

NORTHERN TERRITORY OF AUSTRALIA

WORKPLACE HEALTH AND SAFETY AMENDMENT REGULATIONS 2008

Subordinate Legislation No. 14 of 2008

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NORTHERN TERRITORY OF AUSTRALIA

Subordinate Legislation No. 14 of 2008*

Workplace Health and Safety Amendment Regulations 2008

I, Thomas Ian Pauling, Administrator of the Northern Territory of Australia, acting with the advice of the Executive Council, make the following regulations under the *Workplace Health and Safety Act*.

Dated 4 June 2008.

T. I. Pauling
Administrator

By His Honour's Command

D. P. Lawrie
Treasurer
acting for the
Minister for Employment, Education and Training

* Notified in the *Northern Territory Government Gazette* on 11 June 2008.

1 Citation

These Regulations may be cited as the *Workplace Health and Safety Amendment Regulations 2008*.

2 Regulations amended

These Regulations amend the *Workplace Health and Safety Regulations*.

3 Commencement

These Regulations commence on the day on which, but immediately after, the *Law Reform (Work Health) Amendment Act 2007* commences.

4 Amendment of regulation 2 (Interpretation)

Regulation 2, definitions ***approved*** and ***hazard***
omit

5 New Part 5A

After regulation 35

insert

**Part 5A Work groups, health and safety representatives
and health and safety committees**

Division 1 Definitions

35A Definitions

In this Part:

relevant employer, for a work group or prospective work group, means an employer of workers who form, or will form, all or part of the work group.

relevant workplace, for a work group or prospective work group, means a workplace at which workers who form, or will form, all or part of the work group perform work.

Division 2 Work groups

35B Agreement establishing work group

- (1) Negotiations for an agreement to establish a work group must be directed at ensuring the health and safety representative for the work group is accessible to each member of the group.
- (2) In particular, the following matters must be considered:
 - (a) the location of each relevant workplace;
 - (b) the number of workers who will form the work group;
 - (c) the languages spoken by the workers;
 - (d) the overtime or shift work arrangements that apply to the workers;
 - (e) the capacity in which each worker is engaged to perform work;
 - (f) the nature of each type of work performed by the workers;
 - (g) the nature of particular risks involved in each type of work;
 - (h) the nature of particular hazards at each relevant workplace.
- (3) An agreement establishing a work group must be evidenced in writing.
- (4) Each relevant employer must keep a copy of the agreement.

35C Variation of agreement

- (1) An agreement establishing a work group may be varied by agreement between each relevant employer and the work group.
- (2) If an agreement cannot be reached, a relevant employer or a member of the workgroup may apply, in the approved form, to the Authority for assistance in resolving the variation of the agreement.
- (3) On receipt of the application, the Authority may take any action it considers appropriate to resolve questions in issue and may itself decide how the agreement will be varied.

Division 3 Health and safety representatives

35D Returning officer

If a work group decides to elect a health and safety representative,

the work group must appoint a returning officer for the election by agreement between the majority of members of the work group.

35E Notice of election day

The returning officer must, as soon as practicable after his or her appointment:

- (a) fix the date of the election; and
- (b) ensure a notice is displayed in a prominent place at each relevant workplace for at least 8 business days before the date of the election:
 - (i) stating the date, time and place of the election; and
 - (ii) inviting nominations for candidates; and
 - (iii) stating the closing day for nominations.

35F Nomination

- (1) A nomination of a candidate for election must be:
 - (a) in writing; and
 - (b) received by the returning officer at least 3 business days before the date of the election.
- (2) If the returning officer accepts nomination as a candidate, a new returning officer must be appointed in accordance with regulation 35D.

35G Voting

- (1) Each member of the work group is entitled to 1 vote at the election.
- (2) The election must be by secret ballot.
- (3) The returning officer must make up ballot papers listing the name of each candidate for election in the alphabetical order of the candidates' surnames.
- (4) A member votes by placing a cross next to the name of the candidate of his or her preference.

35H Election

- (1) The candidate who receives the highest number of votes is elected as the health and safety representative for the work group.

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- (2) If 2 or more candidates receive an equal number of votes, the successful candidate must be determined by lot.
 - (3) If only one candidate has been nominated by the close of nominations:
 - (a) a ballot does not need to be held; and
 - (b) the returning officer must declare the candidate elected.
 - (4) The returning officer must, as soon as practicable after the completion of the ballot:
 - (a) declare the results of the election; and
 - (b) ensure a notice is displayed in a prominent place at each relevant workplace stating the results of the election; and
 - (c) inform each relevant employer in writing of the results of the election.

35J Termination of health and safety representative's term of office

For section 37(2)(e) of the Act, the majority of the members of the workgroup must agree to terminate a health and safety representative's term of office.

35K Employer must provide facilities and assistance to health and safety representative

- (1) For section 43(1)(e) of the Act, a health and safety representative must be provided with the following at each relevant workplace:
 - (a) facilities to enable meetings with the work group;
 - (b) use of a noticeboard;
 - (c) if reasonably practicable, use of meter or other standards monitoring equipment.
- (2) In addition, a health and safety representative must be provided with the following at the health and safety representative's workplace:
 - (a) access to a telephone and, where available, internet and email facilities;
 - (b) access to word processing and photocopying facilities.
- (3) If there is more than one relevant workplace, the health and safety representative must be provided with transport between each

workplace, or reimbursement of travel expenses.

Division 4 Health and safety committees

35L Functions assigned to health and safety committee

For section 46(h) of the Act, the majority of a health and safety committee must consent to perform functions assigned to the committee by the employer.

6 New regulation 39A

After regulation 39

insert

39A Hazardous activities

For the definition ***hazardous activity*** in section 4 of the Act, work required to be notified under regulation 26 is classified as a hazardous activity for which a risk management plan is required.

Note

Mining operations are also classified as a hazardous activity by regulation 152B.

39B Content of risk management plan

- (1) For section 58(2) of the Act, a risk management plan for a hazardous activity must:
 - (a) identify the hazards involved in the activity; and
 - (b) identify the risks resulting from the hazards and the seriousness of those risks; and
 - (c) address the risk of high consequence, low probability events; and
 - (d) determine appropriate risk management measures:
 - (i) to eliminate, as far as reasonably practicable, avoidable risks; and
 - (ii) to minimise, as far as reasonably practicable, unavoidable risks; and
 - (e) specify the means by which the risk management measures will be implemented; and
 - (f) determine a mechanism for monitoring and reviewing the

effectiveness of the risk management measures; and

- (g) specify the training which must be provided to a worker who may be exposed to a hazard; and
- (h) specify any requirements for health surveillance of workers; and
- (i) specify the records particular to the risk management plan that must be kept; and
- (j) specify the qualifications or credentials of the person who prepared the risk management plan.

Note

Additional matters must be included in a risk management plan for a mining operation (see Part 11A).

- (2) A new risk management plan is not required each time the hazardous activity is undertaken.
- (3) The risk management plan must be amended if:
 - (a) significant new risks are identified; or
 - (b) risk management measures are modified; or
 - (c) new risk management measures are identified.
- (4) Section 58 of the Act applies to an amended risk management plan as if it were a new risk management plan.

7 Amendment of regulation 44 (Consultation)

- (1) Regulation 44(1), after paragraph (a)

insert

- (aa) each health and safety representative for each workgroup established at the workplace; and

- (2) Regulation 44, after subregulation (1)

insert

- (1A) If one or more workgroups have been established at the workplace, the employer must consult with the health and safety representative for each workgroup before consulting with other workers or the health and safety committee.

8 Repeal and substitution of regulation 46

Regulation 46

repeal, substitute

46 Incidents classified as reportable incidents

For section 64(d) of the Act, an accident involving a hazardous activity for which a risk management plan is required is a reportable incident.

9 New regulations 152C to 152G

After regulation 152B

insert

152C Additional contents of risk management plan for mining operations

In addition to the requirements of regulation 39B, a risk management plan for a mining operation must:

- (a) include a fitness to work program; and
- (b) specify the management structure for the mining operation; and
- (c) include an emergency plan.

152D Fitness to work program

The fitness to work program must specify appropriate risk management measures:

- (a) to eliminate, as far as reasonably practicable, the risks resulting from consumption of alcohol or intoxicating drugs at the mining site; and
- (b) to minimise, as far as reasonably practicable, the risks resulting from fatigue.

152E Management structure

The management structure for the mining operation must identify people within the structure by position and outline the areas of responsibility and accountability of each position.

152F Emergency plan

The emergency plan for the mining operation must:

- (a) identify hazards that might cause an emergency at the mine;
and
- (b) assess the risk of an emergency occurring; and
- (c) identify measures to minimise the risk of an emergency occurring and to respond to an emergency, including by:
 - (i) providing appropriate facilities and equipment; and
 - (ii) providing effective alarm systems; and
 - (iii) testing alarm systems; and
 - (iv) developing procedures to deal with emergencies; and
 - (v) training employees in emergency procedures; and
 - (vi) training employees in fire fighting, mine rescue and other relevant emergency response functions; and
 - (vii) reviewing facilities, equipment and procedures.

152G Health surveillance

- (1) The employer of a worker engaged in mining operations at a mining site must provide health surveillance of the worker.
- (2) The employer must ensure the worker first undergoes health surveillance:
 - (a) in the case of a worker who begins work at the mining site after the commencement of this regulation – within 90 days after the date on which the worker begins work at the mining site; or
 - (b) in any other case – within 1 year after the commencement of this regulation.
- (3) The employer must ensure the worker undergoes additional health surveillance at intervals not longer than 2 years while the worker continues work at the mining site.
- (4) When the worker stops work at the mining site, unless the worker has undergone health surveillance in accordance with this regulation within the previous 12 months:

-
- (a) the employer must offer to provide additional health surveillance; and
 - (b) if the worker elects to undergo the health surveillance – the health surveillance must be carried out within 30 days after the date the worker stops work at the mining site.
- (5) Health surveillance of a worker must include the following:
- (a) a record of the worker's work history;
 - (b) a clinical examination;
 - (c) a chest radiograph (if appropriate);
 - (d) a lung function test;
 - (e) an audiometric test.
- (6) The requirement for health surveillance does not apply to a worker who normally works in an area where there is no significant exposure to the hazards identified in the risk management plan for the mining operation.
- (7) In this section:

employer, of a worker, means the person who directly engages the worker to perform work.

Examples

- 1 *If a worker is engaged by a contractor to work at a mining site, the contractor is the employer for this section.*
- 2 *If a worker is engaged by a labour hire company to work at a mining site, the labour hire company is the employer for this section.*