

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

OCCUPATIONAL HEALTH AND SAFETY (GENERAL) REGULATION 2007

Subordinate Law No **SL2007-36**

EXPLANATORY STATEMENT

Circulated by the authority of
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Minister for Industrial Relations

Occupational Health and Safety (General) Regulation 2007

Outline

The *Occupational Health and Safety Act 1989* (the Act) provides for the promotion and improvement of the standards of occupational health, safety and welfare, and for related purposes. The Occupational Health and Safety (General) Regulation 2007 (the Regulation) is made under the section 229 of the Act.

The Regulation provides for risk control, training for health and safety representatives, reporting of and record keeping in relation to dangerous occurrences at the workplace, and for particular duties and safety measures that relate to the management at workplaces of —

- entry and exit from the workplace;
- the use of personal protective and safety equipment;
- the prevention of falls;
- measures relating to atmosphere and ventilation;
- extremes of heat and cold;
- safe surfaces and floors;
- the safe use of electricity;
- work in confined spaces;
- lighting;
- noise, and the risk of hearing impairment;
- employees working in isolation;
- the risk of fire and explosion; and
- emergency procedures in the workplace.

The Regulation gives effect to national uniform occupational health and safety standards in relation to noise (*National Standard for Occupational Noise [NOHSC:1007 (2000)]*), and working in confined spaces (AS/NZS 2865 - 2001: Safe Working in a Confined Space).

Offences

Strict liability offences are usually employed in cases where it is necessary to ensure the integrity of a regulatory scheme, particularly those relating to public health and safety, the environment, and the protection of the revenue. Such offences are primarily aimed at the less serious side of the criminal spectrum with penalties generally at the lower end of the scale.

The Regulation requires compliance with provisions that are intended to ensure the safety of workplaces and health and safety of employees. Accordingly, the Government considers strict liability appropriate, particularly given the low level of penalty attached to them, for certain offences in the Regulation.

Offences that are infringement notice offences are provided for. As a consequence the Magistrates Court (Occupational Health and Safety Infringement Notices) Regulation 2004 is to be amended by the Magistrates Court (Occupational Health and Safety Infringement Notices) Amendment Regulation 2007.

Revenue/Cost Implications

The *National Occupational Health and Safety Strategy 2002 – 2012*, to which the ACT is a signatory, is predicated on the understanding that a nationally consistent approach to health and safety regulation at workplaces is essential for employers, employees and other duty holders to play their part efficiently in the reduction of workplace injury and disease. The Regulation will enhance the ability of the ACT to meet its commitment to the National Strategy

The Regulation will strengthen the workplace safety regulatory framework. The matters provided for in the Regulation establish benchmarks and describe basic conditions: they do not create new conditions, do not introduce new practices to responsible employers and are unlikely to require new work. Compliance with the provisions of the Regulation will cause costs to be incurred only by those enterprises that are not currently meeting the general safety duties imposed by the Act.

The Office of Regulatory Services is responsible for the costs of education and publicity about workplace safety matters.

Notes on Specific Provisions

Chapter 1 Preliminary

Section 1 Name of regulation

Section 1 provides for the name of the Regulation to be the Occupational Health and Safety (General) Regulation 2007.

Section 2 Commencement

Section 2 provides for commencement of the Regulation to be on the day that is the later date of either the day that is 6 months after its notification day; or the day on which the *Occupational Health and Safety (Regulatory Services) Legislation Amendment Act 2007* commences.

Notification day is the day on which the Regulation is formally notified in the ACT Legislation Register; which is at <http://www.legislation.act.gov.au/>

Section 3 Dictionary

Section 3 provides for the dictionary at the end of the Regulation to be part of the Regulation.

Section 4 Notes

Section 4 indicates that a note in the Regulation is explanatory and is not part of the Regulation.

Section 5 Offences against regulation – application of Criminal Code etc

Section 5 provides for offences against the Regulation and for the application of the Criminal Code, and the *Legislation Act 2001* to provide for the meaning of ‘penalty units’.

Chapter 2 Important Concepts

Section 6 Satisfying requirement to ‘ensure’ something generally

Section 6 provides for the elements that go to satisfying the requirement in a provision of the Regulation, other than a provision in Chapter 3 of the Regulation, that a person ensure that a thing is done.

Subsection 6(1) applies the section to where a provision of the Regulation, other than a provision in Chapter 3, requires a person to ensure that something is or is not done in relation to a workplace.

Subsection 6(2) provides that the requirement to ensure that something is or is not done in relation to a workplace is satisfied if the person (a) takes all reasonably practicable steps to eliminate the risks that might result if the requirement were not met; or, (b) if it is not reasonably practicable to eliminate the risks, to minimise the risks.

Subsection 6(3) provides that subsection 6(2) does not limit the ways in which the requirement to ensure something might be satisfied.

Section 7 **Meaning of *in control of a workplace***

Subsection 7(1) provides that, for the purposes of the Regulation, a person is *in control of a workplace* if, and to the extent that, the person has control (a) of the workplace; (b) of a means of entry to or exit from a workplace; or (c) of plant or a substance at a workplace.

The note gives as examples of a person *in control of a workplace*: an employer, a site supervisor, a building owner, or a plant owner.

Subsection 7(2) provides that more than one person may be in control of a workplace. Where a duty is imposed on *a person in control of a workplace* each person who has control of the workplace is required to comply with the duty.

Section 8 **Meaning of *reasonably practicable steps***

Section 8 provides for the meaning of *reasonably practicable steps* for the purposes of the Regulation.

Subsection 8(1) provides for things that must be considered in working out what are *reasonably practicable steps*. These are –

- (a) the seriousness of the risk;
- (b) the current state of knowledge about –
 - (i) the hazard giving rise to the risk, and
 - (ii) ways of eliminating or minimising the risk;
- (c) the availability and suitability of ways to eliminate or minimise the risk; and
- (d) the cost of eliminating or minimising the risk.

Subsection 8(2) provides that, for section 8, the *cost* includes burdens and disadvantages. These *costs* would include, but not be limited to, the actual expenditure of time and money.

Section 9 **Minimising risks**

Section 9 provides that, for the purposes of the Regulation, if a person is required to minimise a risk the person must take certain steps, in a particular order, until the risk is reduced as far as is reasonably practicable.

The required steps are given, in the order required to be taken, in paragraphs 9(a) to (e) and are - substitution, isolation, minimisation by engineering means, minimisation by administrative means, and the use of personal protective and safety equipment.

Chapter 3 Workplace Requirements

Part 3.1 Important concept — Ch 3

Section 10 Satisfying a requirement to ensure something

Subsection 10(1) applies section 10 if a section of Chapter 3 requires a person to ensure that something is done or is not done in relation to a workplace.

Subsection 10(2) provides that the requirement to ensure that something is done or is not done in relation to a workplace is satisfied if the person takes all reasonably practicable steps to have the thing done or not done.

Subsection 10(3) provides that subsection 10(2) does not limit the ways in which the requirement may be satisfied.

Part 3.2 Facilities

Division 3.2.1 Amenities

Section 11 Employer to provide amenities

Section 11 provides that an employer must ensure that appropriate amenities are provided to all employees while they are at the workplace. This means that an employer must take all reasonably practicable steps to provide appropriate amenities at the workplace.

Subsection 11(2) provides for elements to be considered in deciding what is *appropriate* for the purposes of the section. These include in paragraph (a) the nature of the work undertaken at the workplace; (b) the size and location of the workplace; and (c) the number of men and women at the workplace.

Subsection 11(3) provides that for section 11 *amenities* means facilities for the welfare or personal hygiene needs of people. Examples of these are given and include toilets, seating, change rooms, drinking water and lockers.

Section 12 Amenities and accommodation must be safe and hygienic

Section 12 provides that a person in control of the workplace must ensure that amenities provided under section 11 and other accommodation for the welfare of employees are kept safe and clean.

Section 13 Facilities for personal belongings

Section 13 requires that an employer is to provide employees with reasonable access to facilities for keeping clothes and personal belongings safe and clean at the workplace.

Section 14 Facilities for changing clothes

Subsection 14(1) provides that section 14 applies if (a) because of the nature of the work to be undertaken at the workplace or the usual working conditions, an employee needs to change clothes before, during or after work, and (b) the work is usually performed at the same location, and (c) the workplace is in or near a building where a changing facility can be provided.

Subsection 14(2) requires an employer to provide separate changing facilities for men and women employees at or near the workplace.

Subsection 14(3) qualifies subsection 14(2) to allow an employer to provide a single change room if the employer ensures privacy and security between male and female employees while changing their clothes.

Subsection 14(4) provides that a change room must have enough space and seating for the number of people likely to be using it at any particular time and must have (a) a reasonable number of mirrors and shelves; (b) be hygienic; and (c) give reasonable privacy.

Subsection 14(5) provides that section 14 is subject to section 17. Section 17 provides that an employer may combine facilities including change rooms in certain circumstances.

Section 15 Facilities for changing clothes — temporary workplaces

Section 15(1) applies section 15 if an employee needs to change clothes before, during or after work because of the nature of the work or the usual working conditions and the work is not usually performed in the same place, the workplace is not in or near a building where changing facilities can be provided.

Subsection 15(2) requires an employer to provide separate changing facilities for men and women employees.

Subsection 15(3) qualifies subsection 15(2) to allow an employer to provide a single change room if the employer ensures privacy and security between male and female employees while changing their clothes.

Subsection 15(4) provides that a changing facility must be (a) accessible from the workplace; (b) hygienic; and (c) reasonably private.

Subsection 15(5) provides that section 15 is subject to section 17. Section 17 provides that an employer may combine facilities including change rooms in certain circumstances.

Section 16 Meal facilities

Subsection 16(1) provides that section 16 applies if it is reasonable for meal facilities to be provided for employees because of the nature of the work or the usual working conditions (for instance, the hours of work cover one or more of the usual times for meals).

Subsection 16(2) requires the employer to provide employees with access to reasonable meal facilities.

Subsection 16(3) provides that the meal facilities must be (a) reasonably accessible from the workplace; (b) hygienic; and (c) protected from the weather.

Subsection 16(4) provides that section 16 is subject to section 17. Section 17 provides that an employer may combine facilities where there are no more than 15 employees employed at the workplace, and, if the combined facilities are to include meal facilities, the combined facility would not detrimentally affect the health or welfare of anyone eating in the area.

Section 17 Combined facilities

Section 17 allows an employee to combine facilities where there are no more than 15 employees employed at the workplace, and, if the combined facilities are to include meal facilities, the combined facility would not detrimentally affect the health or welfare of anyone eating in the area.

Subsection 17(1) provides that section 17 applies to workplaces with 15 or fewer employees.

Subsection 17(2) provides that an employer may combine 2 or more of the required facilities.

Subsection 17(3) provides that subsection 17(2) does not apply if the combined facility is to include a facility under section 16 (Meal facilities) and the health and welfare of anyone eating in the facility will be adversely affected because the facilities are combined.

Subsection 17(4) provides that the *required facilities* referred to in subsection 17(2) mean the facilities referred to in — section 13 (Facilities for personal belongings), section 14 (Facilities for changing clothes), section 15 (Facilities for changing clothes—temporary workplaces); or section 16 (Meal facilities).

Section 18 Toilet facilities

Subsection 18(1) requires an employer to ensure that employees have reasonable access to toilet facilities.

Subsection 18(2) requires an employer to provide adequate and hygienic facilities for the disposal of sanitary items.

Subsection 18(3) requires that the toilet facilities must be (a) accessible from the workplace; (b) hygienic; (c) protected from the weather; and (d) kept in a clean and hygienic working condition.

Subsection 18(4) requires an employer to provide separate toilet facilities for men and for women employees.

Subsection 18(5) provides that the employer need not provide separate toilet facilities for men and for women employees if the employer ensures privacy and security between men and women in using the facilities.

Subsection 18 (6) provides that an employer need not provide the toilet facilities required in subsections 17(3), (4) and (5) if (a) not more than 5 people are working at the workplace; (b) premises with a clean and hygienic toilet are reasonably accessible to the workplace; and (c) the owner of the premises gives permission for employees to use the toilet facility.

Section 19 Washing facilities

Subsection 19(1) requires an employer to ensure that employees have reasonable access to washing facilities.

Subsection 19(2) requires the employer to ensure that (a) each sink has running water; or (b) if it is not reasonable for a sink to have running water – that employees have access to clean water near to the facility.

Subsection 19(3) provides that a *washing facility* mean a facility for a person to wash and to dry the person's hands, arms, neck and face.

Section 20 Shower facilities

Subsection 20(1) provides that the section applies if, because of the nature of the work, or of the usual working conditions, an employee needs to shower at or after work at the workplace.

Subsection 20(2) requires the employer to ensure that employees have reasonable access to shower facilities.

Subsection 20(3) requires the employer to ensure privacy and security between male and female employees in the shower facilities provided.

Section 21 Drinking water

Subsection 21(1) provides that an employer commits an offence if drinking water is not provided for employees at the workplace. A maximum penalty of 10 penalty units is provided for

Subsection 21(2) provides that an offence against section 21 is a strict liability offence.

Section 22 Seating

Subsection 22(1) requires an employer to provide seating for an employee if it is reasonable for the employee to work while seated.

Subsection 22(2) requires an employer to provide seating for an employee to use from time to time if it reasonable for an employee to perform some tasks while seated.

Subsection 22(3) requires the seating provided to be (a) ergonomically sound; (b) provide suitable support; and (c) be appropriate for the type of work being done.

Subsection 22(4) provides that what is reasonable in relation to subsections (1) and (2) is to be decided having regard to the nature of the work undertaken by the employee.

Section 23 Working space

Section 23 requires an employer to ensure that sufficient space is provided to allow workers to work safely.

Division 3.2.2 First aid and sickness

Section 24 First aid

Subsection 24(1) requires an employer to provide appropriate first aid equipment at the employer's workplace so that each person has reasonable access to the equipment.

Subsection 24(2) requires an employer to ensure that an appropriate number of people trained in first aid are available to give first aid at the workplace.

Subsection 24(3) provides that what is appropriate for subsection (1) or (2) must be decided having regard to (a) the nature of the work done at the workplace; (b) the size and location of the workplace; and (c) the number of employees at the workplace.

Subsection 24(4) provides that, for the section, *first aid* means the immediate treatment or care of a person who is injured or becomes sick.

Section 25 Arrangements for sick employees

Section 25 provides that, if there is not a first aid room or a health centre provided at the workplace, an employer must make appropriate arrangements to ensure the well-being of an employee who is injured or becomes sick at work.

Part 3.3 Particular safety measures

Division 3.3.1. Entry and exit

Section 26 Entry to and exit from workplaces

Section 26 requires a person in control of a workplace to ensure that any one entering or leaving the workplace is able to (a) enter, exit and move safely about the workplace; and (b) leave the workplace in an emergency – that is a serious situation or occurrence that happens unexpectedly and demands immediate action.

Section 27 Movement within workplaces

Subsection 27(1) requires a person in control of a workplace to ensure that anyone allowed at the workplace has safe access to (a) each place at the workplace where the person is allowed to be; and (b) to any amenities provided at the workplace where the person is allowed to be.

Subsection 27(2) provides that a person in control of a workplace commits an offence if a passage or other space used for normal movement in the workplace, or an emergency

exit contains anything that could hinder or prevent the safe and quick exit of anyone in an emergency.

A maximum penalty of 10 penalty points is provided for.

Subsection 27(3) provides that an offence against section 27 is a strict liability offence.

Division 3.3.2 Personal protective and safety equipment

Section 28 Employer to provide personal protective and safety equipment

Section 28 requires that, where the measures are taken by an employer to minimise a risk include the use of personal protective and safety equipment, the employer must provide each person who is at risk with personal protective and safety equipment. Section 9 of the Regulation provides that personal protective and safety equipment is the last of the steps to be taken to minimise a risk.

Paragraphs 28(1) (a) to (e) require that –

- (a) the equipment provided is appropriate for the person and minimises the risk for the person;
- (b) that the person to whom the equipment is provided is told of any limitation of the equipment;
- (c) that the person to whom the equipment is provided is given instruction and training in the use of the equipment so as to ensure that the equipment minimises the risk for the person;
- (d) that the equipment is properly maintained and repaired, or replaced as frequently as is necessary, to minimise the risk for the person; and
- (e) that the equipment is kept in a clean and hygienic condition.

Subsection 28(2) provides that the employer commits an offence if the personal protective and safety equipment used to minimise risk at a workplace is not stored in an accessible place at the workplace. A maximum penalty of 10 penalty points is provided for.

Subsection 28(3) provides that an employer commits an offence if (a) there are areas in the workplace where the personal protective and safety equipment must be used; and (b) the areas are not clearly identified. A maximum penalty of 10 penalty points is provided for.

Subsection 28(4) provides that an offence against section 28 is a strict liability offence.

Section 29 Responsibilities of users of personal protective and safety equipment

Subsection 29(1) provides that the section applies if an employee has been provided with personal protective and safety equipment for use at the workplace.

Subsection 29(2) requires an employee to use the personal protective and safety equipment in accordance with the instructions given under paragraph 28(1)(c).

Subsection 29(3) provides that the employee must not misuse or damage the personal protective and safety equipment.

Subsection 29(4) requires the employee to tell the employer as soon as possible if the employee becomes aware of any damage to, or defect in, or a need to clean or sterilize the personal protective and safety equipment.

Section 30 Certain personal protective and safety equipment to be provided

Subsection 30(1) provides that the requirements of section 30 are in addition to any other requirements for measures to be taken by a person in control of a workplace to minimise a risk.

Subsection 30(2) requires a person in control of a workplace to ensure that appropriate personal protective and safety equipment is provided to anyone in the workplace if it is—

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

Subsection 30(3) requires that appropriate steps are to be taken by the person in control of the workplace to ensure that no risk to the health or safety of any one is created if the use of personal protective and safety equipment might affect the user's ability to communicate with others.

Section 31 Air supplied respiratory equipment

Subsection 31(1) provides that the section applies if air-supplied respiratory equipment is used, or is provided for use, at a workplace.

Subsection 31(2) provides that an employer commits an offence if air-supplied respiratory equipment supplies air at (a) less than 170L/min; and (b) that contains less

than 19.5% or more than 22% oxygen. A maximum penalty of 10 penalty points is provided for.

Subsection 31(3) provides that an employer must ensure that the air from the air-supplied respiratory equipment must be passed through (a) an efficient purifying device; (b) an efficient conditioner; (c) an efficient condensate trap; and (d) an efficient device to eliminate stale air.

Subsection 31(4) provides that the equipment must (a) be maintained in efficient working order; (b) kept clean and away from possible contaminants; (c) not be allowed to overheat; and (d) incorporate only those fittings that cannot be connected to any other compressed air equipment at the workplace.

Subsection 31(5) provides that an employer commits an offence if air-supplied respiratory equipment does not include an automatic warning device; and is used in circumstances in which an inadequate air supply would represent an immediate hazard to the user of the air-supplied respiratory equipment and an auxiliary air supply is not provided.

A maximum penalty of 10 penalty units is provided for.

Subsection 31(6) provides that an offence against section 31 is a strict liability offence.

Division 3.3.3 Prevention of falls

Section 32 Meaning of *anchorage* - Division 3.3.3

For the purposes of Division 3.3.3 *anchorage* means a secure point for attaching a safety line or other component of a travel restraint system or of a fall arrest system. The meaning of *safety harness* is given in the dictionary.

Section 33 Protection against falls

Subsection 33(1) applies the section to a situation where (a) because of the nature of the work an employee must work in a place from which the employee could fall; and (b) it is likely that if the employee did fall the employee would be injured.

Subsection 33(2) requires an employer to provide reasonable protection against the employee falling from the place.

Subsection 33(3) requires the employer, in addition, to provide (a) a safe means of entry and exit from the place; and (b), as far as is reasonably practicable, a protective barrier for the place; or (c) if it not reasonably practicable to provide a protective barrier, to provide and maintain a safe system of work for the place.

Subsection 33(4) provides that, in addition to subsection 33(3), if the employee is carrying out maintenance work on a structure, an employer must ensure that the employee uses—

- (a) a properly installed building maintenance unit; or
- (b) scaffolding or a working platform; or
- (c) if it is not reasonably practicable to provide a building maintenance unit, scaffolding or a working platform, a safety harness attached to a safety line that is attached to an appropriate anchorage.

Subsection 33(5) requires the employer, in providing and maintaining a safe system of work for paragraph 33(3)(c), to consider –

- (a) providing training in relation to risks associated with working in the place;
- (b) providing supervision and assistance for people working in the place;
- (c) whether it is practicable to use a fall-arresting device; and,
- (d) if a safe working platform cannot reasonably be provided, whether it is practicable to use a safety harness or a pole safety static-line system.

Subsection 33(6) provides that in the section, a *building maintenance unit* means a power-operated suspended platform and related equipment that is (a) designed to provide access to the face of a building for maintenance purposes; and (b) is permanently installed on the building.

Section 34 Use of safety harness, safety line and anchorage

Subsection 34(1) provides that the section applies if a safety harness, a safety line or anchorage is used, or is provided for use, at a workplace.

Subsection 34(2) requires an employer to ensure that the safety harness, a safety line or anchorage is (a) regularly inspected; and (b) kept in efficient working order.

Subsection 34(3) provides that, for paragraph 33(2)(b), an anchorage that is permanently fixed to a structure is not kept in efficient working order if it is not inspected at least every six months.

Subsection 34(4) prohibits a person using the safety harness or the safety line unless the harness or line is (a) suitable for the use; and (b) undamaged and effective, and (c) maintained in a suitable condition for the particular use.

Subsection 34(5) prohibits a person from using the anchorage if the load-bearing capacity of the anchorage is impaired.

Subsection 34(6) requires an employer who becomes aware that the load-bearing capacity of the anchorage is impaired to ensure that the anchorage is not used until it is repaired or replaced.

Section 35 Use of ladders

Subsection 34(1) provides that the section applies if a ladder is used, or if a ladder is provided for use, at a workplace.

Subsection 35(2) requires an employer to ensure that the ladder is (a) of sound construction; and (b) is maintained in a safe condition.

Subsection 35(3) prohibits a person from using the ladder in a way that creates a risk to the safety of any person.

Section 36 Use of particular types of ladders

Subsection 36(1) provides that a person commits an offence if a portable ladder or an extension ladder is used at a workplace in any one of the following conditions—

- (a) the horizontal distance between its top support point and its foot is more than $\frac{1}{4}$ of its supported length;
- (b) the ladder is not placed on a firm footing;
- (c) the ladder is not secured to prevent slipping and sideways movement.

A maximum penalty of 10 penalty units is provided for.

Subsection 36(2) provides that a person commits an offence if (a) a ladder is used at a workplace to support planks for a working platform; and (b) the ladder is not a trestle ladder. A maximum penalty of 10 penalty units is provided for.

Subsection 36(3) provides that a person commits an offence if (a) a working platform is supported by trestle ladders at a workplace; and (b) the working platform is used for other than light duty work. A maximum penalty of 10 penalty units is provided for.

Subsection 36(4) provides that an offence against section 36 is a strict liability offence.

Subsection 36(5) provides a definition for *light duty work* for the purposes of the Regulation: it is to mean work on a ladder if the total weight on the ladder is less than 2.2KN (or 224kg), including a single point limit of 1KN (102kg).

Division 3.3.4 Atmosphere and ventilation

Section 37 Definitions for Division 3.3.4

Section 37 provides meanings for the terms used in Division 3.3.4 as follows —

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

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

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

TWA or time weighted average means

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

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

unsafe oxygen level means an oxygen level that is not a safe oxygen level, that is, it is a level outside the minimum and maximum levels that define the ‘safe oxygen level’.

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

Section 38 Ventilation

Section 38 places a duty on a person in control of a workplace to ensure that the workplace is reasonably ventilated.

Section 39 Unsafe oxygen levels — particular measures

Section 39 requires a person in control of a workplace to ensure that appropriate risk minimisation measures are taken if atmospheres in the workplace contain unsafe oxygen levels.

Section 40 Unsafe levels of unclassified inhalable dust — particular measures

Section 40 requires a person in control of a workplace to ensure that appropriate risk minimisation measures are taken if atmospheres in the workplace contain, or are reasonably likely to develop, levels of unclassified inhalable dust exceed 10 milligrams per square metre (TWA).

Section 41 Unsafe levels of oxygen and unclassified inhalable dust— entry

Subsection 41(1) provides that the section applies if there is a risk of exposure to (a) unsafe oxygen levels or (b) unsafe levels of unclassified inhalable dust at the workplace.

Subsection 41(2) requires a person in control of the workplace to ensure that (a) the place is isolated; and (b) that appropriate warning signs are displayed at entry points to the place.

Section 42 Monitoring levels of oxygen or unclassified inhalable dust

Subsection 42(1) provides that section 42 applies if there is a risk of exposure to (a) unsafe oxygen levels or (b) unsafe levels of unclassified inhalable dust at the workplace.

Subsection 42(2) provides that, if there is a risk of exposure to unsafe oxygen levels or unsafe levels of unclassified inhalable dust at the workplace, the employer must ensure that—

- (a) appropriate monitoring is undertaken at the workplace in accordance with a suitable procedure; and
- (b) the results of the monitoring are recorded; and
- (c) the monitoring records are readily accessible to anyone who may be put at risk by an unsafe level of oxygen or unclassified inhalable dust; and
- (d) safe oxygen levels and safe levels of unclassified inhalable dust are maintained at the workplace.

Division 3.3.5 Heat and cold**Section 43 Air temperature**

Subsection 43(1) places a duty on an employer to ensure that employees are protected from extremes of heat and cold in the workplace.

Subsection 43(2) places a duty on an employer to ensure that heating and cooling are provided in the workplace to allow employees to work in a comfortable environment.

Section 44 Heat — particular measures

Subsection 44(1) provides that the section applies if a workplace environment becomes hot or could reasonably be expected to become hot.

Subsection 44(2) places a duty on an employer to ensure that—

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

Section 45 Cold — particular measures

Subsection 45(1) provides that the section applies if a workplace environment may become cold or could reasonably be expected to become cold.

Subsection 45(2) places a duty on an employer to ensure that—

- (a) employees exposed to cold have adequate access to (i) heated or sheltered work areas and (ii) warm clothing or other personal protective and safety equipment; and
- (b) that appropriate work and rest regimes are provided for each employee exposed to cold.

Division 3.3.6 Surfaces and floors

Section 46 Floors — General

Section 46 provides that a person in control of the workplace must ensure that floors and surfaces at the workplace are constructed and maintained to minimise the risk of slips, trips and falls.

Section 47 Floors that become slippery

Subsection 47(1) provides that section 47 applies if a floor becomes slippery because of something on the floor (such as a spillage of liquid) or for any other reason.

Subsection 47(2) places a duty on a person in control of the workplace to –

- (a) take all reasonable steps to –
 - (i) warn people of the risk;
 - (ii) remove the hazard; and
- (b) take other appropriate steps to minimise the risk.

Section 48 Floors — hard surfaces

Section 48 provides that, where a employee must stand for a significant period of a work shift in substantially the same position on a floor or on a work platform that is a hard surface, the employer must provide a covering for the surface of the floor or the

work platform that (a) has low thermal conductivity; and (b) that is designed to give reasonable relief from the hard surface.

Division 3.3.7 Electricity

Section 49 Electricity — particular measures

Section 49 provides for definitions for the purposes of Division 3.3.7.

electrical inspector means a person who is appointed as an inspector under section 41 of the *Electricity Safety Act 1971*; and

electrical installation is to have the same meaning as is provided under the *Electricity Safety Act 1971*.

Section 50 Electricity — measures for electrical installations

Subsection 50(1) applies the section to a workplace if there is an electrical installation at the workplace.

Subsection 50(2) requires a person in control of a workplace to ensure that—

- (a) each electrical installation at the workplace is safe; or
- (b) if an electrical installation at the workplace is not safe—
 - (i) the installation, or unsafe part of the installation, is disconnected from the electricity supply; and
 - (ii) if the installation, or part of the installation, has been found unsafe by an electrical inspector—the installation, or the part of the installation that is unsafe, is danger labelled and secured to prevent inadvertent reconnection.

Subsection 50(3) provides that a person in control of a workplace commits an offence if —

- (a) each electrical installation is not suitably enclosed to prevent inadvertent contact with parts supplied with electricity; and
- (b) someone can make inadvertent contact with parts supplied with electricity.

A maximum penalty of 10 penalty units is provided for.

Subsection 50(4) provides that a person in control of a workplace commits an offence if —

- (a) someone enters an electrical installation that has an electrical hazard, and
- (b) the person entering is not appropriately trained in safe entry, emergency procedures, and the safe use of electrical plant and equipment.

A maximum penalty of 10 penalty units is provided for.

Subsection 50(5) provides that a person in control of a workplace commits an offence if —

- (a) wiring work is undertaken in relation to the electrical installation at the workplace; and
- (b) the work is finished, or is left unfinished; and
- (c) a copy of an installation test report from a licensed electrician certifying the safety and compliance of the wiring work—
 - (i) is not obtained; or
 - (ii) is obtained, but is not kept so that it is readily accessible to anyone undertaking further electrical wiring work in relation to the electrical installation for a period of five years.

A maximum penalty of 10 penalty units is provided for.

Subsection 50(6) provides that an offence against section 50 is a strict liability offence.

Subsection 50(7) provides that, in section 50, *licensed electrician* means a person licensed under the *Construction Occupations (Licensing) Act 2004* to undertake work as an electrician.

The *Note* notes that the *Electricity Safety Act 1971* requires electrical installation work to be carried out in accordance with AS/NZS 3000:2000 *Electrical installations*.

Section 51 Electricity — measures for articles of electrical equipment

Subsection 51(1) applies the section to a workplace if an article of electrical equipment is provided for use, or in connection with an electrical installation, at a workplace.

Subsection 51(2) requires the person in control of the workplace to ensure that —

- (a) the article of electrical equipment is safe; or
- (b) if the article of electrical equipment is not safe—

- (i) the article is disconnected from the electricity supply; and
- (ii) if found unsafe by an electrical inspector—the article, or the part of the article that is unsafe, is danger labelled and secured to prevent inadvertent reconnection.

Subsection 51(3) provides that in section 51 the meaning of an *article of electrical equipment* is that provided in the Dictionary of the *Electrical Safety Act 1971*.

Section 52 Electricity — measures for preventing contact

Subsection 52(1) provides that a person in control of a workplace must ensure that a person working in, or undertaking maintenance at, the workplace is prevented from making inadvertent contact with a live, conductive part of an electrical installation.

Subsection 52(2) provides that a person in control of a workplace must ensure that a person working in, or undertaking maintenance at, the workplace is prevented from going within an unsafe distance of overhead or underground electrical power lines, or exposed cables,

Subsection 52(3) provides that subsections 52(1) and 52(2) do not apply in relation to a person undertaking electrical work who is an electrician licensed under the *Construction Occupations (Licensing) Act 2004* to undertake the work.

Subsection 52(4) provides that subsection 52(2) does not apply if (a) a written risk assessment is given to the electricity network operator; and (b) the electricity network operator is satisfied (i) with the content of the risk assessment, and (ii) that work to be done in accordance with the risk assessment will be safe.

Subsection 52(5) provides for the meaning of –

electricity distributor to be the meaning given in the *Utilities Act 2000*;

electricity network operator to mean the person responsible for network operations for the relevant electricity distributor; and

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

Division 3.3.8 Confined spaces

Section 53 Definitions for Division 3.3.8

Section 53 provides that in Division 3.3.8—

atmospheric contaminant means –

- (a) a dangerous substance in the form of a fume, mist, gas, dust or vapour; or

- (b) an asphyxiant; or
- (c) nuisance dust.

confined space, for a workplace, means a space in the workplace that is enclosed or partly enclosed that –

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

entry permit means a written permit to enter a confined space given by the person in control of the workplace as is provided for in section 60.

The meanings of *safe oxygen level* and *unsafe oxygen level* in this section are the same as the meanings of the phrases given in section 37.

Section 54 Design etc — confined spaces

Subsection 54(1) requires a person who designs, manufactures or supplies a confined space to ensure that–

- (a) the confined space is designed so that, ordinarily, there is no need for anyone to enter the space; and
- (b) if entry to the space is needed, that the space has a safe means of entry and exit.

Subsection 54(2) requires a person who modifies a confined space to ensure that the modification does not adversely affect the safe means of entry to and exit from the confined space.

Section 55 Hazard identification and risk assessment — confined spaces

Subsection 55(1) requires an employer to identify any confined space at the workplace and to identify any reasonably identifiable hazard associated with working in the space or on the surface of the space.

Subsection 55(2) requires an employer to ensure that a risk assessment is undertaken by a suitably qualified person before any work involving entering a confined space is started for the first time.

Subsection 55(3) provides that the risk assessment must include at least an assessment of—

- (a) the nature of the space and the work to be done;
- (b) whether the work can be done without anyone entering the space;
- (c) the different ways that the work can be done; and
- (d) the risks associated with the work, the plant to be used and any potentially hazardous conditions that are present within the confined space.

Subsection 55 (4) requires the employer to ensure that the risk assessment is reviewed if there is evidence that the risk assessment does not address or no longer addresses the risks posed by the confined space.

Subsection 55(5) provides for the meaning of a *suitably qualified person* for the purposes of the requirement that a risk assessment be made under subsection 55(2) to mean a person who is suitably qualified by experience and training to carry out the risk assessment.

Section 56 Entry to and work in confined spaces

Subsection 56(1) provides that a person in control of a workplace must ensure that no person enters a confined space at the workplace, and that work is not performed in a confined space, if—

- (a) there is an uncontrolled risk to the health or safety of someone entering, occupying or working in a confined space; or
- (b) if there is an uncontrolled risk of fire or explosion.

Subsection 56(2) provides that, without the requirement in subsection 56(1) being limited, the person in control of the workplace must ensure that, before anyone enters a confined space—

- (a) that the space contains a safe oxygen level; and
- (b) that any atmospheric contaminant is reduced to below the national exposure standards for the contaminant; and
- (c) that the concentration of any flammable contaminant in the atmosphere is below 5% of its LEL;
- (d) that the space is not extremely hot or cold; and
- (e) that steps are taken to minimise any risk associated with the presence of vermin in the space.

Subsection 56(3) requires that the person in control of the workplace must ensure that no-one enters or stays in a confined space if the concentration of any flammable contaminant in the atmosphere of the confined space is 10% or more of its LEL.

Subsection 56(4) provides that, in section 55, *LEL*, or *lower explosive limit*, of a flammable contaminant means the concentration of the contaminant in air below which the propagation of a flame does not occur on contact with an ignition source.

Section 57 Isolation and control of potentially hazardous services — particular measures

Subsection 57(1) provides that the section applies if a potentially hazardous service is normally connected to a confined space. Examples of such a service are given as including a gas supply line and ductwork.

Subsection 57(2) requires a person in control of a workplace to ensure that no-one enters a confined space unless the potentially hazardous service is isolated or controlled in a way that prevents—

- (a) the introduction of any material, contaminant, agent or condition that may be harmful to someone occupying the confined space; or
- (b) the activation or energising in any way of equipment or services that may pose a risk to the health or safety of someone in the confined space.

Section 58 Particular measures for clearing before entry

Subsection 58(1) provides that the section applies if a confined space must be cleared of contaminants to comply with section 56 (section 56 provides for entry to and work in a confined space).

Subsection 58(2) requires a person in control of a workplace to ensure that, if it is appropriate, the confined space is cleared of all contaminants by use of a suitable purging agent by which the contaminants are displaced from the confined space.

Subsection 58(3) requires a person in control of a workplace to ensure that pure oxygen or a gas mixture in a concentration of more than 21% of oxygen by volume is not used for the purging of or the ventilation of the confined space.

Section 59 Unsafe level of oxygen and atmospheric contaminants

Subsection 59(1) applies the section if –

- (a) a safe oxygen level cannot be provided in a confined space at a workplace; or
- (b) an atmospheric contaminant in a confined space at a workplace cannot be reduced to below the exposure standard under the national exposure standards.

Subsection 59(2) provides that a person in control of the workplace commits an

offence if –

- (a) someone enters the confined space; and
- (b) the person entering is not equipped with suitable personal protective and safety equipment including air-supplied respiratory protective equipment.

A maximum penalty of 10 penalty points is provided.

Subsection 59(3) provides that an offence against section 59 is a strict liability offence.

Section 60 Entry permits — particular measures

Subsection 60(1) requires a person in control of a workplace to give a written permit (an *entry permit*) to the person in direct control of work to be done in a confined space at the workplace.

Subsection 60(2) provides that the written entry permit must –

- (a) identify the confined space;
- (b) clearly describe the work to be carried out in the confined space;
- (c) set out risk minimisation measures to be taken;
- (d) state the name of each person who may enter or work in the confined space; and
- (e) state the date and time when each person named under paragraph (d) may enter the confined space to carry out the work.

Subsection 60(3) requires a person in control of the workplace to ensure that each person who is to do work in a confined space is told about and understands the entry permit.

Subsection 60(4) provides that a person in control of the workplace commits an offence if –

- (a) someone enters a confined space or works in a confined space at the workplace; and
- (b) the entry or the work does not comply with an entry permit under this section.

A maximum penalty of 10 penalty points is provided for.

Subsection 60(5) provides that a person in control of a workplace commits an offence if–

- (a) a confined space is returned to normal use, and

- (b) the person in control does not have written confirmation from the person in direct control of the work that—
 - (i) the work in the confined space has been completed; and
 - (ii) each person involved in the work has left the confined space.

A maximum penalty of 10 penalty points is provided for.

Subsection 60(6) provides that an offence against section 60 is a strict liability offence.

Section 61 Standby people — particular measures

Subsection 61(1) provides that section 61 applies if (a) there is a confined space at a workplace; and (b) someone is in the confined space.

Subsection 61(2) requires an employer to appoint one or more people as stand-by people for the workplace.

Subsection 61(3) provides that an employer commits an offence if –

- (a) the employer appoints a person to be a standby person under subsection 61(2); and
- (b) the person appointed –
 - (i) has not undertaken training in accordance with section 64; and
 - (ii) cannot operate the monitoring equipment used to ensure safety during and entry to and work within the confined space, and
 - (iii) cannot initiate emergency procedures (including rescue procedures).

A maximum penalty of 10 penalty points is provided for.

Subsection 61(4) provides that an offence against section 61 is a strict liability offence.

Subsection 61(5) provides that an employer must ensure that a standby person –

- (a) remains outside and near the confined space while anyone is inside the confined space; and
- (b) is able to communicate continuously with anyone inside the confined space; and

- (c) if practicable, is able to see anyone who is in the confined space.

Section 62 Emergencies — particular measures

Subsection 62(1) requires a person in control of a workplace, when someone is inside a confined space at the workplace, to ensure that emergency equipment appropriate for the particular circumstances is provided.

Subsection 62(2) requires the person in control of the workplace to ensure that emergency procedures are established and rehearsed in relation to people in a confined space.

Subsection 62(3) requires the person in control of the workplace to ensure that –

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

Section 63 Entry protection — particular measures

Section 63 requires a person in control of a workplace to ensure that appropriate signs are displayed and protective barriers are erected to prevent the entry into a confined space of anyone who does not have an entry permit for the place.

Section 64 Atmospheric testing and monitoring — particular measures

Section 64 requires a person in control of a workplace to ensure that appropriate atmospheric testing and monitoring is carried out in a confined space at the workplace if the confined space–

- (a) is or may be contaminated with an atmospheric contaminant;
- (b) is or may be contaminated with a flammable contaminant; or
- (c) has or may have an unsafe oxygen level.

Section 65 Training about confined spaces

Subsection 65(1) requires an employer to provide training relating to entering and working in confined spaces to –

- (a) anyone who is required to work in a confined space at the workplace; and
- (b) anyone who is to be appointed as a standby person for the workplace.

Subsection 65(2) provides that an employer must also provide training to –

- (a) anyone who does any of the following—
 - (i) assesses the safety of confined spaces;
 - (ii) issues entry permits for confined spaces;
 - (iii) designs and fixes the layout of work places;
 - (iv) supervises people working in or near confined spaces;
 - (v) maintains equipment used in confined spaces;
 - (vi) purchases, distributes, fits, wears or maintains personal protective and safety equipment used for work in confined spaces;

and

- (b) anyone who may be involved in rescue and first aid procedures involving a confined space.

Subsection 65(3) provides that the training mentioned in subsection 65(1) must include instruction in—

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

Subsection 65(4) provides that an employer commits an offence if the employer fails to make a written record of—

- (a) the training given under this section; and
- (b) the people to whom the training has been given.

A maximum penalty of 10 penalty points is provided for.

Subsection 65(5) provides that an offence against section 65 is a strict liability offence.

Subsection 65(6) provides that, in section 65, *standby person* means a person appointed as a standby person under section 61.

Section 66 Record keeping

Subsection 66(1) requires an employer to keep—

- (a) entry permits for confined spaces for a period of 1 month after the day the space is returned to normal use; and
- (b) risk assessment reports for work in a confined space at the workplace for a period of 5 years after the last entry in the report; and
- (c) a record of training relating to work in a confined space at the workplace while the person to whom the training has been given is employed.

Subsection 66(2) provides that an employer commits an offence if – requires that the records must be made available on request to –

- (a) an inspector requests access to a record made under subsection 66(1) in relation to a workplace; and
- (b) the employer does not give access to the record.

A maximum penalty of 10 penalty points is provided for.

Subsection 66(3) provides that an offence against section 66 is a strict liability offence.

Subsection 66(4) provides that if a record made under subsection 66(1) contains information personal to an employee, the employer must give the employee with access to the record on request.

Division 3.3.9 Lighting

Section 67 Employer to provide lighting

Subsection 67(1) requires an employer to provide adequate and appropriate lighting at a workplace.

Subsection 67(2) provides that what is adequate and appropriate for subsection 67(1) must be decided having regard to the nature of the tasks being performed by each employee at the workplace.

Subsection 67(3) requires an employer, without limiting the requirement imposed by subsections 67(1) or (2), to ensure that lighting is provided so that the lighting –

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

Division 3.3.10 Noise management

Section 68 Definitions —Division 3.3.10

Subsection 68(1) provides that, in this Division –

exposure standard means–

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

Subsection 68(2) provides that, in section 68 –

sound pressure level, in relation to a person, means the level of noise worked out, at the person's ear position, in accordance with AS 1269, without taking into account any protection that may be given by a personal hearing protector.

Section 69 Working out L_{peak} value—Division 3.2.10

Section 69 provides that for Division 3.2.10, the value of L_{peak} must be worked out by using sound-measuring equipment with a peak detector-indicator characteristic that complies with AS 1259 (Sound level meters, part 1, non-integrating).

Section 70 Noise management — duties of designers etc

Subsection 70(1) requires a designer, manufacturer, supplier or importer of plant that may emit an unsafe level of noise to ensure that the plant is designed and constructed so that the noise emitted by the plant, when used in reasonably foreseeable circumstances, is as low as is reasonably practicable.

Subsection 70(2) provides that a manufacturer, supplier or importer of plant commits an offence if–

- (a) plant that may emit an unsafe level of noise is supplied to a person; and

- (b) the manufacturer, supplier or importer of plant fails to provide the person with information about—
 - (i) the noise emitted by the plant; and
 - (ii) ways to keep the noise to the lowest level that it is reasonably practicable to achieve.

A maximum penalty of 10 penalty points is provided for.

Subsection 70(3) provides that an offence against section 70 is a strict liability offence.

Section 71 Noise management — duties of employers

Subsection 71(1) provides that an employer must—

- (a) properly maintain noise control measures at the workplace; and
- (b) give an employee information about noise control measures; and
- (c) ensure that any personal hearing protectors given to the employee are properly used and maintained.

Subsection 71(2) provides that, if action is required to reduce the noise level to which an employee is exposed, the employer must —

- (a) implement, as far as is reasonably practicable, engineering noise controls to reduce the noise level; and
- (b) if the action taken under paragraph (a) does not reduce the noise level to the exposure standard or less, as far as is reasonably practicable, implement administrative controls to reduce the noise to which the employee is exposed; and
- (c) if the actions taken under paragraphs (a) and (b) do not reduce the noise level to the exposure standard or less, give the employee personal hearing protectors that —
 - (i) meet Australian Standard 1270; and
 - (ii) that have been selected according to the procedures specified in Australian Standard 1269.

Subsection 71(3) provides that an employer commits an offence if —

- (a) noise levels at the workplace exceed the exposure standards for an employee; and
- (b) the employer does not take the action mentioned in subsection 71(2) to reduce the noise level to which the employee is exposed.

A maximum penalty of 10 penalty points is provided for.

Subsection 71(4) provides that an offence against section 71 is a strict liability offence.

Section 72 Noise management — duties of employees

Section 72 provides that an employee, must, as far as is practicable –

- (a) comply with noise control measures taken under this regulation;
and
- (b) use any personal hearing protection given to the employee under this regulation.

Division 3.3.11 Isolated work

Section 73 Isolated employees

Subsection 73(1) provides that the section applies if an employer employs a person (*the employee*) to work alone in –

- (a) an area that is remote from other people, or an area that is isolated from other people because of the time, location or nature of the work; or
- (b) a situation that involves the operation or maintenance of hazardous plant or the handling of a dangerous substance; or
- (c) work that is dangerous to perform alone.

Subsection 73(2) provides that an employer commits an offence if the employer fails to ensure –

- (a) that the employee is able to call for help; and
- (b) that there is a procedure in place for regular contact to be made with the employee; and
- (c) that the employee is trained in the procedure.

A maximum penalty of 10 penalty points is provided for.

Subsection 73(3) provides that an offence against section 73 is a strict liability offence.

Division 3.3.12 Fire and explosion

Section 74 Fire and explosion — risk control

Subsection 74(1) requires a person in control of a workplace to ensure that the risks of fire or explosion at the workplace are minimised.

Subsection 74(2) requires that, in particular, a person in control of the workplace must –

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

Subsection 74(3) requires a person in control of the workplace to regularly monitor the workplace to ensure the continued effectiveness of control measures against fire or explosion at the workplace where there are flammable substances, combustible dust or waste materials at the workplace.

Section 75 Fire and explosion — facilities

Subsection 75(1) requires a person in control of a workplace to ensure that appropriate fire control appliances are (a) available at the workplace; and (b) maintained to a reasonable standard by a suitably qualified person.

Subsection 75(2) provides that a person in control of a workplace commits an offence if portable fire extinguishers are not installed at the workplace in accordance with Australian Standard 2444.

A maximum penalty of 10 penalty points is provided for.

Subsection 75(3) provides that an offence against section 75 is a strict liability offence.

Subsection 75(4) provides that what is appropriate for subsection 74(1) must be decided having regard to the nature of the hazards at the workplace.

Subsection 74(5) provides for the meaning of a *fire appliance* and of a *suitably qualified person* for the purposes of the section.

The term *fire appliance* includes –

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

- (d) equipment used to control smoke in, or remove smoke from, a building.

A suitably qualified person, for maintaining a fire appliance, means someone who is suitably qualified (by experience or training) to maintain the appliance.

Division 3.3.13 Emergency procedures

Section 76 Employer to provide for emergencies

Subsection 76(1) requires an employer to ensure that, in an emergency at the workplace, appropriate systems are in place for –

- (a) the safe and rapid evacuation of people from the workplace,
- (b) emergency communications; and
- (c) the medical treatment of injured people.

Subsection 76(2) requires an employer who employs employees at a workplace to ensure that—

- (a) arrangements are made for shutting down and evacuating the workplace in an emergency;
- (b) details of the arrangements are displayed in appropriate places at the workplace; and
- (c) an appropriate number of people are properly trained to oversee an evacuation and to use any on-site fire appliances.

Subsection 76(3) provides that what is appropriate for subsection 76(1) or paragraphs 76(2)(b) or (c) must be decided having regard to –

- (a) the nature of the hazards at the workplace;
- (b) the size and location of the workplace; and
- (c) the number, mobility and capability of people at the workplace.

Chapter 4 Training — health and safety representatives

Section 77 Approval of health and safety representative training programs

Subsection 77(1) provides that the council may approve a training program for paragraph 61(1)(f) or subsection 66(4) of the *Occupational Health and Safety Act 1989* (the OHS Act).

The *council* is the Occupational Health and Safety Council appointed under section 11 of the OHS Act

Paragraph 61(1)(f) of the Act permits a health and safety representative to take time off work, without loss of remuneration or other entitlements, that is necessary and reasonable to undertake a ‘training program approved under the regulations’.

Subsection 66(4) of the Act allows a deputy health and safety representative to take time of work, without loss of remuneration or other entitlements, that is necessary and reasonable to undertake a ‘training program approved under the regulations’.

Subsection 77(2) provides that the approval of a training program by the council is a notifiable instrument (a notifiable instrument must be notified under the *Legislation Act 2001*).

Section 78 Training for authorisation as authorised representative — Act, s75(2)(b)

Section 78 refers to subsection 75(1) of the OHS Act which provides that a person may be authorised as an *authorised representative* for the purposes of entry to workplaces.

Paragraph 76(2)(b) of the OHS Act provides that a person is not to be authorised as an *authorised representative* unless the person has undertaken a training course approved by the OHS Council under section 77 of the Regulation.

Section 79 Payment of training fees and expenses

Subsection 79(1) provides that the section applies if (a) a person who is to be authorised to be a health and safety representative undertakes a training program under paragraph 61(1)(f) of the OHS Act; or (b) a person who is to be authorised to be a deputy health and safety representative undertakes a training program under subsection 66(4) of the OHS Act.

Subsection 79(2) provides that an employer commits an offence if-

- (a) a health and safety representative, or a deputy health and safety representative, employed by the employer, undertakes a training program; and
- (b) the employer fails to –
 - (i) pay the fees for the training program; or
 - (ii) reimburse expenses reasonably incurred by the representative in undertaking the training program.

A maximum penalty of 10 penalty points is provided for.

Subsection 79(3) provides that an offence against section 79 is a strict liability offence.

Chapter 5 Injury and dangerous occurrence reporting and records

Section 80 What is a *dangerous occurrence*?

The Dictionary of the OHS Act provides that a *dangerous occurrence* means an occurrence at a workplace that is declared by the regulations to be a *dangerous occurrence*.

Subsection 80(1) provides that, for the Act, Dictionary, definition of a *dangerous occurrence*, each of the following is declared a *dangerous occurrence*—

- (a) any occurrence involving imminent risk of—
 - (i) the death of, or serious personal injury to, anyone; or
 - (ii) an escape of gas, a dangerous substance or steam; or
 - (iii) fire, explosion; or
 - (iv) substantial damage to property.
- (b) damage to a boiler, pressure vessel, plant, equipment, or other thing that endangers or is likely to endanger the health or safety of people at a workplace;
- (c) damage to, or failure of, a load-bearing member or control device of a crane, hoist, conveyor, lift, escalator, moving walkway, plant, scaffolding, gear, amusement device or public stand;
- (d) an uncontrolled fire, explosion, or escape, of gas, a dangerous substance or steam.

Section 81 Prescribed period for incapacity for work — OHS Act s204(1)(c)

Section 81 provides that the prescribed period for the purposes of section 204 of the OHS Act is 7 days.

Section 82 Prescribed period for notice of events — OHS Act s204(1)

Section 204 of the OHS Act (Notice of events) requires an employer who is aware of the occurrence of an event at or near the workplace which results in the death of a person, an injury to a person other than an employee of the employer, an injury to an employee as a result of which the employee is incapacitated for work for the prescribed period (section 81 fixes that period as 7 days) to give notice of the event to the commissioner within the prescribed period.

Subsection 82(1) provides that the prescribed period for giving notice to the commissioner of an event is –

- (a) if the event is a death, or the serious personal injury or the imminent risk of death or serious personal injury, and someone other than the employer was injured or put at risk –
 - (i) as soon after the event as is reasonably practicable; and
 - (ii) in writing not later than 48 hours after the event; and
- (b) for any other event – in writing not later than 7 days after the day on which the event occurs.

Subsection 82(2) provides that section 81 is subject to section 82.

Section 83 Reporting under the *Dangerous Substances Act 2004*

Subsection 83(1) provides that the section applies if the occurrence of an event that is required to be reported under section 204 (Notice of events) of the OHS Act is reported under the *Dangerous Substances Act 2004*.

Subsection 83(2) provides that the reporting under the *Dangerous Substances Act 2004* is taken to be adequate reporting of the occurrence of the event for the purposes of section 204 of the OHS Act.

Section 84 Method of reporting — Act, section 204

Subsection 84(1) provides that, unless another section provides otherwise, a notice of events required to be given under section 204 of the OHS Act may be given in writing or by telephone, or by fax or other electronic means.

Subsection 84(2) provides that, if the OHS commissioner receives notice of the occurrence of an event other than in writing, the commissioner must send the employer –

- (a) details of the information received; or
- (b) an acknowledgement of receiving the notice.

Section 85 Employer to protect site of occurrence of an event

Subsection 85(1) provides that an employer commits an offence if–

- (a) the employer is required to give the chief executive notice of the occurrence of an event under the Act, section 204(1); and
- (b) the employer fails to ensure that the site where the event occurred is not entered or otherwise disturbed until an inspector directs that the site may be used.

A maximum penalty of 10 penalty points is provided for.

Subsection 85(2) provides that an offence against section 85 is a strict liability offence.

Subsection 85(3) provides that section 85 does not apply to the disturbance of a site to—

- (a) protect the health or safety of a person; or
- (b) help an injured person; or
- (c) take essential action to make the site safe or to prevent a further occurrence.

Section 86 Keeping records of event notices

Subsection 86(1) provides that an employer commits an offence if—

- (a) the employer gives notice of the occurrence of an event in accordance with section 204 of the OHS Act; and
- (b) the employer fails to keep a copy of the notice for 5 years after the day the notice was given.

A maximum penalty of 10 penalty points is provided for.

Subsection 86(2) provides that an offence against section 86 is a strict liability offence.

Section 87 Keeping information given by the chief executive

Subsection 87(1) provides that the section applies if the employer gives notice of the event in a way other than in writing and the chief executive then provides the employer with —

- (a) a copy of the information received; or
- (b) an acknowledgement of receipt of the notice.

Subsection 87(2) provides that the employer commits an offence if the employer fails to keep the copy of the information received or the acknowledgement of receipt of the notice for 5 years after the day on which the employer receives it.

A maximum penalty of 10 penalty points is provided for.

Subsection 87(3) provides that an offence against section 87 is a strict liability offence.

Section 88 Content of records

Subsection 88(1) provides that the chief executive may approve the content of a record required to be maintained under the Act, section 205.

Subsection 88(2) provides that an approval of the content of a record by the chief executive is a notifiable instrument (a notifiable instrument must be notified under the *Legislation Act 2001*).

Section 89 Keeping records of incapacity

Subsection 89(1) provides that the section applies to an employer if—

- (a) an employee is injured in an event at or near the employee's workplace;
- (b) the event is connected with the employment; and
- (c) the injury results in the employee being incapacitated for work for a period of more than 1 day but less than 7 days.

Subsection 89(2) provides that the section does not apply to an employer if the employer has given notice of the event to the chief executive.

Subsection 89(3) requires an employer to record the details of the occurrence of the event including—

- (a) details of the event;
- (b) the nature and extent of the injury; and
- (c) the reason for the employee's incapacity.

Subsection 89(4) provides that an employer commits an offence if the employer does not keep the record mentioned in subsection 89(3) for a period of 5 years after the day on which the event occurred.

A maximum penalty of 10 penalty units is provided for.

Subsection 89(5) provides that an offence against section 89 is a strict liability offence.

Chapter 6 Review

Section 90 Time for decision on internal review — Act, s182(2)

Subsection 90(1) provides that the time for making a decision on an application for an internal review of an inspector's decision is —

- (a) 10 business days after the day the application is made under section 185 of the OHS Act; or
- (b) if the chief executive tells the applicant in writing within the 10 business days that the chief executive is satisfied that a longer period is necessary to adequately review the decision — 20 business

days after the day the application is made for internal review under section 185 of the OHS Act; or

- (c) if the chief executive asks the applicant in writing for further information in relation to the application—10 business days after the day the chief executive receives the further information.

Section 184 of the OHS Act provides –

‘For this part –

- (a) a decision of an inspector mentioned in schedule 1, part 1.1 is an *internally reviewable decision*; and
- (b) a person mentioned in schedule 1, part 1.1 in relation to an internally reviewable decision is an *eligible person* for the decision; and
- (c) a decision of the chief executive mentioned in schedule 1, part 1.2 or part 1.3 is a *reviewable decision*; and
- (d) a person mentioned in schedule 1, part 1.2 or part 1.3 in relation to reviewable decision is an *eligible person* for the decision.’

Section 185 of the OHS Act provides –

- ‘(1) An eligible person for a internally reviewable decision may apply to the chief executive for review of the decision.
- (2) The application must be made within –
 - (a) 28 days after the day the applicant is told about the decision by the inspector; or
 - (b) any longer period allowed by the chief executive, whether before or after the end of the 28-day period.
- (3) The application must set out the grounds on which internal review of the decision is sought.
- (4) The making of the application for internal review of the decision does not affect the operation of the decision.’

Subsection 90(2) requires the chief executive to tell the applicant in writing if the information given in response to a request mentioned in subsection 89(1)(c) is not the further information asked for, or is not all the further information asked for.

Chapter 7 Miscellaneous

Section 91 Meaning of *incorporated document*

Section 91 provides that, in the Regulation, an *incorporated document* means any of the following—

- (a) AS 1259 (Sound level meters, part 1, non-integrating);
- (b) AS 1269 (Occupational noise management – Measurement and assessment of noise emission and exposure);
- (c) AS 1270 (Acoustics – Hearing protectors);
- (d) AS/NZS 1891 (Industrial fall-arrest systems and devices – safety belts and harnesses);
- (e) AS 2444 (Portable fire extinguishers and fire blankets – Selection and location);
- (f) the national exposure standards;
- (g) a document approved in writing by the Minister to be an incorporated document; or
- (h) any other document incorporated, applied or adopted by a document mentioned in paragraphs (a) to (g).

Section 92 Inspection of incorporated documents

Subsection 92(1) provides that the section applies to an incorporated document, or to an amendment to, or replacement of, an incorporated document.

Subsection 92(2) requires the chief executive to ensure that the document, amendment or replacement is made available for inspection free of charge to the public at reasonable times.

Subsection 92(3) provides that subsection 92(6) of the Regulation should be referred to for the meaning of ‘amendment’ of an incorporated document.

Section 93 Notification of certain incorporated documents

Subsection 93(1) provides that the section applies to –

- (a) an incorporated document; or
- (b) an amendment of, or replacement for, an incorporated document.

Subsection 93(2) provides that that the chief executive may prepare a written notice (an *incorporated document notice*) for the incorporated document, amendment or replacement that contains the following information:

- (a) for an incorporated document – details of the document, including its title, author and date of publication;

- (b) for a replacement of an incorporated document – details of the replacement, including its title, author and date of publication;
- (c) for an amendment of an incorporated document – the date of publication of the amendment (or of the standard as amended) and a brief summary of the effect of the amendment;
- (d) for an incorporated document or any amendment or replacement –
 - (i) a date of effect (no earlier than the day after the day of notification of the notice); and
 - (ii) details of how access to inspect the document, amendment or replacement may be obtained under section 91 (Inspection of incorporated documents); and
 - (iii) details of how copies may be obtained, including an indication of whether there is a cost involved.

Subsection 93(3) provides that an incorporated document notice is a notifiable instrument (a notifiable instrument must be notified under the *Legislation Act 2001*).

Subsection 93(4) provides that the incorporated document, amendment or replacement has no effect under this Act unless –

- (a) an incorporated document notice is notified in relation to the standard, amendment or replacement; or
- (b) the document, amendment or replacement is notified under the Legislation Act, section 47 (6).

Subsection 93(5) provides that the Legislation Act, section 47(7) does not apply in relation to the incorporated document, amendment or replacement.

Subsection 93(6) provides that in section 92 –

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

incorporated document – see section 90.

replacement, for an incorporated document, means –

- (a) a standard that replaces the incorporated document; or
- (b) a document (an ‘initial replacement’) that replaces a document mentioned in paragraph (a); or
- (c) a document (a ‘further replacement’) that replaces an initial replacement or any further replacement.

Section 94 Repeal of Occupational Health and Safety Regulation 1991

Section 94 repeals the Occupational Health and Safety Regulation 1991.

Dictionary

The Dictionary provides for the meanings of certain of the words used in the Regulation.