provides the health monitoring must, as soon as practicable after the monitoring is carried out:

(a) give the results of the monitoring and an explanation of those results to the worker or former worker and the mine operator; and

(b) advise the mine operator of any remedial action the person considers ought to be taken.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(4) A mine operator must keep a health monitoring report for a worker until the worker ceases to be a worker at the mine site.

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for subregulation (4)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

(5) The mine operator must ensure that information contained in a health monitoring report for a worker or former worker is not disclosed to another person without the written consent of the worker or former worker.

Maximum penalty:

(a) in the case of an individual – $1 250.

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

Note for subregulation (5)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

620 Duty to provide training

Without limiting regulation 39, training required by the current risk management plan for a mine site to be provided to a worker at the mine site, as mentioned in regulation 613(g), is training that must be provided by the mine operator under regulation 39.

621 Duty to keep records

A mine operator must keep the records required by the current risk management plan for the mine site, as mentioned in regulation 613(h).

Maximum penalty:

(a) in the case of an individual – $6 000.

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

Note for regulation 621

Strict liability applies to each physical element of this offence. See section 12B of the Act.

Chapter 11 General

Part 11.1 Review of decisions under these Regulations

Division 1 Reviewable decisions

676 Which decisions under these Regulations are reviewable

(1) The following table sets out:

(a) decisions made under these Regulations that are reviewable under this Part (***reviewable decisions***); and

(b) who is eligible to apply for review of a reviewable decision (the ***eligible person***).

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision
	High risk work licences	
1	regulation 89 (Refusal to grant licence)	Applicant
2	regulation 91 (Refusal to grant licence)	Applicant
2A	regulation 91A (Imposition of a condition when granting licence)	Applicant
2B	regulation 91A (Imposition of a condition when renewing licence)	Applicant
3	regulation 98 (Refusal to issue replacement licence document)	Licence holder
4	regulation 104 (Refusal to renew licence)	Applicant
5	regulation 106 (Suspension of licence)	Licence holder
6	regulation 106 (Cancellation of licence)	Licence holder

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision
7	regulation 106 (Disqualification of licence holder from applying for another licence)	Licence holder
7A	regulation 106 (Variation of licence conditions)	Licence holder
	Accreditation of assessors	
8	regulation 118 (Refusal to grant accreditation)	Applicant An RTO that engages the applicant
9	regulation 120 (Refusal to grant accreditation)	Applicant An RTO that engages the applicant
10	regulation 121 (Imposition of a condition when granting accreditation)	Applicant An RTO that engages the applicant
11	regulation 121 (Imposition of a condition when renewing accreditation)	Applicant An RTO that engages the applicant
12	regulation 127 (Refusal to issue replacement accreditation document)	Accredited assessor An RTO that engages the accredited assessor
13	regulation 132 (Refusal to renew accreditation)	Applicant An RTO that engages the applicant
14	regulation 133 (Suspension of accreditation)	Accredited assessor An RTO that engages the accredited assessor
15	regulation 133 (Cancellation of accreditation)	Accredited assessor An RTO that engages the accredited assessor
16	regulation 133 (Disqualification of assessor from applying for a further accreditation)	Accredited assessor An RTO that engages the accredited assessor

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision
	Registration of Plant Designs	
17	regulation 256 (Refusal to register plant design)	Applicant
18	regulation 257 (refusal to register plant design	Applicant
19	regulation 258 (Imposition of a condition when granting registration of plant design)	Applicant
	Registration of Plant	
20	regulation 269 (Refusal to register item of plant)	Applicant The person with management or control of the item of plant
21	regulation 270 (Refusal to register item of plant)	Applicant The person with management or control of the item of plant
22	regulation 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	regulation 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
24	regulation 279 (Refusal to renew registration of item of plant)	Registration holder The person with management or control of the item of plant
25	regulation 283 (Amendment of registration, on regulator's initiative)	Registration holder The person with management or control of the item of plant

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision
26	regulation 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	regulation 288 (Refusal to issue replacement registration document)	Registration holder The person with management or control of the item of plant
27A	regulation 288B (Decision to cancel registration)	Registration holder The person with management or control of the item of plant
	General Construction Induction Training	
28	regulation 322 (Refusal to issue general construction induction training card)	Applicant
29	regulation 322 (Refusal to issue replacement general construction induction training card)	Card holder
30	regulation 323 (Cancellation of general construction induction training card)	Card holder
	Hazardous chemicals and lead	
31	regulation 384 (Refusal to grant authorisation to use, handle or store a prohibited or restricted carcinogen)	Applicant
32	regulation 386 (Cancellation of authorisation to use, handle or store a prohibited or restricted carcinogen)	Authorisation holder

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision
33	regulation 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	regulation 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	regulation 497 (Refusal to grant licence)	Applicant
36	regulation 501 (Refusal to grant licence)	Applicant
37	regulation 502 (Imposition of a condition when granting licence)	Applicant
38	regulation 502 (Imposition of a condition when renewing licence)	Applicant
39	regulation 508 (Amendment of licence, on regulator's initiative)	Licence holder
40	regulation 509 (Refusal to amend licence on application (or a decision to make a different amendment))	Licence holder
41	regulation 513 (Refusal to issue replacement licence document)	Licence holder
42	regulation 517 (Refusal to renew licence)	Applicant

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision
43	regulation 520 (Suspension of licence)	Licence holder
44	regulation 520 (Cancellation of licence)	Licence holder
45	regulation 520 (Disqualification of licence holder from applying for another licence)	Licence holder
	Major hazard facilities	
	Determination of facility to be major hazard facility	
46	regulation 541 (Determination of facility to be a major hazard facility, on making inquiry)	Operator of facility
47	regulation 541 (Decision not to determine proposed facility to be a major hazard facility)	Operator of facility
48	regulation 542 (Determination of major hazard facility)	Operator of facility
49	regulation 543 (Determination of suitability of operator)	Operator of facility
50	regulation 544 (Imposition of a condition on a determination of a major hazard facility)	Operator of facility
	Licensing of major hazard facility	
51	regulation 580 (Refusal to grant licence)	Operator of facility
52	regulation 584 (Imposition of a condition when granting licence)	Operator of facility
53	regulation 584 (Imposition of a condition when renewing licence)	Operator of facility
54	regulation 589 (Amendment of licence, on regulator's initiative)	Operator of facility

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision
55	regulation 590 (Refusal to amend licence, on application (or a decision to make a different amendment))	Operator of facility
56	regulation 594 (Refusal to issue replacement licence document)	Operator of facility
57	regulation 598 (Refusal to renew licence)	Operator of facility
58	regulation 600 (Refusal to transfer licence, on application)	Operator of facility Proposed operator of facility
59	regulation 601 (Refusal to cancel licence, on application)	Operator of facility
60	regulation 602 (Suspension of licence)	Operator of facility
61	regulation 602 (Cancellation of licence)	Operator of facility
62	regulation 602 (Disqualification of licence holder from applying for another licence)	Operator of facility
	Exemptions	
63	regulation 684 (Refusal to exempt person (or a class of persons) from compliance with any of these Regulations)	Applicant
64	regulation 686 (Refusal to exempt person from requirement to hold a high risk work licence)	Applicant
65	regulation 688 (Refusal to exempt operator of MHF from compliance with any of these Regulations, on application)	Operator of facility
66	regulation 691 (Imposing condition on an exemption granted on application under Part 11.2)	Applicant

Item	Regulation under which reviewable decision is made	Eligible person in relation to reviewable decision
67	regulation 696 (Refusal to grant exemption)	Applicant
68	regulation 697 (Amendment of an exemption granted on application under Part 11.2)	Applicant
69	regulation 697 (Cancellation of an exemption granted on application under Part 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 2 Internal review

677 Application

This Division does not apply to a reviewable decision made under:

(a) Chapter 9; or

(b) Part 11.2.

678 Application for internal review

(1) Subject to subregulation (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 regulation 89(5), 118(5), 256(5), 269(5) or 497(5) 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 referred to in that provision; or

(b) any longer time the regulator allows.

(3) The application must be made in the manner and form required by the regulator.

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.

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 subregulation (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) specified 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 referred to in subregulation (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.

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 3 External review

683 Application for external review

(1) An eligible person may apply to the Work Health Court for review (an ***external review***) of:

(a) a reviewable decision made by the regulator under:

(i) Chapter 9; or

(ii) Part 11.2; 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 Work Health Court allows.

Part 11.2 Exemptions

Division 1 General

684 General power to grant exemptions

(1) The regulator may exempt a person or class of persons from compliance with any of these Regulations.

(2) The exemption may be granted on the regulator's own initiative or on the written application of one or more persons.

(3) This regulation is subject to the limitations set out in this Part.

(4) This regulation 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 relating to a major hazard facility or proposed major hazard facility.

Note for regulation 684

A decision to refuse to grant an exemption is a reviewable decision (see regulation 676).

685 Matters to be considered in granting exemptions

In deciding whether or not to grant an exemption under regulation 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 Part 5, Divisions 1 and 2 of the Act.

Division 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 these Regulations 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 for regulation 686

A decision to refuse to grant an exemption is a reviewable decision (see regulation 676).

687 High risk work licence – regulator to be satisfied about certain matters

(1) The regulator must not grant an exemption under regulation 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 subregulation (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.

Division 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 these Regulations 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 for regulation 688

A decision to refuse to grant an exemption is a reviewable decision (see regulation 676).

689 Major hazard facility – regulator to be satisfied about certain matters

(1) The regulator must not grant an exemption under regulation 688 unless satisfied that:

(a) one 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 one or more containers with the capacity of each container being not more than a total of 500 kg; 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.

(2) For the purposes of subregulation (1)(d) the regulator must have regard to all relevant matters, including whether or not:

(a) the applicant is complying with the Act and these Regulations; 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 4 Exemption process

690 Application for exemption

An application for an exemption must be made in the manner and form required by the regulator.

Notes for regulation 690

1 The application must be in writing (see regulation 684(2)).

2 The regulator may grant an exemption on its own initiative (see regulation 684(2)).

3 See section 268 of the Act for offences relating to the giving of false or misleading information under the Act or these Regulations.

691 Conditions of exemption

(1) The regulator may impose any conditions it considers appropriate on an exemption granted under this Part.

(2) Without limiting subregulation (1), conditions may require the applicant to do one or more of the following:

(a) monitor risks;

(b) monitor the health of persons at the workplace who may be affected by the exemption;

(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 for regulation 691

A decision to impose a condition is a reviewable decision (see regulation 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 these Regulations 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.

694 Notice of decision in relation to exemption

The regulator must give a copy of the exemption document referred to in regulation 692, 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 regulation 695 applies) to whom the exemption will apply.

695 Publication of notice of exemption

(1) This regulation applies to an exemption that relates to a class of persons.

(2) The regulator must publish a copy of the exemption in the *Gazette*.

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 for regulation 696

A refusal to grant an exemption is a reviewable decision (see regulation 676).

697 Amendment or cancellation of exemption

The regulator may at any time amend or cancel an exemption.

Note for regulation 697

A decision to amend or cancel an exemption is a reviewable decision (see regulation 676).

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 subregulation (2) applies) to whom the exemption applies.

(2) If the exemption affects a class of persons, the regulator must publish notice of the amendment or cancellation of the exemption in the *Gazette*.

(3) The notice must state the regulator's reasons for the amendment or cancellation.

(4) The amendment or cancellation takes effect:

(a) on the publication of the notice in the *Gazette*, or on a later date specified in the notice; or

(b) if the notice is not required to be published in the *Gazette*, on the giving of the notice to the applicant under subregulation (1) or on a later date specified in the notice.

Part 11.3 Miscellaneous

Division 1 General matters

699 Incident notification – prescribed serious illnesses

For the purposes of section 36 of the Act, 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.

Note for section 699

Other legislation may also require notification of conditions mentioned in this regulation. See, for example, the Notifiable Diseases Act.

700 Inspectors' identity cards

For the purposes of section 157(1) of the Act, an identity card given by the regulator to an inspector must include the following:

(a) a recent photograph of the inspector in the form specified 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

For the purposes of section 228(6)(a) of the Act, the prescribed period is 14 days from the date on which the decision was made on the internal review.

702 Confidentiality of information – exception relating administration or enforcement of other laws

A corresponding WHS law is prescribed for the purposes of section 271(3)(c)(ii) of the Act.

Division 2 Infringement notice offences

703 Definitions

In this Part:

infringement notice, see regulation 705.

infringement notice offence, see regulation 704(1).

prescribed amount, see regulation 704(2).

704 Infringement notice offence and prescribed amount payable

(1) An infringement notice offence is an offence against a provision of the Act or these Regulations specified in Schedule 19.

(2) The prescribed amount for an infringement notice offence is the amount specified for the offence in Schedule 19.

705 When infringement notice may be given

If an inspector reasonably believes a person has committed an infringement notice offence, the inspector may give a notice (an ***infringement notice***) to the person.

706 Contents of infringement notice

(1) The infringement notice must specify the following:

(a) the name and address of the person, if known;

(b) the date the infringement notice is given to the person;

(c) the date, time and place of the infringement notice offence;

(d) a description of the offence;

(e) the prescribed amount payable for the offence;

(f) the enforcement agency, as defined in the *Fines and Penalties (Recovery) Act*, to whom the prescribed amount is payable.

(2) The infringement notice must include a statement to the effect of the following:

(a) the person may expiate the infringement notice offence and avoid any further action in relation to the offence by paying the prescribed amount to the specified enforcement agency within 28 days after the notice is given;

(b) the person may elect under section 21 of the *Fines and Penalties (Recovery) Act* to have the matter dealt with by a court instead of under that Act by completing a statement of election and giving it to the specified enforcement agency;

(c) if the person does nothing in response to the notice, enforcement action may be taken under the *Fines and Penalties (Recovery) Act*, including (but not limited to) action for the following:

(i) suspending the person's licence to drive;

(ii) seizing personal property of the person;

(iii) deducting an amount from the person's wages or salary;

(iv) registering a statutory charge on land owned by the person;

(v) making a community work order for the person and imprisonment of the person if the person breaches the order.

(3) Also, the infringement notice must include an appropriate form for making the statement of election mentioned in subregulation (2)(b).

707 Payment by cheque

If the person tenders a cheque in payment of the prescribed amount, the amount is not taken to have been paid unless the cheque is cleared on first presentation.

708 Withdrawal of infringement notice

(1) The regulator may withdraw the infringement notice by written notice given to the person.

(2) The notice must be given:

(a) within 28 days after the infringement notice is given to the person; and

(b) before payment of the prescribed amount.

709 Application of Part 11.3

(1) This Part does not prejudice or affect the start or continuation of proceedings for an infringement notice offence for which an infringement notice has been given unless the offence is expiated.

(2) Also, this Part does not:

(a) require an infringement notice to be given; or

(b) affect the liability of a person to be prosecuted in a court for an offence for which an infringement notice has not been given; or

(c) prevent more than 1 infringement notice for the same offence being given to a person.

(3) If more than 1 infringement notice for the same offence has been given to a person, the person may expiate the offence by paying the prescribed amount in accordance with any of the notices.

Chapter 12 Transitional provisions for Work Health and Safety (National Uniform Legislation) Act 2011

Note for Chapter 12

Chapter 12 applies in relation to mining operations with modification. See regulation 831.

Part 12.1 Preliminary matters

710 Definitions

In this Chapter:

existing, in relation to plant, means in existence immediately before 1 January 2012.

existing business means a business or undertaking that was being conducted immediately before 1 January 2012.

existing workplace means a place that was a workplace for the purposes of the old WHS Act immediately before 1 January 2012.

NUL followed by a provision designation, means the provision of that designation in these Regulations.

*Examples for definition **NUL***

1 NUL regulation 256 means regulation 256 of these Regulations.

2 NUL Schedule 3 means Schedule 3 of these Regulations.

old WHS Act means the *Workplace Health and Safety Act* as in force immediately before 1 January 2012.

old WHS Authority means the Authority under the old WHS Act.

old WHS Regulations means the *Workplace Health and Safety Regulations* as in force immediately before 1 January 2012.

old WHS followed by a provision designation, means the provision of that designation of the old WHS Regulations.

*Examples for definition **old WHS***

1 old WHS regulation 35 means regulation 35 of the Workplace Health and Safety Regulations as in force immediately before 1 January 2012.

2 old WHS Part 5 means Part 5 of the Workplace Health and Safety Regulations as in force immediately before 1 January 2012.

unfinished application means an application that was made under the old WHS Regulations before 1 January 2012 but, as at 1 January 2012, had not been determined.

711 Interpretation Act not affected

This Chapter does not limit the operation of Part III of the *Interpretation Act*.

Part 12.2 General risks and workplace management

712 Duty to provide first aid

Until 1 January 2014, a person conducting an existing business at a workplace is not required to comply with NUL regulation 42 if the person ensures that, in relation to that workplace, old WHS regulation 52 is complied with as if it had not been repealed.

713 Duty to prepare, maintain and implement emergency plans

Until 1 January 2014, a person conducting an existing business at a workplace is not required to comply with NUL regulation 43 if the person ensures that, in relation to that workplace, old WHS regulation 47(4) is complied with as if it had not been repealed.

714 Remote or isolated work

Until 1 January 2014, a person conducting an existing business is not required to comply with NUL regulation 48 in relation to remote or isolated work if the person ensures that, in relation to the work, old WHS regulations 38 and 39 are complied with as if they had not been repealed.

715 Flammable or combustible materials not to be accumulated

Until 1 January 2014, NUL regulation 53 does not apply in relation to an existing business.

716 Falling objects

Until 1 January 2014, NUL regulations 54 and 55 do not apply in relation to an existing business.

Part 12.3 Hazardous work

717 Noise – audiometric testing

Until 1 January 2016, a person conducting an existing business is not required to comply with NUL regulation 58 in relation to a worker if the person ensures that, in relation to that worker's risk of hearing loss associated with noise, old WHS regulations 38, 39 and 42 are complied with as if they had not been repealed.

718 Confined space entry permits

On 1 January 2012, a permit issued under old WHS regulation 61A(5) that was in force immediately before 1 January 2012 becomes a confined space entry permit under NUL regulation 67.

719 Confined spaces – signage

Until 1 January 2014, a person conducting an existing business is not required to comply with NUL regulation 68 in relation to a confined space if the person ensures that, in relation to that space, old WHS regulations 50 and 61A are complied with as if they had not been repealed.

720 Confined spaces – communications, safety monitoring and emergency procedures

Until 1 January 2014, a person conducting an existing business is not required to comply with NUL regulations 69 or 74 in relation to a confined space if the person ensures that, in relation to that space, old WHS regulation 61A(4) is complied with as if it had not been repealed.

721 Falls – management of risk

Until 1 January 2014, a person conducting an existing business at a workplace is not required to comply with NUL regulation 78 if the person ensures that, in relation to the risk of falls at the workplace, old WHS regulations 38 and 39 are complied with as if they had not been repealed.

722 Falls – specific requirements to minimise risk

Until 1 January 2014, a person conducting an existing business at a workplace is not required to comply with NUL regulation 79 if the person ensures that, in relation to that workplace, old WHS regulation 47A is complied with as if it had not been repealed.

723 Falls – emergency and rescue procedures

Until 1 January 2014, NUL regulation 80 does not apply in relation to an existing business.

724 Demolition work – notice of work

Until 1 January 2014, a person conducting an existing business is not required to comply with NUL regulation 142 in relation to demolition work if the person ensures that, in relation to that work, old WHS regulation 26 is complied with as if it had not been repealed.

725 Electrical equipment – inspection and testing

Until 1 January 2014, a person conducting an existing business is not required to comply with NUL regulations 150 and 151 in relation to electrical equipment if the person ensures that, in relation to that equipment, old WHS regulation 62 is complied with as if it had not been repealed.

726 Electrical work on energised electrical equipment

Until 1 January 2014, NUL regulations 154 to 162 do not apply in relation to an existing business.

727 Residual current devices – use of socket outlets in hostile operating environments

Until 1 January 2014, a person is not required to comply with NUL regulation 164 in relation to electrical equipment if the person ensures that, in relation to that equipment, old WHS regulation 65 is complied with as if it had not been repealed.

728 Residual current devices – testing

Until 1 January 2014, a person conducting an existing business is not required to comply with NUL regulation 165 in relation to electrical equipment if the person ensures that, in relation to that equipment, old WHS regulation 65(3) and (4) is complied with as if it had not been repealed.

729 Overhead and underground electric lines

Until 1 January 2014, NUL regulation 166 does not apply in relation to an existing business.

Note for regulation 729

This regulation does not affect the operation of the Electrical Reform Act, which also imposes obligations in relation to electric lines in certain circumstances.

Part 12.4 Upstream duties

730 Duties of designers

(1) If a designer commenced designing plant or a structure before 1 January 2012:

(a) the new upstream duties imposed on a designer do not apply in relation to the designing of the plant or structure; and

(b) the old upstream duties imposed on the designer in relation to the designing of the plant or structure continue to apply as if the old WHS Act had not been repealed.

(2) In this regulation:

new upstream duties means the duties imposed under NUL regulations 59(1) and (2), 61(1) to (3), 64, 187 to 192 and 228 to 230.

old upstream duties means duties that were imposed under old WHS regulations 9, 61 and 84, and clause 7 of the National Standard for Construction Work [NOHSC:1016 (2005)] as adopted by old WHS regulation 133A, immediately before 1 January 2012.

(3) This regulation expires on 1 January 2015.

731 Duties of manufacturers

(1) If a manufacturer commenced any process associated with the manufacture of plant or a structure before 1 January 2012:

(a) the new upstream duties imposed on a manufacturer do not apply in relation to the manufacture of the plant or structure; and

(b) the old upstream duties imposed on the manufacturer in relation to the manufacture of the plant or structure continue to apply as if the old WHS Act had not been repealed.

(2) In this regulation:

new upstream duties means the duties imposed under NUL regulations 59(3) and (4), 61(4) to (6), 64, 193 to 195 and 231.

old upstream duties means duties that were imposed under old WHS regulations 10, 61 and 85 immediately before 1 January 2012.

(3) This regulation expires on 1 January 2014.

732 Duties of importers

(1) If an importer commenced any steps constituting the importation of plant or a structure before 1 January 2012:

(a) the new upstream duties imposed on an importer do not apply in relation to the importation of the plant or structure; and

(b) the old upstream duties imposed on the importer in relation to the importation of the plant or structure continue to apply as if the old WHS Act had not been repealed.

(2) In this regulation:

new upstream duties means the duties imposed under NUL regulations 59(5), 61(7), 64, 196, 197 and 232.

old upstream duties means duties that were imposed under old WHS regulations 11 and 86 immediately before 1 January 2012.

(3) This regulation expires on 1 January 2014.

733 Duties of suppliers

(1) If a supplier commenced any process associated with the supply of plant or a structure before 1 January 2012:

(a) the new upstream duties imposed on a supplier do not apply in relation to the supply of the plant or structure; and

(b) the old upstream duties imposed on the supplier in relation to the supply of the plant or structure continue to apply as if the old WHS Act had not been repealed.

(2) In this regulation:

new upstream duties means the duties imposed under NUL regulations 59(6), 61(8), 64, 198 to 200 and 233.

old upstream duties means duties that were imposed under old WHS regulations 11, 61 and 86 immediately before 1 January 2012.

(3) This regulation expires on 1 January 2014.

734 Duties of persons installing, constructing or commissioning plant or structures

(1) If a person to whom section 26 of the Act applies (an ***installer***) commenced any process associated with the installation, construction or commissioning of plant or a structure before 1 January 2012:

(a) the new upstream duties imposed on an installer do not apply in relation to the installation, construction or commissioning of the plant or structure; and

(b) the old upstream duties imposed on the installer in relation to the installation, construction or commissioning of the plant or structure continue to apply as if the old WHS Act had not been repealed.

(2) In this regulation:

new upstream duties means the duties imposed under NUL regulations 201, 202 and 234.

old upstream duties means duties that were imposed under old WHS regulations 12 and 87 immediately before 1 January 2012.

(3) This regulation expires on 1 January 2015.

735 References to upstream duty provisions

(1) A reference in these Regulations to something done or required to be done under a new upstream provision includes a reference to the equivalent thing done or required to be done under the corresponding provision of the old WHS regulations mentioned in this Part.

Example for subregulation (1)

A reference to information required to be provided under section 22 of the Act about plant that was being designed before 1 January 2012 includes a reference to information required to be provided about the plant under sections 56 and 57 of the old WHS Act as continued by section 279 of the Act.

(2) In this regulation:

new upstream provision means section 22 to 26 of the Act or a provision of these Regulations mentioned in the definition ***new upstream duties*** in NUL regulation 730, 731, 732, 733 or 734.

Part 12.5 High risk work – licensing and accreditation

Division 1 High risk work licences

736 Definitions

In this Division:

converted licence means a licence that becomes a high risk work licence under NUL regulation 737 or 738.

existing licence means a licence under old WHS Part 3 that was in force immediately before 1 January 2012, other than an Asbestos Removal licence.

737 Continuation of licences for high risk work

(1) On 1 January 2012, an existing licence of a type listed in table 737 becomes a high risk work licence of the class listed in the table for that type of existing licence.

(2) The converted licence remains in force until the date on which the existing licence would have expired under the old WHS Regulations.

Note for subregulation (2)

However, NUL regulation 739 may affect the duration of concrete placing boom, standard boiler operation and reciprocating steam engine licences.

Table 737

	Type of existing licence	Class of high risk work licence
1	Basic Scaffolding	Basic scaffolding (NUL Schedule 3, item 1)
2	Intermediate Scaffolding	Intermediate scaffolding (NUL Schedule 3, item 2)
3	Advanced Scaffolding	Advanced scaffolding (NUL Schedule 3, item 3)

	Type of existing licence	Class of high risk work licence
4	Dogging	Dogging (NUL Schedule 3, item 4)
5	Basic Rigging	Basic rigging (NUL Schedule 3, item 5)
6	Intermediate Rigging	Intermediate rigging (NUL Schedule 3, item 6)
7	Advanced Rigging	Advanced rigging (NUL Schedule 3, item 7)
8	Tower Crane Operation, if item 9 does not apply	Tower crane (NUL Schedule 3, item 8)
9	Tower Crane Operation, if stated to be for the operation of self-erecting tower cranes	Self-erecting tower cranes (NUL Schedule 3, item 9)
10	Derrick Crane Operation	Derrick crane (NUL Schedule 3, item 10)
11	Portal Boom Crane Operation	Portal boom crane (NUL Schedule 3, item 11)
12	Bridge and Gantry Crane Operation	Bridge and gantry crane (NUL Schedule 3, item 12)
13	Vehicle Loading Crane Operation	Vehicle loading crane (NUL Schedule 3, item 13)
14	Slewing Mobile Crane Operation (up to 20 tonne)	Slewing mobile crane – with a capacity up to 20 t (NUL Schedule 3, item 15)
15	Slewing Mobile Crane Operation (up to 60 tonne)	Slewing mobile crane – with a capacity up to 60 t (NUL Schedule 3, item 16)
16	Slewing Mobile Crane Operation (up to 100 tonne)	Slewing mobile crane – with a capacity up to 100 t (NUL Schedule 3, item 17)
17	Slewing Mobile Crane Operation (open)	Slewing mobile crane – with a capacity over 100 t (NUL Schedule 3, item 18)
18	Hoist Operation (Cantilever Platform)	Materials hoist (NUL Schedule 3, item 19)

	Type of existing licence	Class of high risk work licence
19	Hoist Operation (Personnel and Materials)	Personnel and materials hoist (NUL Schedule 3, item 20)
20	Elevating Work Platform Operation	Boom-type elevating work platform (NUL Schedule 3, item 21)
21	Concrete Placing Boom Operation	Concrete placing boom (NUL Schedule 3, item 22)
22	Forklift Truck Operation, if item 22 does not apply	Forklift truck (NUL Schedule 3, item 24)
23	Forklift Truck Operation, if stated to be for the operation of order-picking forklift trucks	Order-picking forklift truck (NUL Schedule 3, item 25)
24	Basic Boiler Operation	Standard boiler operation (NUL Schedule 3, item 26)
25	Intermediate Boiler Operation	Standard boiler operation (NUL Schedule 3, item 26)
26	Advanced Boiler Operation	Advanced boiler operation (NUL Schedule 3, item 27)
27	Turbine Operation	Turbine operation (NUL Schedule 3, item 28)
28	Reciprocating Steam Engine Operation	Reciprocating steam engine (NUL Schedule 3, item 29)

738 Continuation of non-slewing mobile crane licences

(1) On 1 January 2012, an existing licence for Non-slewing Mobile Crane Operation becomes both of the following:

(a) a non–slewing mobile crane high risk work licence as mentioned in NUL Schedule 3, item 14;

(b) a reach stacker high risk work licence as mentioned in NUL Schedule 3, item 23.

(2) Each of the converted licences remains in force until the date on which the existing licence would have expired under the old WHS Regulations.

Note for subregulation (2)

However, NUL regulation 739 may affect the duration of a reach stacker licence.

738A Former Intermediate Boiler Operation licence

(1) This regulation applies in relation to an existing licence for Intermediate Boiler Operation that became a standard boiler operation high risk work licence on 1 January 2012.

(2) Until 1 July 2015, in addition to work that is authorised to be carried out under a standard boiler operation high risk work licence, the converted licence authorises the licence holder to carry out work of the class that the existing licence authorised the licence holder to carry out immediately before 1 January 2012.

739 Licences for high risk work in classes with changed competency requirements

(1) This regulation applies in relation to a converted licence of one of the following classes:

(a) concrete placing boom;

(b) reach stacker;

(c) standard boiler operation;

(d) reciprocating steam engine.

(2) If the expiry date of the licence is on or after 1 July 2015, the licence is subject to a condition that the licence holder must give to the regulator, before 1 July 2015, a copy of a certification mentioned in NUL regulation 87(2)(f) for the relevant class of licence.

(3) If the expiry date of the licence is before 1 July 2015, an application for the renewal of the licence made before 1 July 2015 must include either:

(a) a copy of a certification as mentioned in NUL regulation 87(2)(f) for the relevant class of licence; or

(b) a statement that the licence holder has not yet obtained that certification.

(4) If the application includes a statement as mentioned in subregulation (3)(b):

(a) NUL regulation 89(2)(e) does not apply; and

(b) if it is renewed, the licence is subject to a condition that the licence holder must give to the regulator, before 1 July 2015, a copy of a certification as mentioned in NUL regulation 87(2)(f) for the relevant class of licence.

(5) If the licence holder does not comply with a condition imposed by subregulation (2) or (4)(b), the licence expires on 1 July 2015.

740 Conditions on converted licences

A converted licence is subject to any conditions to which the existing licence was subject immediately before 1 January 2012.

741 Non-renewal of certain converted licences

A converted licence that was, immediately before 1 January 2012, a licence to which old WHS regulation 174 applied cannot be renewed under these Regulations.

742 Existing licences suspended

If, immediately before 1 January 2012, an existing licence was suspended, the converted licence is suspended until the date on which the suspension would have ended under the old WHS Regulations.

743 Unfinished applications for licences

(1) An unfinished application for the grant or renewal of a licence, or the issue of a replacement licence, under old WHS Part 3 (other than an Asbestos Removal licence) is to be dealt with and determined (including as to the exercise of any right of review or appeal) in accordance with the old WHS Act as if it had not been repealed.

(2) If the licence is granted, NUL regulations 737 to 740 apply as if the licence had been in force immediately before 1 January 2012.

(3) If the licence is renewed, NUL regulations 737(2) or 738(2) apply as if the licence had been renewed immediately before 1 January 2012.

744 Applications for issue of reach stacker licences before 1 July 2015

(1) This regulation applies in relation to an application for a reach stacker high risk work licence that is made before 1 July 2015.

(2) The application does not need to include a copy of a certification as mentioned in NUL regulation 87(2)(f) for a reach stacker high risk work licence if it includes:

(a) a copy of a certification as mentioned in NUL regulation 87(2)(f) for a non–slewing mobile crane high risk work licence; and

(b) evidence that the applicant has experience in the operation of a reach stacker.

(3) If the regulator is satisfied that the application includes the certification and evidence mentioned in subregulation (2), NUL regulation 89(2)(e) does not apply.

(4) If a licence is granted to a person who provides the certification and evidence mentioned in subregulation (2), the licence is subject to a condition that the person must give to the regulator, before 1 July 2015, a copy of a certification as mentioned in NUL regulation 87(2)(f) for a reach stacker licence.

(5) If the licence holder does not comply with the condition imposed by subregulation (4), the licence expires on 1 July 2015.

745 Applications for issue of other licences with new competency requirements before 1 July 2015

(1) This regulation applies in relation to an application for a high risk work licence in one of the following classes that is made before 1 July 2015:

(a) concrete placing boom;

(b) standard boiler operation;

(c) reciprocating steam engine.

(2) The application does not need to include a copy of a certification as mentioned in NUL regulation 87(2)(f) if it includes written evidence that the applicant has met the training and qualification requirements that applied under old WHS regulation 17(2) for:

(a) in the case of a concrete placing boom high risk work licence – a Concrete Placing Boom Operation licence; or

(b) in the case of a standard boiler operation high risk work licence – a Basic Boiler Operation licence; or

(c) in the case of a reciprocating steam engine high risk work licence – a Reciprocating Steam Engine Operation licence.

(3) If the regulator is satisfied that the application includes written evidence as mentioned in subregulation (2), NUL regulation 89(2)(e) does not apply.

(4) If a licence is granted to a person who provides the evidence mentioned in subregulation (2), the licence is subject to a condition that the person must give to the regulator, before 1 July 2015, a copy of a certification as mentioned in NUL regulation 87(2)(f) for the relevant class of licence.

(5) If the licence holder does not comply with the condition imposed by subregulation (4), the licence expires on 1 July 2015.

Division 2 Assessors

746 Registered assessors become accredited assessors

(1) This regulation applies in relation to a person who was, immediately before 1 January 2012, registered under old WHS regulation 28.

(2) On 1 January 2012, the person becomes an accredited assessor under NUL Part 4.5, Division 2.

(3) If the person was registered under old WHS regulation 28 on or after 1 July 2010, the person's accreditation expires 3 years after the person was registered.

(4) If the person was registered under old WHS regulation 28 before 1 July 2010, the person's accreditation expires:

(a) if the person had, before 1 January 2012, been recognised by the old WHS Authority as having the workplace assessor competencies mentioned in clause 6.11(a) of the National Standard for Licensing Persons Performing High Risk Work – 3 years after the person was so recognised; or

(b) otherwise – on 1 July 2012.

747 Unfinished applications for registration

(1) An unfinished application for registration under old WHS regulation 28 is to be dealt with and determined (including as to the exercise of any right of review or appeal) in accordance with the old WHS Act as if it had not been repealed.

(2) If the registration is granted, NUL regulation 746 applies as if the registration had been in force immediately before 1 January 2012.

Part 12.6 Diving work

748 Interpretation

In this Part:

dive supervisor means a person appointed under NUL regulation 177.

harvesting or scientific diving work means general diving work that is carried out for the purpose of:

(a) harvesting pearls or food (including fishing); or

(b) professional scientific research, natural resource management or scientific research as an educational activity.

other diving work means general diving work that is not harvesting or scientific diving work.

749 Medical certificates

Until 1 July 2012, a worker carrying out general diving work is not required to hold a current certificate of medical fitness that complies with NUL regulation 169 if, in relation to the worker, old WHS regulation 168(b) is complied with as if it had not been repealed.

750 Competence of workers – general diving work

(1) A person may carry out harvesting or scientific diving work without complying with NUL regulation 171(a):

(a) if the person was engaged to carry out harvesting or scientific diving work on a regular basis during 2011:

(i) if the person had, before 1 January 2012, logged at least 60 hours of harvesting or scientific diving work – until 1 January 2015; or

(ii) otherwise – until 1 July 2012; or

(b) if paragraph (a) does not apply and the person is engaged to carry out harvesting or scientific diving work after 1 January 2012 but before 1 July 2012 – until 6 months after the person commences that work.

(2) The person may carry out other diving work without complying with regulation 171(a):

(a) if the person was engaged to carry out general diving work on a regular basis during 2011:

(i) if the person had, before 1 January 2012, logged at least 15 hours of general diving work – until 1 January 2015; or

(ii) otherwise – until 1 July 2012; or

(b) if paragraph (a) does not apply and the person is engaged to carry out other diving work after 1 January 2012 but before 1 July 2012 – until 6 months after the person commences that work.

751 Competence of persons supervising general diving work

Until 1 January 2015, NUL regulation 5(1), definition ***competent person***, paragraph (b) and NUL regulation 174 do not apply.

752 Management of risks to health and safety

Until 1 January 2015, a person conducting an existing business undertaking general diving work is not required to comply with NUL regulation 176 if the person ensures that, in relation to that diving work, old WHS regulations 38, 39 and 168 are complied with as if they had not been repealed.

753 Appointment of competent persons to supervise diving work

Until 1 January 2015, NUL regulation 177 does not apply in relation to an existing business.

754 Dive plans

Until 1 January 2015, a person conducting an existing business is not required to comply with NUL regulations 178 or 179 in relation to diving work if the person ensures that, in relation to that work, old WHS regulations 43 and 168(e) are complied with as if they had not been repealed.

755 Dive safety logs

Until 1 January 2015, NUL regulations 180 and 181 do not apply in relation to an existing business.

756 Record keeping

Until 1 January 2015, a person conducting an existing business is not required to comply with NUL regulation 182 in relation to diving work if the person ensures that, in relation to the keeping of records about that work, old WHS regulations 38 and 168 are complied with as if they had not been repealed.

757 High risk diving work – person conducting business or undertaking

Until 1 January 2015, a person is not required to comply with NUL regulation 183 in relation to high risk diving work if the person ensures that, in relation to that work, old WHS regulation 168 is complied with as if it had not been repealed.

758 High risk diving work – competence of diver

Until 1 January 2015, a person is not required to comply with NUL regulation 184 if the person is competent to perform the work within the meaning of old WHS regulation 168(b) as in force immediately before 1 January 2012.

Part 12.7 Plant and structures

Division 1 General duties for existing plant

759 Guarding

Until 1 January 2014, a person with management or control of existing plant is not required to comply with NUL regulation 208 if the person ensures that, in relation to that plant, old WHS regulation 125(b) is complied with as if it had not been repealed.

760 Operational controls, emergency stops and warning devices

Until 1 January 2014, NUL regulations 210 to 212 do not apply in relation to existing plant.

761 Protective structures

Until 1 January 2015, NUL regulations 216 and 217 do not apply in relation to existing plant.

762 Scaffolds

Until 1 January 2014, a person with management or control of an existing scaffold is not required to comply with NUL regulation 225 if the person ensures that, in relation to that scaffold, old WHS regulation 133 is complied with as if it had not been repealed.

763 Major inspection of registered mobile cranes and tower cranes

Until 1 January 2015, a person with management or control of an existing crane is not required to comply with NUL regulation 235 if the person ensures that, in relation to the inspection of the crane:

(a) old WHS regulation 87B is complied with as if it had not been repealed; and

(b) any inspection carried out for the purposes of compliance with old WHS regulation 87B is carried out in accordance with AS 1418 (Cranes, hoists and winches).

764 Operation of amusement devices

Until 1 January 2014, a person with management or control of an existing amusement device is not required to comply with NUL regulation 238 if the person ensures that, in relation to the operation of that device, old WHS regulation 120 is complied with as if it had not been repealed.

765 Competent person for inspection of amusement devices

(1) This regulation applies in relation to a person who was, immediately before 1 January 2012, registered under old WHS regulation 33 as an inspector of designated plant with authority to inspect amusement devices.

(2) Until 1 January 2015, the person is taken to be a competent person for the purposes of NUL regulation 241(5)(b).

766 Annual inspection of amusement devices

Until 1 January 2014, a person with management or control of an existing amusement device is not required to comply with NUL regulation 241 if the person ensures that, in relation to the inspection of the device, old WHS regulations 99, 100 and 120 are complied with as if they had not been repealed.

767 Logbook and manuals for amusement devices

Until 1 January 2014, a person with management or control of an existing amusement device is not required to comply with NUL regulation 242 if the person ensures that, in relation to that device, old WHS regulation 105 is complied with as if it had not been repealed.

Division 2 Registration of plant designs and items of plant

Subdivision 1 Plant designs

768 Continuation of registration of designs

(1) This regulation applies in relation to a design of plant that:

(a) was registered under old WHS regulation 90 immediately before 1 January 2012; and

(b) is required to be registered under NUL Part 5.3, Division 1.

(2) On 1 January 2012:

(a) the registration becomes registration under NUL Part 5.3, Division 3; and

(b) the design registration number issued under old WHS regulation 90(5)(a) becomes the plant design registration number for the design under NUL regulation 260.

(3) A person is not required to comply with NUL regulation 260(3) or (4) in relation to that plant design registration number until 1 January 2014.

(4) As soon as practicable after 1 January 2012 the regulator must issue to the registration holder a registration document as mentioned in NUL regulation 261 for that design.

769 Conditions continued

A registration converted by NUL regulation 768(2)(a) into registration under NUL Part 5.3, Division 3 is subject to any conditions to which the registration was subject immediately before 1 January 2012.

770 Unfinished applications for registration

(1) An unfinished application for registration of a design, or an alteration to a registered design, under old WHS regulation 90 is to be dealt with and determined (including as to the exercise of any right of review or appeal) in accordance with the old WHS Act as if it had not been repealed.

(2) If the registration is granted, NUL regulation 768 applies as if the registration had been in force immediately before 1 January 2012.

771 Old verification procedures may be used for 2 years

(1) Until 1 January 2014, an application under NUL regulation 249 for the registration of the design of an item of plant does not need to include a design verification statement as mentioned in NUL regulation 250(2)(f) if it includes a verification statement that complies with old WHS regulation 90(2)(a) and (3)(b) as if it had not been repealed.

(2) A design verifier is not required to comply with NUL regulation 253 in relation to the design verification process for a design if the verifier started the process before 1 January 2012 and completes it before 1 January 2014.

772 Registration of designs for new classes of plant

(1) This regulation applies in relation to the design of an item of plant that:

(a) is of a kind that is required to be registered under NUL Part 5.3, Division 3; but

(b) was not required to be registered under old WHS regulation 90.

(2) Despite NUL regulation 243, the design is not required to be registered if plant of that design had been manufactured before 1 January 2012 or is first manufactured before 1 January 2014.

Subdivision 2 Items of plant

773 Definition

In this Subdivision:

converted registration means registration that is converted by NUL regulation 774(2) into registration under NUL Part 5.3, Division 4.

774 Continuation of registration of certificated items of plant

(1) This regulation applies in relation to an item of plant if:

(a) immediately before 1 January 2012:

(i) the item of plant was registered under old WHS regulation 95; and

(ii) a certificate of inspection in respect of the plant was in force under old WHS regulation 99; and

(b) the item of plant is required to be registered under NUL Part 5.3, Division 2.

(2) On 1 January 2012:

(a) the registration becomes registration under NUL Part 5.3, Division 4; and

(b) the identification number issued under old WHS regulation 95(4)(b) becomes the plant registration number for the item of plant under NUL regulation 273; and

(c) the certificate of registration issued under old WHS regulation 95(4)(a) becomes the registration document for the item of plant under NUL regulation 274.

(3) The converted registration is subject to a condition that the registration holder must give to the regulator, before 1 January 2014, a copy of the certificate mentioned in subregulation (1)(a)(ii).

(4) If the registration holder does not comply with the condition imposed by subregulation (3), the registration expires on 1 January 2014.

(5) A person is not required to comply with NUL regulation 273(3) or (4) in relation to the plant's registration number until 1 January 2014.

775 Conditions continued

A converted registration is subject to any conditions to which the registration was subject immediately before 1 January 2012.

776 Duration of converted registrations

A converted registration expires:

(a) if the item of plant was registered before 1 January 2001 – on 1 January 2014; or

(b) if the item of plant was registered on or after 1 January 2001 but before 1 January 2006 – on 1 January 2015; or

(c) if the item of plant was registered on or after 1 January 2006 but before 1 January 2009 – on 1 January 2016; or

(d) if the item of plant was registered on or after 1 January 2009 but before 1 January 2011 – on 1 January 2017; or

(e) if the item of plant was registered on or after 1 January 2011 – on 1 January 2018.

777 Unfinished applications for registration

(1) An unfinished application for registration of an item of plant under old WHS regulation 95 is to be dealt with and determined (including as to the exercise of any right of review or appeal) in accordance with the old WHS Act as if it had not been repealed.

(2) If registration is granted, NUL regulation 774 applies as if the registration had been in force immediately before 1 January 2012.

778 Registration of items of plant in new classes

(1) This regulation applies in relation to an item of plant that:

(a) is of a kind that is required to be registered under NUL Part 5.3, Division 4; and

(b) was not required to be registered under old WHS regulation 95; and

(c) was in existence immediately before 1 January 2012.

(2) Despite NUL regulation 246, the item of plant is not required to be registered under NUL Part 5.3, Division 4 until 1 January 2014.

779 Competent person for plant inspections

(1) This regulation applies in relation to a person who was, immediately before 1 January 2012, registered under old WHS regulation 33 as an inspector of designated plant.

(2) Until 1 January 2014, the person is taken to be a competent person under NUL regulation 267 in respect of plant of the kind the person was authorised to inspect immediately before 1 January 2012.

Part 12.8 Construction work

Division 1 Duties relating to construction work

780 Trenches

Until 1 January 2014, a person conducting an existing business is not required to comply with NUL regulation 306 in relation to the excavation of a trench if the person ensures that, in relation to that excavation, old WHS regulation 145 is complied with as if it had not been repealed.

781 Principal contractor – management plans

Until 1 January 2014, the principal contractor for a construction project that started before 1 January 2012 is not required to comply with NUL regulations 308 to 314 if the person ensures that, in relation to that project, old WHS regulation 133A is complied with as if it have not been repealed.

Division 2 General construction industry training

782 Definitions

In this Division:

NT Code means the Northern Territory Code of Practice for Induction for Construction Work.

unfinished application means an application that was made under the NT Code before 1 January 2012 but, as at 1 January 2012, had not been determined.

white card means a construction induction card issued under the NT Code.

783 Continuation of existing cards

On 1 January 2012, a white card that was in force immediately before 1 January 2012 becomes a general construction induction training card.

784 Unfinished applications for registration

(1) An unfinished application for the issue of a white card, or a replacement white card, is to be dealt with and determined (including as to the exercise of any right of review or appeal) in accordance with the NT Code and old WHS Act as if that Act had not been repealed.

(2) If the card is issued, NUL regulation 783 applies as if the card had been in force immediately before 1 January 2012.

785 Agreements with RTO

(1) On 1 January 2012, an agreement between the old WHS Authority and an RTO relating to the issue by the RTO of white cards that was in force immediately before 1 January 2012 becomes an agreement between the regulator and the RTO under NUL regulation 325.

(2) An agreement continued by subregulation (1) has effect, with any necessary modifications, until:

(a) if the agreement includes an expiry date – that date; or

(b) if the agreement does not include an expiry date – 1 January 2016.

Part 12.9 Hazardous chemicals

Division 1 Hazardous chemicals – general

786 Introductory period for GHS

(1) This regulation applies in relation to a provision of these Regulations that makes provision for a matter by reference to compliance with the GHS.

(2) Until 1 January 2017, a person is taken to comply with the provision to the extent it requires compliance with the GHS if the person complies with a transitional standard to the extent that it relates to the matter.

(3) In this regulation:

transitional standard means any of the following:

(a) the ADG Code;

(b) the Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (2004)];

(c) National Code of Practice for the Labelling of Workplace Hazardous Substances [NOHSC: 2012 (1994)];

(d) Code of Practice for Labelling Agricultural Chemical Products, made under the *Agricultural and Veterinary Chemicals Act 1994* (Cth);

(e) Code of Practice for Labelling Veterinary Chemical Products, made under the *Agricultural and Veterinary Chemicals Act 1994* (Cth).

Note for regulation 786

This regulation applies in relation to the whole of these Regulations. Most provisions relating to the GHS are in Chapter 7, however a number of definitions in NUL regulation 5 and NUL regulations 471, 472, 483 and 484 also make reference to the GHS.

787 Abandoned tanks

Until 1 January 2014, NUL regulation 367 does not apply in relation to a tank that was an abandoned tank immediately before 1 January 2012.

788 Reports of health monitoring to regulator

Until 1 January 2014, a person conducting an existing business is not required to comply with NUL regulation 376 in relation to a worker if the person ensures that, in relation to the worker, old WHS regulation 69E(1)(b) is complied with as if it had not been repealed.

789 Pipeline builder's duties

(1) Until 1 January 2014, NUL regulation 390 does not apply in relation to a pipeline.

(2) However, if:

(a) building of the pipeline commences before 1 January 2014; or

(b) a circumstance mentioned in NUL regulation 390(3)(a) to (e) occurs before 1 January 2014;

the builder must comply with NUL regulation 390 in relation to that circumstance before 1 January 2014.

(3) A builder is not required to give to the regulator information about a pipeline that was given to the old WHS Authority before 1 January 2012 in accordance with clause 56 of NOHSC:1015.

(4) In this regulation:

builder means a person to whom NUL regulation 390 applies.

790 Management of risks – existing pipelines

Until 1 January 2014, NUL regulation 391(2) and (3) do not apply in relation to a pipeline that was, immediately before 1 January 2012, being used to transfer hazardous chemicals.

791 Lead risk work

Until 1 January 2014, NUL regulations 402 to 404 do not apply in relation to an existing business.

Division 2 Manifests and notification

792 Definitions

In this Division:

DG licence means a licence for the storage of dangerous goods under Part I, Division 2 of the *Dangerous Goods Regulations* as in force immediately before 1 January 2012.

NOHSC:1015 means the National Standard for Storage and Handling of Workplace Dangerous Goods [NOHSC:1015(2001)] as in force immediately before 1 January 2012.

793 New manifest requirements for existing workplace

(1) This regulation applies if:

(a) a person conducting an existing business at a workplace is required under NUL regulation 347 to prepare a manifest of Schedule 11 hazardous chemicals; and

(b) immediately before 1 January 2012, neither of the following were required in relation to the storage or handling of the chemicals at the workplace:

(i) a DG licence;

(ii) a manifest under clause 40 of NOHSC:1015.

(2) Until 1 January 2014, NUL regulations 347 and 348 do not apply in relation to the person conducting the existing business at that workplace.

794 Existing DG licence holders

(1) This regulation applies if:

(a) a person conducting an existing business at a workplace is required under NUL regulation 347 to prepare a manifest of Schedule 11 hazardous chemicals; and

(b) immediately before 1 January 2012, a DG licence was in force in relation to the storage of those chemicals at that workplace.

(2) Until the date on which the DG licence was due to expire, the person is not required to comply with NUL regulations 347 and 348 in relation to that workplace if the person ensures that, in relation to the workplace, clauses 40 and 45 of NOHSC:1015 are complied with.

795 Existing manifests and notifications under NOHSC:1015

(1) This regulation applies if:

(a) a person conducting an existing business at a workplace is required under NUL regulation 347 to prepare a manifest of Schedule 11 hazardous chemicals; and

(b) immediately before 1 January 2012, a manifest of dangerous goods was kept for the workplace under clause 40 of NOHSC:1015; and

(c) a notification was given to the old WHS Authority under clause 45 of NOHSC:1015 not more than 12 months before 1 January 2012.

(2) Until the re-notification date, the person is not required to comply with NUL regulations 347 and 348 in relation to that workplace if the person ensures that, in relation to the workplace, clauses 40 and 45 of NOHSC:1015 are complied with.

(3) In this regulation:

re-notification date means the date 12 months after the notification mentioned in subregulation (1)(c) was given to the old WHS Authority.

796 Significant change of chemicals

(1) This Division ceases to apply in relation to a workplace if there is a significant change in the Schedule 11 hazardous chemicals at the workplace.

(2) There is a ***significant change in the Schedule 11 hazardous chemicals at a workplace*** if the type or quantity of Schedule 11 hazardous chemicals being used, handled or stored at the workplace changes in such a way that, had the change occurred before 1 January 2012:

(a) a DG licence would have been required to be obtained, or an existing DG would have been required to be amended; or

(b) a re-notification would have been required to be provided under clause 45(c)(ii) of NOHSC:1015.

Part 12.10 Asbestos

Division 1 Duties in relation to asbestos

797 Asbestos registers and management plans

Until 1 January 2015, NUL regulations 425 to 430, 448 to 450 and 463 do not apply in relation to an existing workplace.

798 Naturally occurring asbestos

Until 1 January 2014, NUL Part 8.4 does not apply in relation to an existing workplace.

799 Training

Until 1 January 2015, a person conducting an existing business is not required to comply with NUL regulation 445 in relation to a worker if the person ensures that, in relation to the worker's involvement in asbestos removal work or asbestos-related work, old WHS regulation 43 is complied with as if it had not been repealed.

800 Demolition and refurbishment

Until 1 January 2015, a person conducting an existing business is not required to comply with NUL regulations 451 to 457 in relation to a demolition or refurbishment if the person ensures that, in relation to that demolition or refurbishment, old WHS regulation 151 is complied with as if the old WHS Regulations had not been repealed.

801 Nominated supervisors

(1) Until 1 January 2015, in NUL Chapter 8 a reference to a nominated supervisor for asbestos removal work is a reference to a competent person whose name has been give to the regulator by the asbestos removalist carrying out the work as a supervisor of work carried out by the removalist.

(2) In this regulation:

competent person means:

(a) for Class A asbestos removal work – the holder of a converted licence authorising the person to carry out Class A asbestos removal work who has held that licence for at least 3 years; or

(b) for Class B asbestos removal work – the holder of a converted licence authorising the person to carry out Class B asbestos removal work who has held that licence for at least 1 year.

converted licence, see NUL regulation 811.

802 VET training for workers

Until 1 January 2015, an asbestos removalist is not required to comply with NUL regulation 460(1) in relation to a worker if the removalist ensures that, in relation to the worker, old WHS regulation 43 is complied with as if it had not been repealed.

Note for regulation 802

The operation of NUL regulation 460 is also affected by NUL regulation 810.

803 Asbestos removal control plans

Until 1 January 2014, an asbestos removalist is not required to comply with NUL regulations 464 and 465 in relation to asbestos removal work that was commissioned before 1 January 2012 if the removalist ensures that, in relation to the work, section 58 of the old WHS Act is complied with as if it had not been repealed.

Note for regulation 803

The operation of NUL regulations 464 and 465 is also affected by NUL regulation 810.

804 Information and access

Until 1 January 2014, NUL regulations 467 to 470 do not apply.

Note for regulation 804

The operation of NUL regulations 467 and 470 is also affected by NUL regulation 810.

805 Decontamination and disposal of waste

Until 1 January 2014, NUL regulations 471, 472, 483 and 484 do not apply in relation to asbestos removal work that was commissioned before 1 January 2012.

Note for regulation 805

NUL regulation 786 contains transitional arrangements in relation to the GHS.

806 Clearance certificates

(1) Until 1 January 2016, NUL regulation 473(2)(a) and (b) apply as if the word "independent" had been omitted.

(2) Until 1 January 2015, a person is taken to be a competent person for the purposes of NUL regulation 473(2)(b) if the person:

(a) is a competent person within the meaning of NUL regulation 5, definition ***competent person***, paragraph (g); or

(b) is the holder of a converted licence (as defined in NUL regulation 811) authorising the person to carry out Class B asbestos removal work and has held that licence for at least 1 year.

Note for regulation 806

The operation of NUL regulation 473 is also affected by NUL regulation 810.

807 Air-monitoring – class A asbestos removal work

Until 1 January 2015, a person conducting a business or undertaking is not required to comply with NUL regulations 475 or 476 in relation to asbestos removal work if the person ensures that, in relation to the work, old WHS regulation 41 is complied with as if it had not been repealed.

808 Independence of air monitoring

Until 1 January 2015, NUL regulations 475 and 477(1)(e) apply as if each reference to the word "independent" had been omitted.

Note for regulation 808

The operation of NUL regulations 475 and 477 is also affected by NUL regulations 807 and 810.

809 Asbestos-related work

Until 1 January 2015, a person conducting a business or undertaking is not required to comply with NUL regulations 479 to 481 in relation to asbestos-related work if the person ensures that, in relation to the work, old WHS regulations 43 and 68 are complied with as if they had not been repealed.

810 Licence holder duties imposed on person conducting business or undertaking

Until 1 January 2015, a reference in NUL Part 8.7 or 8.8 to a licensed asbestos removalist:

(a) is taken to be a reference to an asbestos removalist; and

(b) is taken to not be a reference to the holder of a converted licence (as defined in NUL regulation 811) who is not an asbestos removalist.

Notes for regulation 810

1 An asbestos removalist is a person conducting a business or undertaking who carries out asbestos removal work, whether or not the person is licensed. A worker carrying out the work is not an asbestos removalist unless the worker is also the person conducting the business or undertaking.

2 The operation of some provisions in NUL Parts 8.7 and 8.8 is also affected by other regulations in this Division.

Division 2 Licences

811 Definitions

In this Division:

converted licence means a licence that becomes an asbestos removal licence or asbestos assessor licence under NUL regulation 812.

existing licence means an Asbestos Removal licence under old WHS Part 3 that was in force immediately before 1 January 2012.

812 Continuation of Asbestos Removal licences

(1) On 1 January 2012, an existing licence authorising the licence holder to carry out work involving friable asbestos that was issued before 1 January 2009 becomes both of the following:

(a) a Class A asbestos removal licence;

(b) an asbestos assessor licence.

(2) On 1 January 2012, an existing licence authorising the licence holder to carry out work involving friable asbestos that was issued on or after 1 January 2009 becomes a Class A asbestos removal licence.

(3) On 1 January 2012, an existing licence to which subregulations (1) and (2) do not apply becomes a Class B asbestos removal licence.

(4) Each of the converted licences remains in force until 1 January 2015.

Note for subregulation (4)

Subregulation (4) applies regardless of the date on which the existing licence would have expired. The duration of a converted asbestos assessor licence may also be affected by subregulations (5) and (6).

(5) A converted asbestos assessor licence is subject to a condition that the licence holder must, before 1 July 2012, satisfy the regulator that the person is competent to carry out work as a licensed asbestos assessor.

(6) If the licence holder does not comply with a condition imposed by subregulation (5), the licence expires on 1 July 2012.

813 Conditions on converted licences

A converted licence is subject to any conditions to which it was subject immediately before 1 January 2012.

814 Non-renewal of converted licences

A converted licence cannot be renewed under these Regulations.

Note for regulation 814

This regulation does not prevent the licensee applying for a new licence under these Regulations.

815 Existing licences suspended

If, immediately before 1 January 2012, an existing licence was suspended, the converted licence is suspended until the date on which the suspension would have ended under the old WHS Regulations.

816 Unfinished applications for Asbestos Removal licences

(1) An unfinished application for the grant or renewal of an Asbestos Removal licence, or the issue of a replacement Asbestos Removal licence, under old WHS Part 3 is to be dealt with and determined (including as to the exercise of any right of review or appeal) in accordance with the old WHS Act as if it had not been repealed.

(2) If the licence is granted or renewed, NUL regulations 812 to 814 apply as if the licence had been in force immediately before 1 January 2012.

817 Applications for issue of licences before 1 January 2015

(1) This regulation applies in relation to an application for an asbestos removal licence or asbestos assessor licence that is made before 1 January 2015.

(2) An application for an asbestos removal licence does not need to include the information required by NUL regulation 493(1)(c) or 494(1)(c) if it includes written evidence that each named supervisor has met the training and qualification requirements that applied under old WHS regulation 17(2) for an Asbestos Removal licence immediately before 1 January 2012.

(3) An application for an asbestos assessor licence does not need to include the information required by NUL regulation 495(b) if it includes written evidence that the applicant has met the training and qualification requirements that applied under old WHS regulation 17(2) for an Asbestos Removal licence immediately before 1 January 2012.

(4) If the application does not include the information required by NUL regulation 493(1)(c), 494(1)(c) or 495(b), NUL regulation 497(1)(b) does not apply.

(5) Despite NUL regulation 503, if a licence is granted on an application that does not include the information required by NUL regulation 493(1)(c), 494(1)(c) or 495(b), the licence expires on 1 January 2015 and cannot be renewed.

Note for subregulation (4)

This subregulation does not prevent the licensee applying for a new licence.

(6) Despite NUL Schedule 2, if the application does not include the information required by NUL regulation 493(1)(c), 494(1)(c) or 495(b), the fee payable with the application is:

(a) if the application is made during 2012 – $1 310 or

(b) if the application is made during 2013 or 2014 – $655.

818 Requirement to be licensed and related obligations

Until 1 January 2015, a person conducting a business or undertaking is not required to comply with NUL regulation 485(2) or 487(2) if the worker who is directed or allowed to carry out the removal holds, or is supervised by another worker who holds, the requisite asbestos removal licence.

Part 12.11 Major hazard facilities

819 Definitions

In this Part:

accepted safety report, means a safety report under Part 7 of NOHSC:1014 that is accepted by the relevant public authority as complying with NOHSC:1014.

converted major hazard facility means a facility that becomes a determined major hazard facility under NUL regulation 821.

DG licence for a facility, means a licence under Part I, Division 2 of the *Dangerous Goods Regulations* authorising the storage of Schedule 15 chemicals at the facility.

NOHSC:1014 means the National Standard for Control of Major Hazard Facilities [NOHSC:1014(2002)] as incorporated into the old WHS Regulations by old WHS regulation 168BA.

relevant public authority has the same meaning as it has in NOHSC:1014.

820 Notifications continued

(1) A notification about a facility given under clause 5.1 of NOHSC:1014 before 1 January 2012 is taken to be a notification given by the operator of the facility under NUL regulation 536 or 537.

(2) The giving of that notification is taken to be sufficient compliance by the operator with NUL regulation 536 or 537.

(3) However, if the notification did not include all the information required by NUL regulation 538 to be included in a notification, the operator must provide the additional information to the regulator before 1 July 2012.

Maximum penalty:

(a) in the case of an individual – $3 600.

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

Note for subregulation (3)

Strict liability applies to each physical element of this offence. See section 12B of the Act.

821 Classifications continued as determinations

(1) If a facility was, immediately before 1 January 2012, classified under clause 5.5 of NOHSC:1014 as a major hazard facility, on 1 January 2012:

(a) the facility becomes a determined major hazard facility; and

(b) the classification becomes a determination made under NUL regulation 542.

(2) If a facility was, immediately before 1 January 2012, classified under clause 5.6 of NOHSC:1014 as a major hazard facility, on 1 January 2012:

(a) the facility becomes a determined major hazard facility; and

(b) the classification becomes a determination made under NUL regulation 541.

(3) If a facility was, immediately before 1 January 2012, classified under clause 5.6 of NOHSC:1014 as not being a major hazard facility, on 1 January 2012 the classification becomes a determination under NUL regulation 541 that the facility is not a major hazard facility.

(4) The determination is taken to have been made when the classification was made.

(5) The determination is subject to any conditions to which the classification was subject immediately before 1 January 2012.

(6) NUL regulation 545(1) and (2) do not apply in relation a determination mentioned in subregulation (1) to (3).

822 Accepted safety reports continued as safety cases etc.

(1) This regulation applies in relation to a converted major hazard facility if, immediately before 1 January 2012, there was an accepted safety report for the facility.

(2) If NUL Part 9.3 applies in relation to the facility, Division 2 of that Part does not apply in relation to the facility.

Note for subregulation (2)

NUL Part 9.3 will not apply if the facility is a licensed major hazard facility.

(3) All hazards and events identified and documented under clause 6.1 of NOHSC:1014 are taken to have been identified and documented under NUL regulation 554.

(4) On 1 January 2012, the documented risk assessment for the facility under clause 6.1 of NOHSC:1014 becomes the safety assessment for the facility as if it had been prepared under NUL regulation 555.

(5) On 1 January 2012, the emergency plans for the facility under clauses 6.2(d) and 9 of NOHSC:1014 become the emergency plan for the facility as if they had been prepared under NUL regulation 557.

(6) On 1 January 2012, the safety management system for the facility under clause 6.3 of NOHSC:1014 becomes the safety management system for the facility as if it had been established under NUL regulation 558.

(7) On 1 January 2012, the accepted safety report for the facility becomes the safety case for the facility as if it had been prepared and given to the regulator under NUL Part 9.3, Division 4.

(8) If a provision of these Regulations requires a document mentioned in this regulation to have been prepared in a particular way or to contain particular information and that requirement did not apply under NOHSC:1014, the provision is not required to be complied with until the next review of risk management for the facility is required under NUL regulation 569.

(9) For the purposes of NUL regulation 569(2)(g), the first review conducted under NUL regulation 569 must be conducted not more than 5 years after the date on which an accepted safety report for the facility was last accepted by the relevant public authority under NOHSC:1014.

823 Determined facilities without accepted safety reports

(1) This regulation applies in relation to a converted major hazard facility if, immediately before 1 January 2012, there was not an accepted safety report for the facility.

(2) Despite NUL regulation 549(1), the operator of the facility must apply for a major hazard facility licence before 1 January 2015, or any longer period allowed under NUL regulation 549(2).

(3) Despite NUL regulation 560, the operator of the facility must provide the regulator with a completed safety case for the facility within the period within which the operator is required to apply for a major hazard facility licence for the facility.

824 Continuation of licence for facility with accepted safety report

(1) This regulation applies in relation to a converted major hazard facility if, immediately before 1 January 2012:

(a) there was an accepted safety report for the facility; and

(b) a DG licence was in force for the facility.

(2) On 1 January 2012, the DG licence becomes a major hazard facility licence held by the operator of the converted major hazard facility.

(3) The major hazard facility licence remains in force until the date on which the DG licence would have expired.

(4) The major hazard facility licence is subject to any conditions to which the DG licence was subject immediately before 1 January 2012.

(5) NUL regulation 596(4) does not apply in relation to an application for the renewal of the licence made before 1 January 2014.

825 Application for renewal of DG licence made but not determined

(1) This regulation applies in relation to a converted major hazard facility if:

(a) before 1 January 2012, an application was made for the renewal of a DG licence for the facility; and

(b) as at 1 January 2012, that application had not been determined; and

(c) the DG licence becomes a major hazard facility licence under NUL regulation 824.

(2) On 1 January 2012, the application becomes an application under NUL Part 9.7, Division 3 for the renewal of the major hazard facility licence.

(3) NUL regulation 596 does not apply in relation to the application if it was made in the manner and form required under the *Dangerous Goods Regulations*.

Note for subregulation (3)

However, if necessary information has not been provided it may be requested by the regulator under NUL regulations 598(a) and 579.

826 Renewal fees for converted major hazard facility licences

(1) This regulation applies if:

(a) a DG licence for a facility becomes a major hazard facility licence under NUL regulation 824; and

(b) an application for the renewal of the major hazard facility licence is made before 1 January 2013; and

(c) the safety case review date for the facility is on or after 1 January 2013.

(2) Despite NUL Schedule 2, the fee payable with the application for renewal is the fee set out in table 826.

(3) In this regulation:

safety case review date means the date 5 years after the date on which an accepted safety report for the facility was last accepted by the relevant public authority under NOHSC:1014.

tier, for a facility, see Schedule 2.

Table 826

	Safety case renewal date	Fee		
		Tier 1 facility	Tier 2 facility	Tier 3 facility
1	During 2013	$2 000	$5 000	$9 000
2	During 2014	$4 000	$10 000	$18 000
3	During 2015	$6 000	$15 000	$27 000
4	During 2016	$8 000	$20 000	$36 000

Part 12.12 Miscellaneous

827 Keeping of documents

(1) This regulation applies if:

(a) a provision of these Regulations (the ***new provision***) requires a document to be kept for a particular period of time; and

(b) a provision of the old WHS Regulations (the ***old provision***) required the keeping of a similar document.

(2) The documents required to be kept under the new provision include documents that, immediately before 1 January 2012, were required to be kept under the old provision.

828 Things done for purposes of continued provisions

If a provision of this Chapter enables a person to comply with a provision of these Regulations (the ***new provision***) by ensuring that a provision of the old WHS Regulations (the ***old provision***) is complied with, anything done for the purposes of compliance with the old provision is taken to have been done for the purposes of compliance with the new provision.

829 Recognition of interstate things

(1) A reference in these Regulations to something done or in force under a corresponding WHS law includes a reference to a thing that is, under an interstate transitional law, taken to be, or continued as, a thing done or in force under the corresponding WHS law.

(2) In this regulation:

interstate transitional law means a law of another jurisdiction that makes transitional arrangements consequent on the enactment of a corresponding WHS law.

Chapter 13 Transitional provisions for Work Health and Safety (National Uniform Legislation) Amendment Regulations 2012

830 Definitions

(1) In this Chapter:

existing mine site means a mine site at which mining activity or a related activity was being carried out immediately before 1 March 2012.

old WHS followed by a provision designation, means the provision of that designation of the old WHS Regulations.

old WHS Act means the *Workplace Health and Safety Act* as in effect immediately before 1 March 2012 under section 33 of the *Work Health and Safety (National Uniform Legislation) Implementation Act*.

old WHS Authority means the Authority under the old WHS Act.

old WHS Regulations means the *Workplace Health and Safety Regulations* as in effect immediately before 1 March 2012 under section 33 of the *Work Health and Safety (National Uniform Legislation) Implementation Act*.

(2) Terms defined in Chapter 10 have the same meanings in this Chapter as in Chapter 10.

831 Application of Chapter 12 to mining operations

Chapter 12 applies in relation to mining operations (as defined in section 33(2) of the *Work Health and Safety (National Uniform Legislation) Implementation Act*) as if:

(a) the definitions ***old WHS Act*** and ***old WHS Regulations*** in regulation 710 were replaced by the definitions of those terms in regulation 830(1); and

(b) each other reference in Chapter 12 to 1 January 2012 were a reference to 1 March 2012.

832 Continuation of existing risk management plans

(1) This regulation applies in relation to an existing mine site if:

(a) before 1 March 2012 a risk management plan for the mine site that complied with old WHS regulation 39B and Part 11A had been given to the old WHS Authority under section 58 of the old WHS Act; and

(b) as at 1 March 2012 no requirement to amend that plan had arisen under old WHS regulation 39B(3).

(2) On 1 March 2012 the risk management plan mentioned in subregulation (1)(a) becomes the risk management plan for the mine site for Chapter 10.

(3) The plan is taken to have been prepared, certified and given to the regulator in accordance with regulations 612 to 614.

(4) Before 1 January 2015 the mine operator must review and as necessary revise the risk management plan under regulation 615 (even if an event mentioned in regulation 615(1)(a) or (b) has not occurred) to ensure that the plan complies with Chapter 10.

833 Mine operator

(1) This regulation applies in relation to an existing mine site if:

(a) regulation 832 applies in relation to the mine site; and

(b) the person named as the mine operator in the risk management plan for the mine site is not the entitlement holder for the mine site (as defined in regulation 610(1)(a)).

(2) On 1 March 2012 the person named as the mine operator becomes the mine operator for the mine site under regulation 610(1)(b) as if the person had been appointed in accordance with that regulation.

Schedule 1 Revocation of regulations

regulation 4

Note for Schedule 1

Schedule 1 appears in some corresponding WHS laws but is not required in the Territory.

Schedule 2 Fees

regulation 5(1), definition ***relevant fee***

1 Purpose of this Schedule

This Schedule specifies fees to be paid under these Regulations.

Table 2.1

Regulation	Nature of fee	Fee
	Health and safety representative training	
21(1A)	Application for approval	$1 500
	High risk work licence	
87(3)	Application for grant	$76
98(4)(b)	Application for replacement licence document	$38
101(3)	Application for renewal	$63
	Accreditation of assessor	
116(3)	Application for grant	$269
127(4)(b)	Application for replacement accreditation document	$66
130(2)	Application for renewal	$117
	Plant	
250(4)	Application for registration of design	$105
266(3)	Application for registration of item of plant	$71
277(3)	Application for renewal of registration of item of plant	$81
288(4)(b)	Application for replacement registration document	$30
	Construction induction training cards	
319(4)	Application for issue	$25
321(3)(b)	Application for replacement	$25
	Asbestos removal licence or asbestos assessor licence	
492(3)	Application for grant of asbestos removal licence	$3 276
	Application for grant of asbestos assessor licence	$268
513(4)(b)	Application for replacement licence document	$43
516(3)	Application for renewal of asbestos removal licence	$3 276
	Application for renewal of asbestos assessor licence	$114
	Major hazard facilities	
578(3)	Application for grant of licence:	
	for tier 1 facility	$10 000

Regulation	Nature of fee	Fee
	for tier 2 facility	$25 000
	for tier 3 facility	$45 000
594(4)(b)	Application for replacement licence document	$50
596(3)	Application for renewal of licence	
	for tier 1 facility	$10 000
	for tier 2 facility	$25 000
	for tier 3 facility	$45 000
600(2)(b)	Application for transfer of licence	$500
601(2)(b)	Application for cancellation of licence	$50

2 Tiers for major hazard facility fees

(1) A major hazard facility is a *tier 1 facility* if Schedule 15 chemicals are present or likely to be present at the facility only for the purpose of one or more of the following:

(a) storage;

(b) repacking;

(c) distribution.

(2) A major hazard facility is a ***tier 2 facility*** if it is not a tier 1 facility or a tier 3 facility.

(3) A major hazard facility is a ***tier 3 facility*** if Schedule 15 chemicals are used, or to be used, at the facility in multiple or complex processes at high or low temperatures or pressures.

Schedule 3 High risk work licences and classes of high risk work

regulation 81

Table 3.1

Item	High risk work licence	Description of class of high risk work
Scaffolding work		
1	Basic scaffolding	Scaffolding work involving any of the following: (a) modular or prefabricated scaffolds; (b) cantilevered materials hoists with a maximum working load of 500 kg; (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 items 2(2)(a) to (g) and 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)

Item	High risk work licence		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) precast 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 items 6(b) to (f) and 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)

Item	High risk work licence	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 m t 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 3 t

Item	High risk work licence	Description of class of high risk work
15	Slewing mobile crane – with a capacity up to 20 t	Use of a slewing mobile crane with a capacity of 20 t 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 3 t Use of a reach stacker
16	Slewing mobile crane – with a capacity up to 60 t	Use of a slewing mobile crane with a capacity of 60 t 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 3 t Use of a reach stacker
17	Slewing mobile crane – with a capacity up to 100 t	Use of a slewing mobile crane with a capacity of 100 t 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 3 t Use of a reach stacker

Item	High risk work licence	Description of class of high risk work
18	Slewing mobile crane – with a capacity over 100 t	Use of a slewing mobile crane with a capacity exceeding 100 t 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 3 t 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 and 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 11 m 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 3 t 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 preheater, superheater or economiser attached

Item	High risk work licence	Description of class of high risk work
27	Advanced boiler operation	Operation of a boiler, including a standard boiler, which may have one or more of the following: (a) multiple fuel sources; (b) pre-heater; (c) superheater; (d) economiser
28	Turbine operation	Operation of a turbine that has an output of 500 kW or more and: (a) is multi-wheeled; or (b) is capable of a speed greater than 3600 rpm; or (c) has attached condensers; or (d) has a multistaged heat exchange extraction process
29	Reciprocating steam engine	Operation of a reciprocating steam engine where the diameter of any piston exceeds 250 mm

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.

Schedule 4 High risk work licences – competency requirements

regulation 81

1 Purpose of this Schedule

This Schedule sets out the qualifications for high risk work licences.

Table 4.1

Item	Licence class	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
8	Tower crane	Licence to operate a tower crane

Item	Licence class	VET course
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 m t and above)
14	Non-slewing mobile crane	Licence to operate a non-slewing mobile crane (greater than 3 t capacity)
15	Slewing mobile crane – with a capacity up to 20 t	Licence to operate a slewing mobile crane (up to 20 t)
16	Slewing mobile crane – with a capacity up to 60 t	Licence to operate a slewing mobile crane (up to 60 t)
17	Slewing mobile crane – with a capacity up to 100 t	Licence to operate a slewing mobile crane (up to 100 t)
18	Slewing mobile crane – with a capacity over 100 t	Licence to operate a slewing mobile crane (over 100 t)
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 11 m or more)
22	Concrete placing boom	Licence to conduct concrete boom delivery operations
23	Reach stacker	Licence to operate a reach stacker of greater than 3 t capacity

Item	Licence class	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	Turbine operation	Licence to operate a turbine
29	Reciprocating steam engine operation	Licence to operate a reciprocating steam engine

Schedule 5 Registration of plant and plant designs

regulations 243 and 246

Part 1 Plant requiring registration of design

1 Items of plant requiring registration of design

1.1 Pressure equipment, other than pressure piping, and categorised as hazard level A, B, C or D according to the criteria in Section 2.1 of AS 4343:2005 (Pressure equipment – hazard levels).

1.2 Gas cylinders covered by Section 1 of AS 2030.1:2009 (Gas cylinders – General Requirements).

1.3 Tower cranes including self-erecting tower cranes.

1.4 Lifts, including escalators and moving walkways.

1.5 Building maintenance units.

1.6 Hoists with a platform movement exceeding 2.4 m, designed to lift people.

1.7 Work boxes designed to be suspended from cranes.

1.8 Amusement devices covered by Section 2.1 of AS 3533.1:2009 (Amusement rides and devices – Design and construction), except devices specified in clause 2(2).

1.8A Passenger ropeways.

1.9 Concrete placing booms.

1.10 Prefabricated scaffolding.

1.11 Boom-type elevating work platforms.

1.12 Gantry cranes with a safe working load greater than 5 t or bridge cranes with a safe working load of greater than 10 t, and any gantry crane or bridge crane which is designed to handle molten metal or Schedule 11 hazardous chemicals.

1.13 Vehicle hoists.

1.14 Mast climbing work platforms.

1.15 Mobile cranes with a rated capacity of greater than 10 t.

2 Exceptions

(1) The items of plant listed in clause 1 do not include:

(a) a heritage boiler; or

(ab) any pressure equipment (other than a gas cylinder) excluded from the scope of AS 1200:2000 (Pressure equipment); or

(b) a crane or hoist that is manually powered; or

(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.

Note for subclause (1)(ab)

See section A1 of Appendix A to AS/NZS 1200:2000.

(2) The following devices are excluded from clause 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 3 metres or more.

Part 2 Items of plant requiring registration

3 Items of plant requiring registration

3.1 Boilers categorised as hazard level A, B or C according to criteria in Section 2.1 of AS 4343:2005 (Pressure equipment – Hazard levels).

3.2 Pressure vessels categorised as hazard level A, B or C according to the criteria in Section 2.1 of AS 4343:2005 (Pressure equipment – Hazard levels), except:

(a) gas cylinders; and

(b) LP Gas fuel vessels for automotive use; and

(c) serially produced vessels.

3.3 Tower cranes including self-erecting tower cranes.

3.4 Lifts, including escalators and moving walkways.

3.5 Building maintenance units.

3.6 Amusement devices covered by Section 2.1 of AS 3533.1:2009 (Amusement rides and devices – Design and construction), except devices specified in clause 4(2).

3.7 Concrete placing booms.

3.8 Mobile cranes with a rated capacity of greater than 10 t.

4 Exceptions

(1) The items of plant listed in clause 3 do not include:

(a) any pressure equipment (other than a gas cylinder) excluded from the scope of AS/NZS 1200:2000 (Pressure equipment); or

(b) a crane or hoist that is manually powered; or

(c) a reach stacker.

Note for subclause (1)(a)

See section A1 of Appendix A to AS/NZS 1200:2000.

(2) The following devices are excluded from clause 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 3 metres or more.

Schedule 6 Classification of mixtures

regulation 5(1), definition ***GHS***

1 Purpose of this Schedule

The tables in this Schedule replace some of the tables in the GHS.

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.

Item	Ingredient classification	Mixture classification		
		Skin sensitiser	**Respiratory sensitiser**	
		Category 1	**Category 1**	
		All physical states	**Solid/liquid**	**Gas**
1	Skin sensitiser Category 1	≥ 1.0%		
2	Skin sensitiser Sub-category 1A	≥ 0.1%		
3	Skin sensitiser Sub-category 1B	≥ 1.0%		
4	Respiratory sensitiser Category 1		≥ 1.0%	≥ 0.2%
5	Respiratory sensitiser Sub-category 1A		≥ 0.1%	≥ 0.1%
6	Respiratory sensitiser Sub-category 1B		≥ 1.0%	≥ 0.2%

Note for table 6.1

Table 6.1 replaces table 3.4.5 in the GHS, 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.

Item	Ingredient classification	Mixture classification	
		Category 1 carcinogen	**Category 2 carcinogen**
1	Category 1 carcinogen	≥ 0.1%	
2	Category 2 carcinogen		≥ 1.0%

Notes for table 6.2

1 The concentration limits in table 6.2 apply to solids and liquids (w/w units) and gases (v/v units).

2 Table 6.2 replaces table 3.6.1 in the GHS, p. 166.

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.

Item	Ingredient classification	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%

Notes for table 6.3

1 The concentration limits in table 6.3 apply to solids and liquids (w/w units) and gases (v/v units).

2 Table 6.3 replaces table 3.7.1 in the GHS, p. 180.

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.

Item	Ingredient classification	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%

Notes for table 6.4

1 The concentration limits in table 6.4 apply to solids and liquids (w/w units) and gases (v/v units).

2 Table 6.4 replaces table 3.8.2 in the GHS, p. 192.

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.

Item	Ingredient classification	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%

Notes for table 6.5

1 The concentration limits in table 6.5 apply to solids and liquids (w/w units) and gases (v/v units).

2 Table 6.5 replaces table 3.9.3 in the GHS, p. 203.

Schedule 7 Safety data sheets

regulations 330 and 331

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* (Cth); and

(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: Product identifier and chemical identity;

(b) Section 2: Hazard(s) identification;

(c) Section 3: Composition and information on ingredients, in accordance with Schedule 8;

(d) Section 4: First aid measures;

(e) Section 5: Firefighting measures;

(f) Section 6: Accidental release measures;

(g) Section 7: Handling and storage, including how the chemical may be safely used;

(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 subclause (2).

(4) The safety data sheet must be in English.

Note for clause 1

Regulations 330 and 331 provide that clause 2 will apply instead of clause 1 in certain cases.

2 Safety data sheets – research chemical, waste product or sample for analysis

For the purposes of regulation 331, 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

(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.

Schedule 8 Disclosure of ingredients in safety data sheet

Schedule 7, clause 1(2)(c)

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 these Regulations.

2 Identity of ingredients to be disclosed

(1) This clause applies if an ingredient in a hazardous chemical causes the correct classification of the chemical to include a hazard class and hazard category referred to in table 8.1.

(2) The identity of the ingredient must be disclosed in English on the label and safety data sheet of the hazardous chemical.

Table 8.1

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
4	Respiratory sensitiser	Category 1
5	Skin sensitiser	Category 1

Column 1 **Item**	Column 2 **GHS hazard class**	Column 3 **GHS hazard category**
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 – repeat 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 2A

3 Generic names used to disclose identity of ingredients

(1) This clause applies if an ingredient of a hazardous chemical must be disclosed under clause 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 8.2; 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 8.1; 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 8.2

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 2A)
4	Skin corrosion or irritation (category 2)
5	Specific target organ toxicity (single exposure) (category 3)

4 Disclosing proportions of ingredients

(1) This clause applies if an ingredient of a hazardous chemical must be disclosed under clause 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 one 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).

Schedule 9 Classification, packaging and labelling requirements

regulations 329, 334 and 335

Part 1 Correct classification

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.

Note for subclause (1)

The Schedule 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.

Part 2 Correct packing

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 subclause (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; or

(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 subclause (1)(a) to (d).

Part 3 Correct labelling

Note for Part 3

More than one clause of this Part may apply to a hazardous chemical depending on the nature of the hazardous chemical, its container and other matters.

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;

(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 subclause (1).

(3) This clause is subject to clauses 4 to 10 of this Schedule.

4 Labelling hazardous chemicals – small container

(1) This clause 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 clause 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 clause 3(1) that it is reasonably practicable to include.

5 Labelling hazardous chemicals – research chemicals or samples for analysis

(1) This clause 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.

6 Labelling hazardous chemicals – decanted or transferred chemicals

(1) This clause 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.

7 Labelling hazardous chemicals – known hazards

(1) This clause 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.

8 Labelling hazardous chemicals – waste products

(1) This clause 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 Labelling hazardous chemicals – explosives

(1) This clause 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 Code for the Transport of Explosives by Road and Rail; 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.

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 clause, agricultural or veterinary chemical means an agricultural chemical product or veterinary chemical product under the *Agricultural and Veterinary Chemicals Code Act 1994* (Cth).

Schedule 10 Prohibited carcinogens, restricted carcinogens and restricted hazardous chemicals

regulations 340 and 380 to 384

Note for Schedule 10

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]

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

Column 1 **Item**	Column 2 **Restricted carcinogen [CAS Number]**	Column 3 **Restricted use**
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

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%

Column 1 **Item**	Column 2 **Restricted hazardous chemical**	Column 3 **Restricted use**
		as lead or which would expose the operator to levels in excess of those set in the regulations covering lead
12	Lead carbonate	For spray painting
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 for table 10.3

Regulation 382 deals with polychlorinated biphenyls (PCBs).

Schedule 11 Placard and manifest quantities

regulations 347 to 350, 361, 390 and 391

Table 11.1

Column 1 **item**	Column 2 **Description of hazardous chemical**	Column 3	Column 4 **Placard quantity**	Column 5 **Manifest quantity**
1	Flammable gases	Category 1	200 L	5 000 L
2	Gases under pressure	With acute toxicity, categories 1, 2, 3 or 4	50 L	500 L
3		With skin corrosion categories 1A, 1B or 1C	50 L	500 L
4		Aerosols	5 000 L	10 000 L
5		Not specified elsewhere in this Table	1 000 L	10 000 L
6	Flammable liquids	Category 1	50 L	500 L
7		Category 2	250 L	2 500 L
8		Category 3	1 000 L	10 000 L
9		Any combination of chemicals from items 6 to 8 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000 L	10 000 L
10		Category 4	10 000 L	100 000 L
11	Self-reactive substances	Type A	5 kg or 5 L	50 kg or 50 L
12		Type B	50 kg or 50 L	500 kg or 500 L
13		Type C to F	250 kg or 250 L	2 500 kg or 2 500 L
14	Flammable solids	Category 1	250 kg	2 500 kg
15		Category 2	1 000 kg	10 000 kg

Column 1 **item**	Column 2 **Description of hazardous chemical**	Column 3	Column 4 **Placard quantity**	Column 5 **Manifest quantity**
16		Any combination of chemicals from items 12 to 15 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000 kg or 1 000 L	10 000 kg or 10 000 L
17	Pyrophoric liquids and pyrophoric solids	Category 1	50 kg or 50 L	500 kg or 500 L
18	Self-heating substances and mixtures	Category 1	250 kg or 250 L	2 500 kg or 2 500 L
19		Category 2	1 000 kg or 1 000 L	10 000 kg or 10 000 L
20		Any combination of chemicals from items 17 to 19 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000 kg or 1 000 L	10 000 kg or 10 000 L
21	Substances which in contact with water emit flammable gas	Category 1	50 kg or 50 L	500 kg or 500 L
22		Category 2	250 kg or 250 L	2 500 kg or 2 500 L
23		Category 3	1 000 kg or 1 000 L	10 000 kg or 10 000 L
24		Any combination of chemicals from items 21 to 23 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000 kg or 1 000 L	10 000 kg or 10 000 L
25	Oxidising liquids and oxidising solids	Category 1	50 kg or 50 L	500 kg or 500 L
26		Category 2	250 kg or 250 L	2 500 kg or 2 500 L

Column 1 **item**	Column 2 **Description of hazardous chemical**	Column 3	Column 4 **Placard quantity**	Column 5 **Manifest quantity**
27		Category 3	1 000 kg or 1 000 L	10 000 kg or 10 000 L
28		Any combination of chemicals from items 25 to 27 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000 kg or 1 000 L	10 000 kg or 10 000 L
29	Organic peroxides	Type A	5 kg or 5 L	50 kg or 50 L
30		Type B	50 kg or 50 L	500 kg or 500 L
31		Type C to F	250 kg or 250 L	2 500 kg or 2 500 L
32		Any combination of chemicals from items 30 and 31 where none of the items exceeds the quantities in columns 4 or 5 on their own	250 kg or 250 L	2 500 kg or 2 500 L
33	Acute toxicity	Category 1	50 kg or 50 L	500 kg or 500 L
34		Category 2	250 kg or 250 L	2 500 kg or 2 500 L
35		Category 3	1 000 kg or 1 000 L	10 000 kg or 10 000 L
36		Any combination of chemicals from items 33 to 35 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000 kg or 1 000 L	10 000 kg or 10 000 L
37	Skin corrosion	Category 1A	50 kg or 50 L	500 kg or 500 L
38		Category 1B	250 kg or 250 L	2 500 kg or 2 500 L

Column 1 **item**	Column 2 **Description of hazardous chemical**	Column 3	Column 4 **Placard quantity**	Column 5 **Manifest quantity**
39		Category 1C	1 000 kg or 1 000 L	10 000 kg or 10 000 L
40	Corrosive to metals	Category 1	1 000 kg or 1 000 L	10 000 kg or 10 000 L
41		Any combination of chemicals from items 37 to 40 where none of the items exceeds the quantities in columns 4 or 5 on their own	1 000 kg or 1 000 L	10 000 kg or 10 000 L
42	Unstable explosives		5 kg or 5 L	50 kg or 50 L
43	Unstable chemicals	Any combination of chemicals from items 11, 29 and 42 where none of the items exceeds the quantities in columns 4 or 5 on their own	5 kg or 5 L	50 kg or 50 L

Notes for table 11.1

1 In item 2, gases under pressure with acute toxicity, category 4 only applies up to a LC50 of 5000 ppmV. This is equivalent to dangerous goods of Division 2.3.

2 Item 4 includes flammable aerosols.

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 one 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 clause 1

For placarding and manifest purposes, a spill compound containing 1000 L of flammable liquid category 1 and 1 000 L of flammable liquid category 4 is considered to contain 2 000 L of flammable liquid category 1.

Schedule 12 Manifest requirements

regulation 347(2)

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.

2 Manifest – bulk storage and containers

(1) This clause 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.

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 Table 3.2.3 of the ADG Code for the chemical; and

(ii) the UN number as stated in Table 3.2.3 of the ADG Code for the hazardous chemical; and

(iii) the class and division of the hazardous chemical as stated in Table 3.2.3 of the ADG Code; 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".

4 Manifest – storage area for packaged hazardous chemicals

(1) This clause 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 these Regulations 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 Table 3.2.3 of the ADG Code – 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 Table 3.2.3 of the ADG Code; and

(ii) the class to which the hazardous chemical is assigned as specified in Table 3.2.3 of the ADG Code; 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

(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 Table 3.2.3 of the ADG Code – the class to which the hazardous chemical is assigned; and

(f) for flammable liquids category 4 – the words "combustible liquid".

(3) In this clause:

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.

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.

6 Manifest – hazardous chemicals in transit

(1) This clause 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 clauses 4 and 5 in relation to the hazardous chemicals if the manifest includes a compilation of the transport documents.

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.

Schedule 13 Placard requirements

regulations 349(2) and 350(2)

1 Displaying placards

(1) This clause 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 persons 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 clause 3 applies – located at each entrance to the workplace where an emergency service organisation may enter the workplace; and

(f) for a placard to which clause 4 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 clause 6 applies – located at each entrance to a storage area in which the hazardous chemicals are stored.

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.

3 Outer warning placards – requirements

(1) This clause 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 for subclause (1)

Regulation 349 sets out when an outer warning placard is required, 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

(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 clause:

red means the colour "signal red" in accordance with AS 2007S-1996 (R13) (Colour standards for general purposes – signal red).

4 Placards for particular hazardous chemicals stored in bulk

(1) This clause 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;

(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 subclause (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 Table 3.2.3 of the ADG Code;

(b) in space (q) – the UN Number for the hazardous chemical as specified in Table 3.2.3 of the ADG Code;

(c) in space (r) – the Hazchem Code for the hazardous chemical as specified in Table 3.2.3 of the ADG Code;

(d) in space (s) – the class label and subsidiary risk label for the hazardous chemical as specified in Table 3.2.3 of the ADG Code.

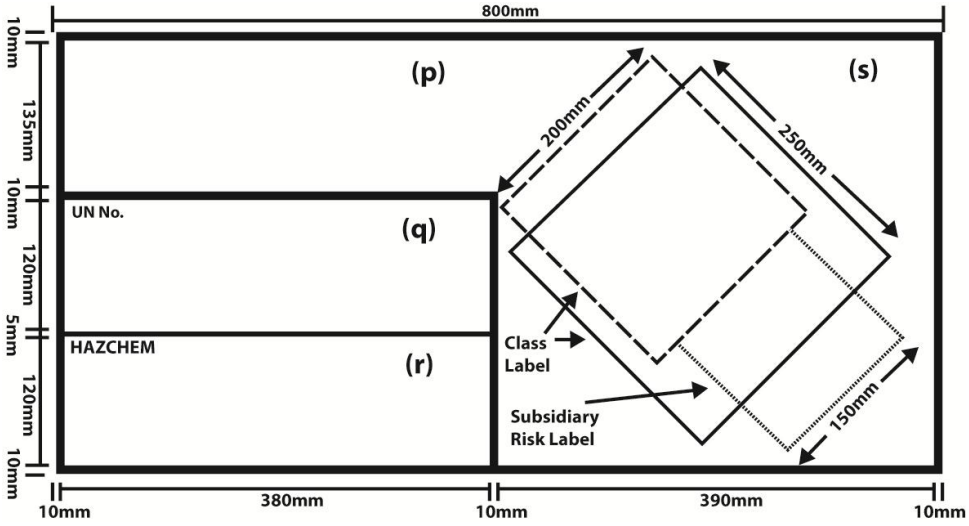

Figure 13.2 Template for a placard for a hazardous chemical stored in bulk

(4) For subclause (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 100 mm high; and

(c) if the proper shipping name requires 2 lines – at least 50 mm high.

(5) For subclause (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

(b) the class label must have:

(i) if there is a subsidiary risk label – sides not less than 200 mm; or

(ii) in any other case – sides of not less than 250 mm; and

(c) if there is a subsidiary risk label – the subsidiary risk label must have sides of not less than 150 mm; and

(d) if there are 2 or more subsidiary risk labels – the width of the right-hand part of the placard may be extended.

5 Placards for unstable explosives, organic peroxides type A or self-reactive substances type A stored in bulk

(1) This clause 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.

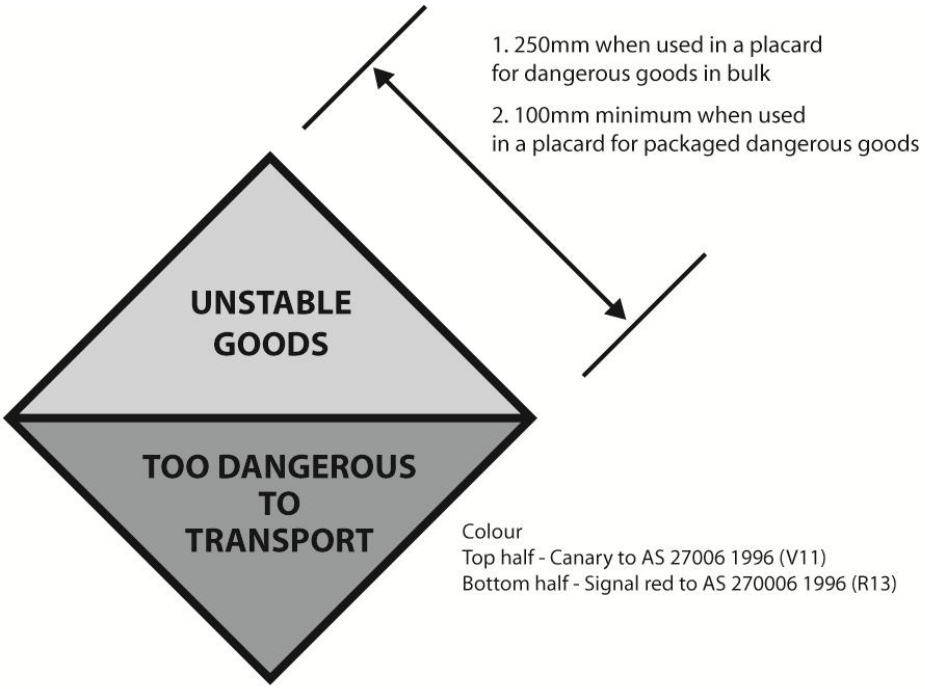

Figure 13.3 Label for unstable explosive, organic peroxide type A or self reactive substance type A

(4) For subclause (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 100 mm high; and

(c) if the name requires 2 lines – at least 50 mm high.

(5) For subclause (3)(d), the label must have sides of not less than 250 mm.

6 Placards for packaged Schedule 11 hazardous chemicals (other than flammable liquids category 4) and IBCs

(1) This clause 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 100 mm.

(3) The placard must include the following:

(a) for a Schedule 11 hazardous chemical (other than unstable explosive, organic peroxide type A, 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

(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.

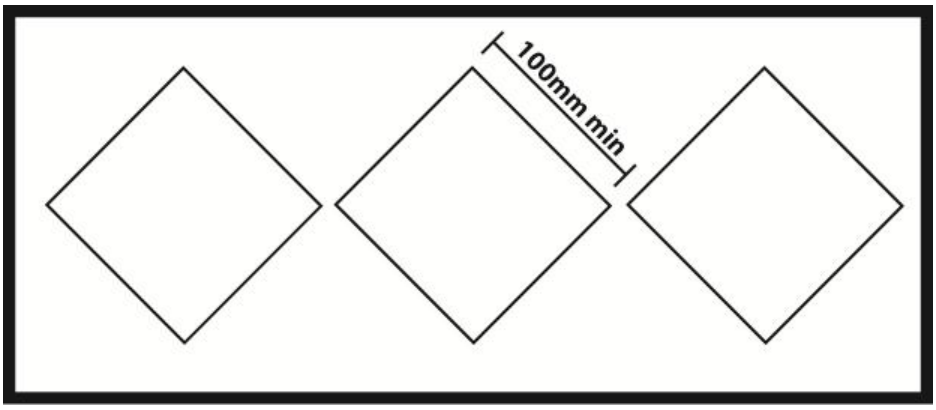

Figure 13.4 General form of placard for packaged Schedule 11 hazardous chemicals

(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 clause.

7 Placards for flammable liquids category 4 packaged or in bulk

(1) This clause 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.

(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

Schedule 14 Requirements for health monitoring

regulations 368, 370 and 406

Table 14.1 Hazardous chemicals (other than lead) requiring health monitoring

Column 1	Column 2	Column 3
Item	**Hazardous chemical**	**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 the 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

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

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

Column 1 **Item**	Column 2 **Hazardous chemical**	Column 3 **Type of health monitoring**
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
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 **Lead**	Column 3 **Type of health monitoring**
1	Lead (inorganic)	Demographic, medical and occupational history Physical examination Biological monitoring

Schedule 15 Hazardous chemicals at major hazard facilities (and their threshold quantity)

Chapter 9

1 Definitions

In this Schedule:

Class has the same meaning as in the ADG Code.

Division has the same meaning as in the ADG Code.

Packing Group has the same meaning as in the ADG Code.

subsidiary risk has the same meaning as in the ADG Code.

2 Relevant hazardous chemicals

The hazardous chemicals that characterise a workplace as a facility for the purposes of these Regulations are the chemicals specifically referred to in table 15.1 and chemicals that belong to the types, classes and categories referred to in table 15.2.

3 Threshold quantity of one hazardous chemical

(1) In relation to each hazardous chemical referred to in clause 2, column 3 of Tables 15.1 and 15.2 provides a quantity that is described as the "threshold quantity" of that chemical.

(2) If a hazardous chemical is referred to in table 15.1, the ***threshold quantity*** of the chemical is that described in table 15.1, whether or not the chemical also belongs to a type, class or category referred to in table 15.2.

(3) If a hazardous chemical is not referred to in table 15.1, and the chemical belongs to a type, class or category referred to in table 15.2, 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 15.1, and the chemical appears to belong to more than one of the types, classes or categories referred to in table 15.2, the ***threshold quantity*** of that chemical is that of the relevant type, class or category which has the lower or lowest threshold quantity.

4 Threshold quantity of more than one hazardous chemical

(1) If there is more than one 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:

x, ***y***, ***[....]*** and ***n*** are the hazardous chemicals present or likely to be present;

q_x, q_y, ***[....]*** and q_n is the total quantity of hazardous chemicals x, y, [....] and n present or likely to be present, other than:

(a) a hazardous chemical that is present or likely to be present in an isolated quantity less than 2% of its threshold quantity;

(b) 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);

Q_x, Q_y, ***[....]*** and Q_n is the individual threshold quantity for each hazardous chemical x, y, [....] and n.

(2) A hazardous chemical is present or likely to be present in an ***isolated quantity***, for the purposes of definition q_x, q_y, ***[....]*** and q_n, paragraph (a) if its location at the facility is such that it cannot, on its own, act as an initiator of a major incident.

5 How table 15.1 must be used

(1) The UN number listed in table 15.1 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 for subclause (1)

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.

6 How table 15.2 must be used

(1) The quantities specified for explosives in table 15.2 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 15.2 is applied, be classified in accordance with the following table:

Division	**1.1**	**1.2**	**1.3**	**1.4**	**1.5**	**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 15.1

	Column 1	Column 2	Column 3
Item	**Hazardous chemical**	**UN Nos included under name**	**Threshold quantity (tonnes)**
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	5 000

Item	Column 1 **Hazardous chemical**	Column 2 **UN Nos included under name**	Column 3 **Threshold quantity (tonnes)**
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	2 500
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
25	HYDROGEN CHLORIDE – Anhydrous – Refrigerated Liquid	 1050 2186	 250 250
26	HYDROGEN CYANIDE	1051 1614	20
27	HYDROGEN FLUORIDE	1052	50

Item	Column 1 **Hazardous chemical**	Column 2 **UN Nos included under name**	Column 3 **Threshold quantity (tonnes)**
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	2 000
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
41	SULFURIC ANHYDRIDE (Alt. SULFUR TRIOXIDE)	1829	75
42	TITANIUM TETRACHLORIDE	1838	500
43	TOLUENE DIISOCYANATE	2078	200

Table 15.2

Item	Column 1 **Hazardous chemical**	Column 2 **Description**	Column 3 **Threshold quantity (tonnes)**
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 15.3	20
		Compressed or liquefied gases that meet the criteria for Toxic in table 15.3	200

Item	Column 1 **Hazardous chemical**	Column 2 **Description**	Column 3 **Threshold quantity (tonnes)**
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
		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 15.3 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 15.3	200

Table 15.3 Criteria for toxicity

Description	Oral Toxicity[1] LD50 (mg/kg)	Dermal Toxicity[2] LD50 (mg/kg)	Inhalation Toxicity[3] LC50 (mg/L)
Very Toxic	$LD_{50} \leq 5$	$LD_{50} \leq 40$	$LC_{50} \leq 0.5$
Toxic	$5 < LD_{50} \leq 50$	$40 < LD_{50} \leq 200$	$0.5 < LC_{50} \leq 2$

Key for table 15.3

1 In rats

2 In rats or rabbits

3 4 hours in rats

Schedule 16 Matters to be included in emergency plan for major hazard facility

regulation 557

1 Site and hazard detail

1.1 The location of the facility, including its street address and the nearest intersection (if any).

Note for subclause 1.1

Sufficient detail must be provided to enable a person not familiar with the site to find it.

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.

1.3 An inventory of all hazardous chemicals present or likely to be present at the facility, and their location.

1.4 A brief description of the nature of the facility and its operation.

1.5 The maximum number of persons, including workers, likely to be present at the facility on a normal working day.

1.6 The emergency planning assumptions, including emergency measures planned for identified incidents and likely areas affected.

1.7 The protective resources available to control an incident.

1.8 The emergency response procedures.

1.9 The infrastructure (on-site and off-site) likely to be affected by a major incident.

2 Command structure and site personnel

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.

2.2 Details of the person who can clarify the content of the emergency plan if necessary.

2.3 The contact details of, and the means of contacting, the persons at the facility responsible for liaising with emergency service organisations.

2.4 A list of 24 hour emergency contacts.

2.5 Arrangements for assisting emergency service organisations and nearby facilities with control actions taken in the surrounding area.

3 Notifications

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 regulation 557.

3.2 After a major incident has occurred, procedures for providing the local community and the local authority for the local authority area in which the facility and the surrounding area are located with information about the major incident under regulation 573.

3.3 On-site and off-site warning systems.

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.

3.5 On-site communication systems.

4 Resources and equipment

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.

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.

5 Procedures

5.1 Procedures for the safe evacuation of, and accounting for, all people on site.

5.2 Procedures and control points for utilities, including gas, water and electricity.

5.3 Procedures for the control of any incident involving Schedule 15 chemicals.

5.4 Procedures for decontamination following an incident involving Schedule 15 chemicals.

Schedule 17 Additional matters to be included in safety management system of major hazard facility

regulation 558

1 Safety policy and safety objectives

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.

1.2 The safety policy must include an express commitment to ongoing improvement of all aspects of the safety management system.

2 Organisation and personnel

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.

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.

3 Operational controls

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

(d) the control of abnormal operations and emergency shut down or decommissioning.

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.

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.

3.4 A description of the roles of persons and of the interfaces between persons and plant.

3.5 Provision for alarm systems.

4 Duties of operators

4.1 A description of the means by which the operator proposes to comply with the Act and with Part 9.3 Division 3 and Parts 9.4 and 9.5 of these Regulations.

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, an annotation or cross-reference identifying the specific provision being complied with.

5 Management of change

A description of the procedures for planning modifications to major hazard facilities.

6 Principles and standards

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.

6.2 A description of any technical standards, whether published or proprietary, being relied on in relation to such principles and standards.

7 Performance monitoring

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.

7.2 A description of the way in which these performance standards are to be met.

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.

8 Audit

Provision for the auditing of performance against the performance standards, including the methods, frequency and results of the audit process.

Schedule 18 Additional matters to be included in safety case for a major hazard facility

regulation 561

Part 1 Facility description

1 The facility

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.

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.

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.

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.

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 WHS management systems are capable of maintaining the safe operation of the major hazard facility.

2 The surrounding area

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).

2.2 Graphically presented demographic information for the local community, including surrounding land uses permitted by the local authority.

2.3 Meteorological data relevant to the estimation of the effects of any major incident.

Part 2 Safety information

3 Control measures to limit the consequences of major incidents

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 in place a command structure 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.

3.2 In item 3.1:

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.

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.

4 Performance monitoring

A detailed description of the performance standards and performance indicators required by Schedule 17, item 7 to be included in the safety management system.

5 Safety management system

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.

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.

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.

7 Major incident history

A summary of the major incidents that have occurred at the major hazard facility over the previous 5 years.

Schedule 19 Infringement notice offences and prescribed amounts

regulation 704

Table 19.1

Provision	Prescribed amount	
	for individual	**for body corporate**
Work Health and Safety (National Uniform Legislation) Act		
section 38(7)	$360	$1 800
section 70(1)(c), (d) or (e)	$720	$3 600
section 70(2)	$720	$3 600
section 72(7)	$720	$3 600
section 74(1)	$144	$720
section 75(1)	$360	$1 800
section 79(3)	$720	$3 600
section 79(4)	$720	$3 600
section 97(1)	$360	$1 800
section 193	$720	$3 600
section 273	$360	$1 800
Work Health and Safety (National Uniform Legislation) Regulations		
regulation 22(3)	$432	$2 160
regulation 46(2) or (4)	$432	$2 160
regulation 48(2)	$720	$3 600
regulation 50(1)	$720	$3 600
regulation 50(2)	$144	$720
regulation 50(3)	$432	$2 160
regulation 66(2) or (5)	$432	$2 160
regulation 67(4)	$720	$3 600
regulation 68(1)	$432	$2 160
regulation 69	$720	$3 600
regulation 72(1) or (2)	$720	$3 600
regulation 76(2)	$144	$720
regulation 77(2), (3) or (4)	$144	$720
regulation 77(5)	$432	$2 160
regulation 85(1), (2) or (3)	$432	$2 160
regulation 85(4)	$144	$720

Provision	Prescribed amount	
	for individual	for body corporate
regulation 94(1)	$144	$720
regulation 96	$144	$720
regulation 97	$144	$720
regulation 98(1)	$144	$720
regulation 111	$144	$720
regulation 124(1) or (2)	$144	$720
regulation 125(1)	$144	$720
regulation 126	$144	$720
regulation 127(1)	$144	$720
regulation 139	$144	$720
regulation 142(1)	$144	$720
regulation 150(1) or (2)	$432	$2 160
regulation 150(3)	$144	$720
regulation 154	$720	$3 600
regulation 155(1) or (2)	$720	$3 600
regulation 159	$720	$3 600
regulation 160	$720	$3 600
regulation 165(1)	$432	$2 160
regulation 165(2)	$144	$720
regulation 170	$144	$720
regulation 175(1), (2) or (3)	$144	$720
regulation 180	$144	$720
regulation 181(2), (3) or (4)	$144	$720
regulation 182(2), (3) or (5)	$144	$720
regulation 182(4)	$432	$2 160
regulation 224(1) or (2)	$432	$2 160
regulation 226(1), (3) or (4)	$144	$720
regulation 228	$144	$720
regulation 229(1) or (2)	$144	$720
regulation 230(1), (2) or (3)	$144	$720
regulation 237(2), (4) or (5)	$144	$720
regulation 238(2)	$720	$3 600
regulation 253	$432	$2 160
regulation 254	$432	$2 160
regulation 260(3), (4) or (5)	$144	$720
regulation 262(1)	$144	$720
regulation 273(3) or (4)	$144	$720

Provision	Prescribed amount	
	for individual	for body corporate
regulation 275(1)	$144	$720
regulation 282(1)	$144	$720
regulation 287	$144	$720
regulation 288(1)	$144	$720
regulation 295(1)	$432	$2 160
regulation 296	$432	$2 160
regulation 301	$432	$2 160
regulation 302	$432	$2 160
regulation 303(1) or (2)	$144	$720
regulation 303(3)	$432	$2 160
regulation 304(2), (3) or (4)	$432	$2 160
regulation 304(5)	$144	$720
regulation 308	$432	$2 160
regulation 312	$432	$2 160
regulation 313(1), (2) or (4)	$144	$720
regulation 313(3)	$432	$2 160
regulation 316	$432	$2 160
regulation 326(1) or (2)	$144	$720
regulation 378(1) or (2)	$144	$720
regulation 387(2)	$432	$2 160
regulation 388(2) or (3)	$432	$2 160
regulation 390(2) or (3)	$144	$720
regulation 391(3)	$144	$720
regulation 409(1)	$432	$2 160
regulation 415(2)	$432	$2 160
regulation 418(3)	$144	$720
regulation 423(2)	$144	$720
regulation 425(1) or (2)	$432	$2 160
regulation 426	$432	$2 160
regulation 427(1) or (2)	$432	$2 160
regulation 429(5)	$432	$2 160
regulation 432(5)	$432	$2 160
regulation 434	$720	$3 600
regulation 438(1) or (2)	$432	$2 160
regulation 444(1) or (2)	$144	$720
regulation 445(3) or (4)	$144	$720
regulation 449	$720	$3 600

Provision	Prescribed amount	
	for individual	for body corporate
regulation 450	$720	$3 600
regulation 451(5)	$432	$2 160
regulation 461(1) or (2)	$144	$720
regulation 464(3)	$432	$2 160
regulation 465(1), (2) or (3)	$432	$2 160
regulation 482(3)	$432	$2 160
regulation 505(1)	$144	$720
regulation 506(1)	$144	$720
regulation 507(1)	$144	$720
regulation 512	$144	$720
regulation 513(1)	$144	$720
regulation 525	$144	$720
regulation 529	$432	$2 160
regulation 555(4)	$720	$3 600
regulation 572(4)	$144	$720
regulation 587(1)	$144	$720
regulation 588(1)	$144	$720
regulation 593	$144	$720
regulation 594(1)	$144	$720
regulation 607	$144	$720

ENDNOTES

1 KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz* = *Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced
od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2 LIST OF LEGISLATION

***Work Health and Safety (National Uniform Legislation) Regulations* (SL No. 59, 2011)**
Notified 30 December
Commenced 1 January 2012 (r 2)

***Work Health and Safety (National Uniform Legislation) Amendment Regulations 2012* (SL No. 8, 2012)**
Notified 1 March 2012
Commenced 1 March 2012 (r 2)

***Work Health and Safety (National Uniform Legislation) Amendment Regulations (No. 2) 2012* (SL No. 53, 2012)**
Notified 20 December 2012
Commenced 20 December 2012

***Work Health and Safety (National Uniform Legislation) Amendment Regulations 2013* (SL No. 26, 2013)**
Notified 28 June 2013
Commenced 28 June 2013

***Emergency Management Act 2013* (Act No. 27, 2013)**
Assent date 8 November 2013
Commenced 27 November 2013 (*Gaz* S63, 27 November 2013)

***Work Health and Safety (National Uniform Legislation) Amendment Regulations (No. 2) 2013* (SL No. 40, 2013)**
Notified 19 December 2013
Commenced 19 December 2013

***Work Health and Safety (National Uniform Legislation) Amendment Regulations 2014* (SL No. 20, 2014)**
Notified 1 July 2014
Commenced 1 July 2014

Work Health and Safety (National Uniform Legislation) Amendment Regulations (No. 2) 2014 **(SL No.40, 2014)**

Notified	24 December 2014
Commenced	24 December 2014

Work Health and Safety (National Uniform Legislation) Amendment Regulations (No. 3) 2014 **(SL No. 45, 2014)**

Notified	24 December 2014
Commenced	24 December 2014

3 LIST OF AMENDMENTS

r 5	amd No. 8, 2012, rr 4 and 10; Act No. 27, 2013, s 128; No. 40, 2014No. 40, 2014, r 3
r 6A	amd No. 40, 2014No. 40, 2014, r 4
r 10	amd No. 8, 2012, r 10
r 21	amd No. 8, 2012, r 5; No. 40, 2014No. 40, 2014, r 37
r 25	amd No. 40, 2014, r 37
r 43	amd No. 40, 2014, r 37
r 82	amd No. 40, 2014, r 5
r 84	amd No. 40, 2014, r 37
r 85	amd No. 40, 2014, r 6
r 87	amd No. 40, 2014, r 37
r 91A	ins No. 40, 2014, r 7
r 93	amd No. 40, 2014, r 8
r 101	amd No. 40, 2014, r 37
r 104	amd No. 40, 2014, r 37
r 106	amd No. 40, 2014, r 9
r 108	sub No. 40, 2014, r 10
r 109	amd No. 40, 2014, r 11
r 152	sub No. 40, 2014, r 12
r 158	amd No. 40, 2014, r 37
r 161	amd No. 40, 2014, r 37
r 164	amd No. 26, 2013, r 3
r 167	amd No. 40, 2014, r 37
r 169	amd No. 40, 2014, r 37
r 171	sub No. 40, 2014, r 13
r 171A	ins No. 40, 2014, r 13
r 172	amd No. 40, 2014, r 14
rr 173 – 175	amd No. 40, 2014, r 37
r 215	amd No. 40, 2014, r 15
r 217	rep No. 40, 2014, r 16
r 235	amd No. 40, 2014, r 17
pt 5.2	
div 4	
sdiv 2 hdg	amd No. 40, 2014, r 18
rr 238 – 241	sub No. 40, 2014, r 19
r 242	amd No. 40, 2014, r 37
r 244	amd No. 40, 2014, r 20
r 252	amd No. 40, 2014, r 21
r 257	amd No. 40, 2014, r 37
r 266	amd No. 40, 2014, r 37
r 269	amd No. 40, 2014, r 37
pt 5.3	
div 6 hdg	ins No. 40, 2014, r 22
rr 288A – 288D	ins No. 40, 2014, r 22
r 318	sub No. 40, 2014, r 23

r 342	amd No. 40, 2014, r 24
r 348	amd No. 40, 2014, r 25
r 359	amd No. 40, 2014, r 37
r 418	amd No. 40, 2014, r 26
r 421	amd No. 40, 2014, r 27
r 491	amd No. 40, 2014, r 37
r 492	amd No. 40, 2014, r 28
r 498	amd No. 40, 2014, r 37
rr 516 – 517	amd No. 40, 2014, r 37
r 547	amd No. 40, 2014, r 29
r 598	amd No. 40, 2014, r 37
ch 10 hdg	sub No. 8, 2012, r 6
pt 10.1 hdg	ins No. 8, 2012, r 6
rr 609 – 610	ins No. 8, 2012, r 6
pt 10.2 hdg	ins No. 8, 2012, r 6
r 611	ins No. 8, 2012, r 6
pt 10.3 hdg	ins No. 8, 2012, r 6
pt 10.3	
div 1 hdg	ins No. 8, 2012, r 6
rr 612 – 616	ins No. 8, 2012, r 6
pt 10.3	
div 2 hdg	ins No. 8, 2012, r 6
rr 617 – 621	ins No. 8, 2012, r 6
r 676	amd No. 40, 2014, r 30
r 689	amd No. 40, 2014, r 37
r 700	amd No. 40, 2014, r 37
ch 12 note	ins No. 8, 2012, r 7
rr 712 – 716	amd No. 53, 2012, r 5
r 717	amd No. 26, 2013, r 4; No. 45, 2014, r 3
rr 719 – 729	amd No. 53, 2012, r 5
r 730	amd No. 26, 2013, r 5
rr 731 – 733	amd No. 53, 2012, r 5
r 734	amd No. 26, 2013, r 6
r 738A	ins No. 26, 2013, r 7
	amd No. 20, 2014, r3
r 739	amd No. 26, 2013, r 8; No. 20, 2014, r 4
r 744	amd No. 26, 2013, r 9; No. 20, 2014, r 5
r 745	amd No. 26, 2013, r 10; No. 20, 2014, r 6
r 750	amd No. 53, 2012, r 5; No. 40, 2013, r 3
r 751	amd No. 53, 2012, r 5; No. 40, 2013, r 4
r 752	amd No. 53, 2012, r 5; No. 40, 2013, r 5
r 753	amd No. 53, 2012, r 5; No. 40, 2013, r 6
r 754	amd No. 53, 2012, r 5; No. 40, 2013, r 7
r 755	amd No. 53, 2012, r 5; No. 40, 2013, r 8
r 756	amd No. 53, 2012, r 5; No. 40, 2013, r 9
r 757	amd No. 53, 2012, r 5; No. 40, 2013, r 10
r 758	amd No. 53, 2012, r 3; No. 40, 2013, r 11
rr 759 – 760	amd No. 53, 2012, r 5
r 761	amd No. 53, 2012, r 5; No. 40, 2013, r 12
r 762	amd No. 53, 2012, r 5
r 763	amd No. 53, 2012, r 5; No. 40, 2013, r 13
r 764	amd No. 53, 2012, r 5
r 765	amd No. 53, 2012, r 5; No. 40, 2013, r 14
r 766	amd No. 53, 2012, r 5; No. 40, 2013, r 15
rr 767 – 768	amd No. 53, 2012, r 5
r 771	amd No. 53, 2012, r 4
r 772	amd No. 53, 2012, r 5
r 774	amd No. 53, 2012, r 5

r 776	amd No. 53, 2012, r 5; No. 26, 2013, r 11
rr 778 – 781	amd No. 53, 2012, r 5
r 785	amd No. 53, 2012, r 5; No. 40, 2013, r 16; No. 45, 2014, r 4
rr 787 – 791	amd No. 53, 2012, r 5
r 793	amd No. 53, 2012, r 5
r 797	amd No. 26, 2013, r 12; No. 20, 2014, r 7
r 798	amd No. 53, 2012, r 5
r 799	amd No. 53, 2012, r 5; No. 40, 2013, r 17
r 800	amd No. 26, 2013, r 13; No. 20, 2014, r 8
r 801	amd No. 26, 2013, r 14
r 802	amd No. 26, 2013, r 15
rr 803 – 805	amd No. 53, 2012, r 5
r 806	amd No. 26, 2013, r 16; No. 45, 2014, r 5
r 807	amd No. 26, 2013, r 17
r 808	amd No. 26, 2013, r 18
r 809	amd No. 53, 2012, r 5; No. 40, 2013, r 18
r 810	amd No. 26, 2013, r 19
r 812	amd No. 26, 2013, r 20
r 817	amd No. 26, 2013, r 21
r 818	amd No. 26, 2013, r 22
r 823	amd No. 26, 2013, r 23
r 824	amd No. 53, 2012, r 5
ch 13 hdg	ins No. 8, 2012, r 8
rr 830 – 831	ins No. 8, 2012, r 8
r 832	ins No. 8, 2012, r 8
	amd No. 26, 2013, r 24
r 833	ins No. 8, 2012, r 8
sch 2	amd No. 8, 2012, r 9; No. 40, 2014, r 31
sch 3	amd No. 40, 2014, r 32
sch 5	amd No. 40, 2014, r 33
sch 6	amd No. 40, 2014, r 34
sch 10	amd No. 40, 2014, r 35
sch 13	amd No. 40, 2014, r 37
sch 15	amd No. 8, 2012, r 10; No. 40, 2014, r 36
sch 16	amd No. 40, 2014, r 37