

2011

THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY

WORK HEALTH AND SAFETY REGULATION 2011

SL2011-36

EXPLANATORY STATEMENT

Circulated with the authority of  
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## Overview

This Regulation implements the model Work Health and Safety Regulation in the Territory and form part of a system of nationally harmonised work health and safety laws.

The importance of harmonisation of work safety legislation has long been recognised as a critical area of regulatory reform, and is a key priority of the Council of Australian Governments' (COAG) national reform agenda. In July 2008, the Commonwealth and each of the States and Territories signed the *Inter-Governmental Agreement for Regulatory and Operational Reform in OHS* (the IGA), which commits jurisdictions to implement model laws by December 2011. The model laws comprise of a model Work Health and Safety Act, supported by model Regulation and model Codes of Practice.

The work health and safety laws are intended to protect the safety of workers, reduce compliance costs for business and government and improve efficiency for health and safety regulators.

This Regulation will replace the Work Safety Regulation 2009 which will be repealed, along with the *Work Safety Act 2008*, on commencement of the Work Health and Safety Act 2011 on 1 January 2012.

The object of harmonising WHS laws through a model framework are to protect the safety of workers, improve safety outcomes, reduce compliance costs for business and improve efficiency for health and safety regulators.

The national model WHS laws comprise a national model WHS Act, national model WHS Regulation and a suite of national model WHS codes of practice. The package of WHS laws has been developed by Safe Work Australia and agreed under the IGA.

The main objective of the Work Health and Safety Regulation 2011 is to give effect to the model WHS Regulation. This Regulation does not adopt Chapter 7 (Hazardous Chemicals), Chapter 8 (Asbestos) and Chapter 9 (Major Hazard Facilities). These matters will continue to be regulated under the Territory's Dangerous Substances Legislation.

The legislation package that has been developed is based on best practice contemporary work health and safety laws and, in many respects, the uniqueness and proprietary of the approach.

### **Performance based WHS legislation**

Until the 1970's Australian work safety laws were based on UK standards for manufacturing. These laws followed the industrial revolution, when people began working with new, dangerous plant in cramped factories in an area with little control over plant quality or work conditions.

Rather than regulate all conditions, early industrial safety laws were targeted to specific industries and mainly responded to major incidents. Over consecutive decades, a large number of detailed, overlapping laws were passed to specify standards in respect of particular industrial hazards.

Between 1972 and 1989 all States and Territories introduced new legislation based on what is known as the "Robens model".

This involved a deliberate move away from detailed and prescriptive standards towards a new, performance-based approach primarily a new single Act setting out general duties

and complementary Regulation and guides setting standards for specific hazards and industries.

The Robens model is based on a unified, integrated system of duties that focuses on achieving the right outcomes through streamlined legislation. The aim of this model is to increase the effectiveness of government regulation and produce a more self-regulating system in which workers and employers understand more about safety, have greater responsibility, and participate in creating practical guidance for their workplaces. This is designed to reduce apathy, regarded as the greatest single factor in accidents, by putting primary responsibility for safety back on "those who create the risks and those who work for them."

The Robens model introduces a combination of Regulations and enforceable Codes of Practice to address this concern, so that strict enforcement by an inspectorate can target high-risk industries and hazards. These Regulations and Codes are easier to amend and supplement the Act by providing clear, practical guidance on what is required to comply with the law.

For the Robens model of work safety to work most effectively, prescriptive Regulation must be retained to clarify what is essential in high-risk industries and where there are known solutions to high-risk hazards in the workplace. Whether this prescription needs to be retained in a Regulation or would be more appropriate in a Code of Practice or guidance material depends on a range of factors, such as:

- whether the hazards involved, or safety measures to address them, are likely to change over time or to be legitimately different across a variety of workplaces;
- whether effective solutions to a hazard are known and accepted; and
- whether there is a need to control significant, specific risks in a particular way.

This approach was taken when the ACT developed and introduced the *Work Safety Act 2008*, and is the model followed nationally in developing the Work Health and Safety Act and Regulation.

## **Other matters**

### **Use of jurisdictional notes**

Jurisdictional notes were used in the model Regulation to explain how jurisdictional specific provisions may be substituted for model provisions to achieve consistency with other laws and processes operating within the jurisdiction. They are intended to facilitate enactment of the model legislation without affecting harmonisation. The jurisdictional notes are found in the Appendix of the model Regulation.

### **Application of the Regulation**

The model WHS laws extend the primary duty of care beyond the traditional employer and employee relationship to all persons who carry out work in any capacity for a business or undertaking, in recognition of the changing nature of work relationships and to ensure that safety protection is extended to all types of work. This reflects a continuation of the approach taken under the Work Safety Act 2008 in the Territory since 1 October 2009.

A ‘worker’ may be owed duties of care by more than one person or ‘business or undertaking’, for example, where a worker is an employee for one business or undertaking and a contractor for another business or undertaking under a labour hire arrangement.

Parallel duties may also be owed in relation to a workplace.

### **Offences in the Regulation**

Breaches of the Regulation will be criminal offences. The offences, like all other provisions in the model laws, have been drafted in non-jurisdictional specific terms and do not reflect the general drafting practice of including each physical element of the offence in a separate paragraph.

Subsection 6A of the WHS Regulation provides that, unless otherwise specified, the physical elements of each offence are strict liability.

For the majority of offences, the prosecution will have to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made the conduct innocent, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact.

The application of strict liability to the element of an offence has been carefully considered during drafting.

The strict liability offences arise in the regulatory context where for reasons such as public safety, and the interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The offences also arise in a context where a defendant can reasonably be expected, because of his or her professional involvement, to know the requirements of the law. Subsequently, the mental or fault element can justifiably be excluded. The rationale is that people who owe work safety duties (such as employers, persons in control of aspects of work and designers and manufacturers or work structures and products – as opposed to members of the general public) can be expected to be aware of their duties and obligations to workers and the wider public.

Most offences will be subject to other qualifies such as reasonable practicability, due diligence and reasonable care.

### **Penalties**

There are currently considerable disparities in the maximum fines that can be imposed under Australian work safety laws.

The penalty regime provides for two types of offence:

1. offences that are ‘linked’ to the model WHS Act; and
2. stand-alone offences that are subject to a monetary penalty specified.

An offence has been linked to the WHS Act where it provides detail on how to comply with the duties contained in the WHS Act – specifically to either the general duties in Part 2 or the authorisations provisions in Part 4. These offences include a note at the foot of the provision which states ‘WHS Act’ followed by the reference to the section number of the WHS Act to which the provision is linked.

A failure to comply with a duty or obligation under a section of the WHS Act referred to in a Section linked to the WHS Act is an offence to which the penalty for the relevant offence in the WHS Act applies.

Subsection 276(3) (h) of the model WHS Act prescribes the maximum monetary penalty for stand-alone offences as \$30,000.

The penalties are intended to reinforce the deterrent effect and allow courts greater capacity to respond meaningfully and proportionally to the worst breaches by duty holders. The overall objective of the penalties in the model WHS laws is to increase compliance and decrease the resort to prosecution to achieve this aim.

Because of the differences in the current value of penalty units among jurisdictions and the potential for further variations to occur, the WHS Act and the Regulation specify monetary fines for offences. Jurisdictions have agreed it would be confusing to adopt a unique penalty unit figure for national uniform legislation.

The maximum penalty provided for some offences are higher than usually permitted by Territory principles for framing offences in primary legislation. High maximum penalties have been nationally agreed, so that any amendment to meet local criminal law policy principles would reduce the relative value of safety in the Territory as compared to other jurisdictions and risk attracting duty holders (along with high-risk items of plant, substances and structures) who have less motivation or ability to comply with the law as stated.

### **Incorporation of documents**

Section 276(3) (d) provides that Regulation made under the WHS Act may incorporate material from other instruments as in force from time to time. Section 13 makes it clear that a reference to a document incorporated or applied in the Regulation is a reference to that document as in force at the time the document was applied, adopted or incorporated, unless express provision is made to the contrary. Where an inconsistency between a document incorporated, and the Regulation arises, the Regulation is to prevail (Section 14).

The Regulation adopts technical material such as Australian Standards and other published documents that set out detailed specifications, exposure standards and guidance on safe ways of undertaking particular types of work. This material is subject to regular revision as risk management practices evolve over time. Moreover, this material is specific to particular industries and undertakings and should be well known to duty holders in those industries and undertakings.

It is incumbent upon duty holders to have regard to the most up to date information and best practice. This detailed technical material should be read in conjunction with the applicable legislation.

Australian Standards may be purchased at a cost and are subject to copyright, while other documents incorporated by the WHS Regulation are freely available online.

While a cost may be incurred by businesses and undertakings that engage in activities to which the Australian Standards apply, the cost is considered minimal.

## **Chapter 1 – Preliminary**

This Chapter sets out preliminary matters including commencement dates and authorising provisions.

Where the Territory is not adopting aspects of the model Regulations, numbering has been used to ensure consistency with the numbering of Sections in the Regulation in the harmonisation process.

### **Part 1.1 – Introductory matters**

#### **Section 1 – Name of Regulation**

*Section 1* names the Regulation the *Work Health and Safety Regulation 2011*.

#### **Section 2 – Commencement**

*Section 2* details the commencement date of various provisions in this Regulation.

#### **Section 3 – Placeholder**

#### **Section 4 - Placeholder**

#### **Section 5 – Dictionary**

*Section 5* provides the dictionary at the end of the Regulation is part of the Regulation and defines certain terms used in the Regulation.

#### **Section 6 – Placeholder**

#### **Section 6A – Offences are offences of strict liability**

*Section 6A* confirms that strict liability applies to each physical element of each offence unless otherwise stated..

#### **Section 6B – Offences against regulation –application of Criminal Code etc.**

*Section 6B* specifies that other laws apply to offences in this Regulation.

#### **Section 6C – Placeholder**

#### **Section 7 – Meaning of *person conducting a business or undertaking* – persons excluded – Act, s 5(6).**

*Section 7* clarifies that, for the purposes of the dictionary of the WHS Act, the following are not deemed to be a PCBU:

- a strata body corporate that is responsible for any common areas used only for residential purposes, so long as no worker is engaged as an employee; and
- an incorporated association consisting of a group of volunteers working together for one or more specified community purposes, so long as neither the association nor any volunteers employs a person to carry out work.

### **Section 8 – Meaning of *supply* – Act s 6(3) (b)**

*Section 8* clarifies the meaning of ‘supply’ for the purposes of paragraph 6(3) (b) of the WHS Act, by specifying that the supply of a thing does not include the situation where a thing is supplied by a person, such as an auctioneer or a real estate agent, who does not control the supply and has no authority to make decisions about the supply.

### **Section 9 – Provisions linked to health and safety duties in the Act – Act, sch3, s.1.1**

*Section 9* provides that if a note in a foot of a provision of these Regulation states ‘WHS Act’ followed by a reference to a section number of the WHS Act, then the Section sets out the way in which a person’s duty or obligation under the section of the WHS Act referred to in the Section is to be performed in relation to the matters and to the extent set out in the Section provision. A failure to comply with a duty or obligation under the section of the WHS Act referred to in a Section linked to the WHS Act is an offence to which a penalty applies.

### **Section 9A – Meaning of corresponding WHS Law – Act, dict**

*Section 9A* prescribes the laws of other jurisdictions that are corresponding WHS laws for the purpose of this Regulation.

## **Part 1.2 – Application**

### **Section 10 – Application of the Act to dangerous goods and high-risk plant – Act, sch 1, s 5.**

*Section 10* specifies which provisions of the Act are excluded from the operation of Schedule 1 of the Act

### **Section 11 – Application of this Regulation**

*Section 11* specifies that a duty imposed on a person under a provision of the Regulation in relation to health and safety does not limit or affect any duty the person has under the WHS Act, or unless otherwise expressly provided, any other provision of the Regulation.

### **Section 12 – Assessment of risk in relation to a class of hazards, tasks, circumstances or things**

*Section 12* specifies the conditions under which a risk assessment may be carried out for a class of hazards, tasks, things or circumstances.

## **Part 1.3 – Incorporated documents**

### **Section 13 – Documents incorporated as in force when incorporated**

*Section 13* provides that a reference to a document applied, adopted or incorporated by, or referred to in the Regulation is taken to be the document in force at the time it was applied, adopted or incorporated by, or referred to, unless otherwise advised.

#### **Section 14 – Inconsistencies between provisions**

*Section 14* provides that where an inconsistency exists, a provision of the Regulation will prevail over any provision of a document applied, adopted or incorporated by, or referred to in the Regulation.

#### **Section 15 – References to standards**

*Section 15* clarifies that s 47(5) and s 47(6) of the *Legislation Act 2001* do not apply to an Australian Standard or an Australian/ New Zealand Standard under this regulation.

## **Chapter 2. – Representation and participation**

Chapter 2 sets out rights and duties of PCBUs, workers, workers' unions and other workers' representatives about the determination of work groups and the election, removal and training of health and safety representatives, and the procedure for resolution of health and safety issues. It also prescribes requirements for workplace entry by WHS permit holders.

This Chapter prescribes matters for Part 5 of the WHS Act – Consultation, representation and participation and Part 7 of the WHS Act – Workplace entry by WHS entry permit holders.

### **Part 2.1 – Representation**

#### **Division 2.1.1 – Work groups**

##### **Section 16 – Negotiations for and determinations of work groups**

*Section 16* provides that any negotiations for work groups, determinations of work groups or variation of work groups must be directed at ensuring that workers are grouped in a way that most effectively and conveniently enables the representation of the workers' work health and safety interests. The need for a health and safety representative to be readily accessible to each worker in the work group must also be taken into account.

Section 16 also notes that under sub-section 51(3) of the WHS Act, a work group may be determined so as to include workers at more than one workplace. Under Subdivision 3 of Division 5.3 of the WHS Act, a work group may also be determined to include workers who carry out work for two or more PCBUs at one or more workplaces.

##### **Section 17 – Matters to be taken into account in negotiations – Act, s 52(6) and s 56(4)**

*Section 17* prescribes the matters to be taken into account when negotiating for and determining work groups, as well as varying agreements concerning work groups, for the purposes of sub-sections 52(6) and 56(4) of the WHS Act. This Section provides that all relevant matters must be taken into account, including the thirteen matters set out in the Section.

The list includes matters such as the number of workers, and the nature and type of work carried out by the workers.

#### **Division 2.1.2 – Health and safety representatives**

##### **Section 18 – Procedures for election of health and safety representatives – Act s 61(2)**

*Section 18* sets out the minimum procedural requirements for the election of a health and safety representative for a work group as required by subsection 61(2) of the WHS Act.

Subsection 42(2) of the WHS Act requires the person conducting the election to take all reasonable steps to ensure that:

- each PCBU with a worker in the work group is informed of the date of the election as soon as practicable after the date is determined;

- all workers in the workgroup are given an opportunity to nominate for the position of health and safety representative and to vote in the election; and
- all workers in the work group and all relevant PCBUs are informed of the outcome of the election.

### **Section 19 – Persons conducting business or undertaking must not delay election**

*Section 19* provides that it is an offence for a PCBU to unreasonably delay the election of a health and safety representative.

### **Section 20 – Removal of health and safety representatives – Act, s 64(2) (d)**

*Section 20* outlines how a majority of members of a work group may remove a health and safety representative as allowed under subparagraph 64(2) (d) of the WHS Act.

Sub-section 20(1) provides that a majority of the members of a work group may remove a health and safety representative for that work group if those members sign a written declaration that the health and safety representative should no longer represent the work group.

Sub-section 20(2) provides that a member of the work group nominated by the members who signed the declaration removing the health and safety representative, must, as soon as practicable, inform the removed health and safety representative and each PCBU with a worker in the work group of the removal. The nominated member must also, as soon as practicable, take all reasonable steps to inform all members of the work group of the removal.

Sub-section 20(3) provides that the removal takes effect when the health and safety representative concerned, each PCBU with a worker in the work group, and the majority of members of the work group have been informed of the removal.

### **Section 21 – Training for health and safety representatives – Act, s 72 (1)**

*Section 21* sets out the training entitlements of health and safety representatives as provided by subsection 72(1) of the WHS Act.

Sub-section 21(1) provides that a health and safety representative (including a deputy health and safety representative) is entitled to attend an initial course of training in work health and safety of 5 days duration. A health and safety representative (including a deputy health and safety representative) is also entitled to one day's refresher training each year, with the entitlement to the first refresher training commencing one year after the initial training of 5 days duration.

Sub-section 21(2) allows the regulator to have regard to all relevant matters when approving a course of training in work health and safety for the purposes of subparagraph 72(1)(b) of the WHS Act, including:

- the content and quality of the curriculum,
- relevance of the curriculum to the powers and functions of a WHS permit holder, and
- the qualifications, knowledge and experience of the person who is to provide the training.

Section 21 also notes that in addition to the entitlements set out in this section, the health and safety representative and the relevant PCBU may agree that the representative will

attend or receive further training. It is further noted that the power to approve a course of training includes a power to amend or repeal the approval.

## **Part 2.2 – Issue resolution**

### **Section 22 – Agreed procedure – minimum requirements**

Subsection 81(2) of the WHS Act provides that when a health or safety issue arises at a workplace, the parties must make reasonable efforts to resolve the issue in accordance with the relevant agreed procedure if there is one in place. *Section 22* sets out the minimum requirements for an agreed procedure for issue resolution at a workplace. An agreed procedure may include any matters that the parties agree to. However, sub-section 22(2) provides that an agreed procedure must include all of the steps set out in the default procedure at sub-section 23.

Sub-section 22(3) places an obligation on a PCBU at a workplace to ensure that any agreed procedure for issue resolution complies with sub-section 22(2), is set out in writing, and is communicated to all workers to whom the agreed procedure applies.

### **Section 23 – Default procedure – Act, s 81 (2)**

Subsection 81(2) of the WHS Act provides that when a health or safety issue arises at a workplace, the parties must make reasonable efforts to resolve the issue in accordance with the relevant agreed procedure if there is one in place, or if there is no agreed procedure, the default procedure prescribed in the Regulation.

*Section 23* sets out the default procedure for issue resolution for the purposes of Subsection 81(2) of the WHS Act.

Sub-section 23(2) provides that any party to the issue may commence the issue resolution procedure by telling each of the other parties that there is an issue to be resolved and the nature and scope of the issue.

Sub-section 23(3) provides that as soon as the parties are told of the issue, all parties must meet or communicate with each other to attempt to resolve the issue.

In attempting to resolve the issue, sub-section 23(4) requires the parties to have regard to all relevant matters including:

- the degree and immediacy of risk to workers or other persons involved in the issue;
- the number and location of workers and other persons affected by the issue;
- the temporary or permanent measure that must be implemented to resolve the issue;
- and
- the person responsible for implementing the resolution measures.

Sub-section 23(5) provides that a party who is involved in resolving the issue may nominate a person to assist or represent them.

Sub-section 23(6) provides that if an issue is resolved, and any party to the issue requests it, details of the issue and its resolution must be set out in a written agreement. The sub-section also notes that under section 80 of the WHS Act, parties to an issue include a PCBU, a worker, a health and safety representative, and any representatives of these persons.

If a written agreement is prepared, sub-section 23(7) provides that all parties to the issue must be satisfied that the written agreement reflects the resolution of the issue. Sub-section 23(8) further provides that a copy of the written agreement must be provided to all parties to the issue. Sub-section 23(8) also requires a copy of the written agreement to be provided to the health and safety committee for the workplace if it requests a copy.

Sub-section 23(9) clarifies that nothing in the issue resolution procedure prevents a worker from bringing a work health and safety issue to the attention of the worker's health and safety representative.

## **Part 2.3 – Cessation of unsafe work**

### **Section 24 – Continuity of engagement of worker – Act, s 88**

Section 88 of the WHS Act provides that if a worker ceases work in circumstances where they are entitled to do so, and complies with the requirements set out in that section, their action does not affect the continuity of their engagement for prescribed purposes.

*Section 24* sets out the prescribed purposes referred to by section 88 of the WHS Act. These prescribed purposes are the assessment of eligibility for, or the calculation of benefits for, any benefit or entitlement associated with the worker's engagement. This includes:

- remuneration and promotion as affect by seniority;
- superannuation benefits;
- leave entitlements; and
- any entitlement to notice of termination of engagement.

## **Parts 2.4 – Workplace entry by WHS entry permit-holders**

Note: A 'WHS entry permit' is defined in the WHS Act to mean a permit issued under Part 7 of the WHS Act or the equivalent part of a corresponding WHS law.

### **Section 25 – Training requirement for WHS entry permits – Act, s 131 and s 133**

*Section 25* provides that the prescribed training required under section 131 and 133 of the WHS Act is training that is provided or approved by the regulator. Sub-section 25(1) sets out the matters that must be covered by the training.

Sub-section 25(2) requires the training to provide participants with information about the availability of any guidance material published by the regulator in relation to the WHS Act and this Regulation.

Sub-section 25(3) provides that for the purpose of approving training, the regulator must have regard to any relevant matter, including:

- the content and quality of the curriculum;
- relevance of the curriculum to the powers and functions of a WHS permit holder; and
- the qualifications, knowledge and experience of the person who is to provide the training.

The power to approve training includes a power to amend or repeal the approval.

## **Section 26 – Form of WHS entry permit**

*Section 26* sets out the information that must be included in a WHS entry permit.

## **Section 27 – Notice of entry – general**

*Section 27* provides that a notice of entry under Part 7 of the WHS Act must be written. It also sets out the information that must be included in a notice of entry.

## **Section 28 – Additional requirements – entry under section 117 – Act, Act s 119**

*Section 28* sets out additional requirements for entry under section 117 of the WHS Act (entry to enquire into suspected contraventions). A notice of entry in relation to section 117 must also include:

- so far as reasonably practicable, the particulars of the suspected contravention to which the notice relates;
- a declaration stating:
  - that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace entered, and that the worker is a member, or eligible to be a member, of that union;
  - the provision in the union's rules that entitles the union to represent the industrial interests of that worker; and
  - that the suspected contravention relates to or affects that worker.

Section 28 also notes that section 130 of the WHS Act provides that a WHS entry permit holder is not required to disclose the name of any worker to the PCBU, and may do so only with the consent of the worker.

## **Section 29 – Additional requirements – entry under section 120 – Act, s 120**

*Section 29* sets out additional requirements for a notice of entry under section 120 of the WHS Act (entry to inspect employee records or information held by another person). A notice of entry in relation to section 120 must also include:

- so far as reasonably practicable, the particulars of the suspected contravention to which the notice relates;
- a description of the employee records and other documents, or the classes of records and documents that are directly relevant to the suspected contravention that are proposed to be inspected;
- a declaration stating that:
  - the union is entitled to represent the industrial interests of a worker who is a member, or eligible to be a member, of that union;
  - the provision in the union's rules that entitles the union to represent the industrial interests of that worker;
  - the suspected contravention relates to or affects that worker; and
  - the records or documents proposed to be inspected relate to that contravention.

Section 29 also notes that section 130 of the WHS Act provides that a WHS entry permit holder is not required to disclose the name of any worker to the PCBU, and may do so only with the consent of the worker.

### **Section 30 – Additional requirements – entry under section 121 – Act, s 122**

*Section 30* sets out additional requirements for a notice of entry under section 122 of the WHS Act (entry to consult and advise workers). A notice of entry in relation to section 121 must also include:

- a declaration stating:
  - that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace proposed to be entered, and that the worker is a member, or eligible to be a member, of that union; and
  - the provision in the union's rules that entitles the union to represent the industrial interests of that worker.

Section 30 also notes that section 130 of the WHS Act provides that a WHS entry permit holder is not required to disclose the name of any worker to the PCBU, and may do so only with the consent of the worker.

### **Sections 31 – Register of WHS entry permit-holders – Act, s 151**

*Section 31* provides that for the purposes of section 151 of the WHS Act, the authorising authority must publish on its website an up to date register of persons who hold a WHS entry permit issued under Part 7 of the WHS Act and the date the register was last updated.

## **Chapter 3 – General risk and workplace management**

### **Part 3.1 – Managing risks to health and safety**

Part 3.1 imposes risk management duties on PCBUs who have duties under this Regulation to manage risks to health and safety. It requires duty holders to manage risks to health and safety by identifying hazards, applying a hierarchy of risk control measures and, in specified circumstances, requires a review of risk control measures.

Duty holders under this Part also have duties under section 17 of the WHS Act to manage risks, and duties under Division 2.5 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part.

There are additional Regulation about management of risk in Part 4.1 – *Noise*; Part 4.2 – *Hazardous manual tasks*; Part 4.3 – *Confined spaces*; Part 4.4 – *Falls*; Part 4.7 – *General electrical safety in workplaces and energised electrical work*; Part 4.8 – *Diving work*; Chapter 5 – *Plant and Structures*; and, Chapter 6 – *Construction Work*.

Defined terms in the dictionary which are relevant to this Part include *administrative control*, *control measure*, *duty holder*, *engineering control*, and *personal protective equipment*.

### **Section 32 – Application - pt 3.1**

*Section 32* specifies that Part 3.1 applies to a PCBU who has a duty under the Regulation to manage risks to health and safety.

### **Section 33 – Specific requirements must be complied with**

*Section 33* provides that any specific requirements under the Regulation for the management of risk must be complied with when implementing the requirements of Part 3.1.

### **Section 34 – Duty to identify hazards**

*Section 34* requires a duty holder, in managing risks to health and safety, to identify reasonably foreseeable hazards that could result in risks to health and safety.

### **Section 35 – Managing risks to health and safety**

*Section 35* specifies the ways in which a duty holder must manage risks to health and safety. Risks to health and safety must first be eliminated so far as is reasonably practicable. If it is not reasonably practicable to eliminate risks to health and safety, then the risks must be minimised so far as is reasonably practicable.

### **Section 36 – Hierarchy of control measures**

*Section 36* sets out the hierarchy of control measures to be implemented to minimise risks to health and safety if it is not reasonably practicable for a duty holder to eliminate risks to health and safety. Administrative controls must be implemented if a risk remains after implementing risk control measures. A duty holder may use a combination of controls to minimise a risk so far as is reasonably practicable if a single control is not sufficient for the purpose.

This Section refers to the term ‘administrative control’, which is defined in the dictionary.

This Section refers to the term ‘personal protective equipment’, which is defined in the dictionary to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

### **Section 37 – Maintenance of control measures**

*Section 37* provides that a duty holder must ensure effectiveness of a control measure that is implemented to eliminate or minimise risks to health and safety. The duty holder must also ensure that the control measure is maintained so that it remains effective. In order to do this, the duty holder must ensure that the control measure is and remains fit for purpose, suitable for the nature and duration of work, and installed, set up and used correctly.

### **Section 38 – Review of control measures**

*Section 38* requires a duty holder to review and revise control measures implemented under the Regulation in certain circumstances so as to maintain, so far as is reasonably practicable, a work environment that is without risks to health or safety. Health and safety representatives may request a review of control measures under circumstances set out in sub-section 38(4).

## **Part 3.2 – General workplace management**

Part 3.2 imposes duties upon PCBUs to ensure that the environment at a workplace is without risks to health and safety. It requires the provision of facilities, first aid, emergency plans, training and instruction for workers and imposes duties regarding remote or isolated work and falling objects. It imposes duties regarding personal protective equipment upon PCBUs who direct the carrying out of work at a workplace, workers and other persons at a workplace.

Duty holders under this Part may also have health and safety duties under Regulation 19, 20, 21, 28 or 29 of the WHS Act. PCBUs may have duties under Division 5.2 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part.

There are additional Regulation about emergency plans in Part 4.3 – *Confined spaces*; Part 4.4 – *Falls*; and, Part 4.8 – *Diving work*.

Additional Regulation about personal protective equipment is contained in Part 4.3 – *Confined spaces*; Part 4.4 – *Falls*; and Chapter 6 – *Construction work*.

Additional Regulation about workplace environmental conditions relate to Part 4.2 – *Hazardous manual tasks*; Part 4.3 – *Confined spaces*; Part 4.4 – *Falls*; Part 4.7 – *General electrical safety in workplaces and energised electrical work*; and, Chapter 6 – *Construction work*.

Regulation about training, information and instruction are also included in Part 4.3 – *Confined spaces*; Part 4.4 – *Falls*; Part 4.8 – *Diving work*; and, Chapter 6 – *Construction work*.

Defined terms in the dictionary which are relevant to this Part include:

- *combustible liquid*
- *combustible substance*

- *contaminant*
- *control measure*
- *emergency service organisation*
- *emergency service worker*
- *essential services*
- *exposure standard*
- *flammable gas*
- *gas cylinder*
- *hazardous area*
- *ignition source*
- *lower explosive limit (LEL)*
- *personal protective equipment, and*
- *safe oxygen level.*

### **Division 3.2.1 – Information, training and instruction**

#### **Section 39 – Provision of information, training and instruction – Act, s19**

*Section 39* requires a PCBU to ensure that information, training and instruction provided to a worker are suitable and adequate, and takes into account the nature of the work being carried out, the natures of the risks associated with the work and the control measures that are implemented.

### **Division 3.2.2 – General working environment**

#### **Section 40 – Duty in relation to general workplace facilities**

*Section 40* sets out the requirements for a PCBU at a workplace to ensure that the workplace layout and maintenance allows persons to enter, exit and move about without risk to health and safety in normal working conditions and in an emergency.

*Section 40* also sets out similar requirements in relation to space for work to occur, floors and other surfaces, lighting, ventilation, work undertaken in extremes of heat or cold, and work on or near essential services.

This Section refers to the term ‘essential services’, which is defined in the dictionary.

#### **Section 41 – Duty to provide and maintain adequate and accessible facilities**

*Section 41* provides that a PCBU at a workplace must ensure the provision and maintenance of adequate facilities for workers. Facilities in this Section include toilets, drinking water, washing facilities and eating facilities. The PCBU is required to consider a number of listed relevant matters in determining the adequacy of facilities.

### **Division 3.2.3 – First aid**

## **Section 42 – Duty to provide first aid**

*Section 42* provides that a PCBU at a workplace must ensure the provision of first aid equipment, access to first aid facilities and access by each worker to the equipment. A PCBU is also required to ensure that an adequate number of workers are trained to administer first aid or given access to an adequate number of other persons who have been trained to administer first aid. The PCBU is required to consider a number of listed relevant matters in determining the adequacy of first aid facilities and equipment.

## **Division 3.2.4 – Emergency plans**

### **Section 43 – Duty to prepare, maintain and implement emergency plan**

*Section 43* requires a PCBU at a workplace to prepare an emergency plan for the workplace which provides for specified requirements, such as emergency procedures, the testing of emergency procedures and information, training and instruction to relevant workers in relation to implementing the emergency procedures. All relevant matters must be considered when preparing the plan, and the PCBU is required to implement the emergency plan in the event of an emergency.

## **Division 3.2.5 – Personal protective equipment**

This Division refers to the term ‘personal protective equipment’, which is defined in the dictionary to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

### **Section 44 – Provision and use of personal protective equipment**

*Section 44* applies if personal protective equipment is to be used to minimise a risk to health and safety in relation to work at a workplace in accordance with the hierarchy of control measures outlined in Section 36. Section 44 requires the PCBU who directs the carrying out of work to provide the personal protective equipment to workers at the workplace, unless the personal protective equipment has been provided by another PCBU.

Section 44 provides that the PCBU who directs the carrying out of work must ensure that the personal protective equipment provided is selected to minimise risk to health and safety is suitable for the work and associated hazards, and is of a suitable size and fit and reasonably comfortable for the worker. The personal protective equipment must also be maintained so that it is clean and hygienic and in good working order. The PCBU must also ensure that the appropriate personal protection equipment is worn by the worker.

The PCBU must provide the worker with training, information and instruction in the proper use, wearing, storage and maintenance requirements.

### **Section 45 – Personal protective equipment used by other persons**

*Section 45* requires that a PCBU who directs the carrying out of work must ensure that personal protective equipment used by any person other than a worker at a workplace is capable of minimising risk to the person’s health and safety, and that the person uses or wears the equipment.

### **Section 46 – Duties of worker**

*Section 46* applies if a PCBU provides a worker with personal protective equipment. In such a case, the worker is required to:

- wear the equipment in accordance with any information, training or reasonable instruction by the PCBU;
- not intentionally misuse or damage the equipment; and
- inform the PCBU of any damage to, defect in, or need to clean or decontaminate any of the equipment of which the worker becomes aware.

### **Section 47 – Duty of person other than worker**

*Section 47* requires a person other than a worker to wear personal protective equipment at a workplace in accordance with any information, training or reasonable instruction provided by the PCBU at the workplace.

## **Division 3.2.6 – Remote or isolated work**

### **Section 48 – Remote or isolated work – Act, s19**

*Section 48* requires a PCBU to manage risks to the health and safety of a worker associated with remote or isolated work, including the provision of a system of work that includes effective communication with the worker. In relation to a worker, remote or isolated work means work that is isolated from the assistance of other persons because of location, time or the nature of the work.

This Section defines the terms ‘assistance’ and ‘remote or isolated work’.

## **Division 3.2.7 – Managing risks from airborne contaminants**

This division refers to the term ‘airborne contaminant’, which is defined in the dictionary to mean a contaminant in the form of a fume, mist, gas, vapour or dust, and includes microorganisms.

### **Section 49 – Ensuring exposure standards for substances and mixtures not exceeded**

*Section 49* requires a PCBU at a workplace to ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the relevant exposure standard.

### **Section 50 – Monitoring airborne contaminant levels**

*Section 50* requires a PCBU at a workplace to ensure that air monitoring is carried out to determine the airborne concentration of a substance or mixture at the workplace to which an exposure standard applies if:

- the PCBU is reasonably uncertain about whether the airborne concentration of a substance or mixture exceeds the relevant exposure standard; and
- monitoring is necessary to determine whether there is a risk to health.

The PCBU is required to ensure that the monitoring results are kept for 30 years from the monitoring date, and that the results are accessible to potentially exposed persons at that workplace.

### **Division 3.2.8 – Hazardous atmospheres**

#### **Section 51 – Managing risks to health and safety, Act s 19**

*Section 51* requires a PCBU to manage risks to health and safety associated with a hazardous atmosphere at the workplace, and provides a description of a hazardous atmosphere.

This Section defines the term ‘hazardous atmosphere’.

#### **Section 52 – Ignition sources – Act, s 19**

*Section 52* requires a PCBU to manage risks to health and safety associated with an ignition source in a hazardous atmosphere at the workplace. The Section does not apply to an ignition source if it is part of a deliberate process or activity at the workplace.

### **Division 3.2.9 – Storage for flammable or combustible substances**

#### **Section 53 – Flammable and combustible material not to be accumulated**

*Section 53* requires a PCBU to ensure flammable or combustible substances (or their empty containers) are kept at the lowest practicable quantity at the workplace.

This Section defines the term ‘flammable or combustible substances’.

This Section refers to the term ‘gas cylinder’, which is defined in the dictionary.

### **Division 3.2.10 – Falling objects**

#### **Section 54 – Management of risk of falling objects - Act, s19**

*Section 54* requires a PCBU to manage the risk of an object falling on a person if the falling object is reasonably likely to injure the person.

#### **Section 55 – Minimising risk associated with falling objects**

*Section 55* requires a PCBU to minimise the risk of an object falling by providing adequate protection against the risk if it is not reasonably practicable to eliminate the risk referred to in Section 54. It describes adequate protection against the risk as the provision and maintenance of a safe system of work, including preventing an object from falling freely, so far as is reasonably practicable. If it is not reasonably practicable to prevent an object from falling, a system to arrest the fall of a falling object must be provided, so far as is reasonably practicable.

## Chapter 4 – Hazardous Work

Chapter 4 sets out the health and safety requirements for noise, hazardous manual tasks, confined spaces, falls, high-risk work, demolition work, electrical safety and energised electrical work and diving work.

### Part 4.1 – Noise

Part 4.1 imposes duties upon a PCBU regarding the exposure of workers to noise at the workplace. Duty holders under this Part may also have health and safety duties under Regulation 19, 20 or 21 of the WHS Act, and duties under Division 5.2 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part.

Defined terms in the dictionary which are relevant to this Part include:

- *control measure*
- *designer*
- *hazardous manual task*
- *importer*
- *manufacturer*
- *personal protective equipment*, and
- *supplier*.

### Section 56 – Meaning of *exposure standard for noise*

*Section 56* provides the meaning of the exposure standard for noise.

### Section 57 – Managing risk of hearing loss from noise – Act, s 19

*Section 57* provides that, in accordance with Part 3.1 of this Regulation, a PCBU at a workplace must manage the risks to health and safety relating to hearing loss associated with noise. Sub-section 7(1) refers to section 19 of the WHS Act and clarifies that Part 3.1 of this Regulation contains general risk management requirements.

Sub-section 7(2) provides that a PCBU must ensure that workers at the workplace are not exposed to noise that exceeds the exposure standard.

### Section 58 – Audiometric testing

*Section 58* applies to workers who are frequently required to wear personal protective equipment to protect against noise that exceeds the exposure standard.

Sub-section 58(1) provides that Section 58 applies to workers who are frequently required by a PCBU to wear personal protective equipment to protect the worker from the risk of hearing loss associated with noise that exceeds the exposure standard.

Sub-section 58(2) provides that a PCBU who provides this personal protective equipment must also provide audiometric testing for the worker within 3 months of the worker commencing the work and, in any event, at least every 2 years.

Sub-section 58(3) provides the meaning of ‘audiometric testing’.

This Section refers to the term ‘personal protective equipment’, which is defined in the dictionary to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

### **Section 59 – Duties of designers, manufacturers, importers and suppliers of plant**

*Section 59* provides for the duties of designers, manufacturers, importers or suppliers of plant.

Sub-section 59(1) provides that a designer of plant must ensure that the plant is designed so that its noise emission is as low as reasonably practicable.

Sub-section 59(2) further provides that a designer of plant must give each person provided with the design for the purpose of giving effect to it (for example, for the purpose of manufacturing it), adequate information about:

- the noise emission values of the plant;
- the operating conditions of the plant when noise emission is to be measured; and
- the methods the designer has used to measure the noise emission of the plant.

Sub-section 59(3) provides that a manufacturer of plant must ensure that the plant is manufactured so that its noise emission is as low as reasonably practicable.

Sub-section 59(4) further provides that a manufacturer of plant must give to each person provided with the plant, adequate information about:

- the noise emission values of the plant;
- the operating conditions of the plant when noise emission is to be measured; and
- the methods the designer has used to measure the noise emission of the plant.

Sub-section 59(5) requires an importer of plant to take all reasonable steps to obtain the information the manufacturer is required to provide to an importer under sub-section 59(4) and give that information to any person to whom the plant is supplied.

Sub-section 59(6) requires a supplier of plant to take all reasonable steps to obtain the information the designer, manufacturer or importer is required to provide to a supplier under sub-section 59(2), 59(4) and 59(5), and give that information to any person to whom the supplier supplies the plant.

### **Part 4.2 – Hazardous manual tasks**

Part 4.2 imposes duties on a PCBU to manage the risk of a musculoskeletal disorder associated with a hazardous manual task. It specifies the duties placed on designers, manufacturers, importers and suppliers of plant or structures for hazardous manual tasks. Duty holders under this Part also have health and safety duties under Regulation 19 – 26 of the WHS Act, and duties Division 5. 2 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part. There is additional Regulation about management of risk in Part 3.1 – Managing risks to health and safety and about workplace environmental conditions in Part 3.2 – General Workplace Management.

Defined terms in the dictionary which are relevant to this Part include:

- *control measure*
- *designer*

- *hazardous manual task*
- *importer*
- *manufacturer*
- *musculoskeletal disorder* and
- *supplier*.

### **Section 60 – Managing risks to health and safety – Act, s19**

*Section 60* specifies that a PCBU must manage the risk of a musculoskeletal disorder associated with a hazardous manual task. The general risk management requirements are outlined in part 3.1 of this Section.

The PCBU must have regard to all relevant matters that may contribute to a musculoskeletal disorder when determining what control measures must be implemented to manage the risk of the musculoskeletal disorder. The matters that must be regarded in this process are listed in this Section.

### **Section 61 – Duties of designers, manufacturers, importers and suppliers of plant or structures**

*Section 61* provides that designers, manufacturers, importers and suppliers of plant or structure must eliminate or, if it is not reasonably practicable to do so, minimise the need for a hazardous manual task to be carried out in relation to the plant or structure when it is being designed, manufactured, imported or supplied.

Sub-sections (4), (5) and (6) provide that a manufacturer of plant or a structure must take all reasonable steps, including by providing adequate information, to eliminate or minimise the need for any hazardous manual task to be carried out in connection with the plant or structure.

Sub-sections (7) and (8) provide that an importer or a supplier of plant or a structure must take all reasonable steps to obtain the relevant information about the features of the plant or structure from the manufacturer. The importer or supplier must give this information to any person to whom the plant or structure is supplied.

### **Part 4.3 – Confined spaces**

Part 4.3 applies to any confined space that is or could be entered by a person. It imposes duties upon a PCBU to minimise the need to enter confined spaces where entry to a confined space is required. A PCBU must put in place known safe working practices including risk assessments, control measures, training, emergency response and record keeping. It also imposes duties upon a PCBU who designs, manufactures, supplies or imports plant in relation to confined spaces.

Duty holders under this Part also have health and safety duties under Regulation 20, 21, 22, 23 or 25 of the WHS Act, and duties under Division 2.5 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part.

There is additional Regulation about management of risk in Part 3.1 – Managing risks to health and safety, about workplace environmental conditions and information, training and instruction in Part 3.2 – General Workplace Management and about construction work involving confined spaces in Chapter 6 – Construction work. Additional Regulation

imposing duties on designers, manufacturers and suppliers about plant and structures are included in Chapter 5 – Plant and structures.

Defined terms in the dictionary which are relevant to this Part include:

- *airborne contaminant*
- *competent person*
- *confined space*
- *confined space entry permit*
- *contaminant*
- *control measure*
- *designer*
- *emergency service organisation*
- *emergency service worker*
- *entry*
- *flammable gas*
- *head or upper body*
- *ignition source*
- *importer*
- *lower explosive limit (LEL)*
- *manufacturer*
- *personal protective equipment*
- *safe oxygen level, and*
- *supplier.*

### **Division 4.3.1 – Preliminary**

#### **Section 62 – Confined spaces to which this Part applies**

*Section 62* provides that Part 4.3 of this Regulation applies to any confined space that is or could be entered by a person. It also clarifies that the person with management or control of the confined space is the PCBU for the purposes of Part 4.3.

#### **Section 63 – Application to emergency service workers**

*Section 63* exempts an emergency service worker from the requirements for an entry permit and signage requirements prescribed in Regulation 67 and 68 if they are either rescuing or providing first aid to a person in a confined space at the direction of the emergency service organisation.

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

#### **Section 64 – Duty to eliminate or minimise risk**

*Section 64* applies to plant or structures that include a space that is, or is intended to be, a confined space.

Paragraph 64(2)(a) imposes a duty on a designer, manufacturer, importer or supplier of the plant or structure, and a person who installs or constructs the plant or structure to ensure

that the need for any person to enter the space and the risk of a person inadvertently entering the space are eliminated, so far as is reasonably practicable.

Paragraph 64(2)(b) prescribes that if elimination is not possible, the need to enter the space or the risk of a person inadvertently entering the space should be minimised so far as is reasonably practicable. The confined space should be designed with a safe means of entry and exit, and the risk to health and safety of any person who enters the space must be eliminated so far as is reasonably practicable and if that is not possible, minimised so far as is reasonably practicable.

### **Division 4.3.3 – Duties of person conducting business or undertaking**

#### **Section 65 – Entry into confined space must comply with this Division**

*Section 65* provides that a PCBU must ensure that a worker does not enter a confined space before the duties in Division 4.3.3 have been complied with.

#### **Section 66 – Managing risks to health and safety - Act, s19**

*Section 66* requires a PCBU to manage risks to health and safety associated with a confined space at a workplace by having the risks assessed by a competent person, and results recorded in writing, which includes all relevant matters, including a specified list of matters.

A competent person is defined in the Dictionary to mean a person who has acquired through training, qualification or experience, the knowledge and skills to carry out the task.

This Section requires the PCBU to ensure that this risk assessment is revised to reflect any review and revision of control measures.

#### **Section 67 – Confined space entry permit**

*Section 67* states that a PCBU must not direct a worker to enter a confined space to carry out work unless the person has issued a confined space entry permit for the work. This Section specifies items which must be included in the confined space entry permit, and who may complete the permit which must be in writing. Furthermore, the controls specified in the permit must be based on the risk assessment required by Section 66, and detail the communication and safety monitoring required in Section 69. The PCBU must ensure that, when the work for which the entry permit was issued is completed, all workers leave the confined space and the entry permit is signed off as being completed.

#### **Section 68 – Signage**

*Section 68* requires a PCBU to ensure that signs which identify the confined space, inform workers that they must not enter the space unless they have a confined space entry permit, and are clear and prominently located next to each entry to the space, are erected before preparation and work in a confined space commences and are maintained while the work is being carried out and is being finalised.

### **Section 69 – Communication and safety monitoring**

*Section 69* requires a PCBU to ensure that a worker does not enter a confined space to carry out work unless the PCBU provides a system of work that includes continuous communication with the worker from outside the space, and monitoring conditions within the space by a standby person who is in the vicinity of the space.

### **Section 70 – Specific control – connected plant and services**

*Section 70* requires a PCBU to eliminate or minimise any risk associated with work in a confined space from the introduction of any substance or condition into the space from or by any plant or services connected to the space, or from the activation or energising in any way of any plant or services connected to the space.

### **Section 71 – Specific control – atmosphere**

*Section 71* requires a PCBU to ensure that purging or ventilation of any contaminant in the atmosphere of the space is carried out, and pure oxygen or gas mixtures with oxygen in a concentration exceeding 21% by volume are not used for purging or ventilation. The PCBU must also ensure that while work is being carried out in a confined space, the atmosphere of the space has a safe oxygen level, and if this is not reasonably practicable to comply with paragraph (a) and the atmosphere in the space has an oxygen level less than 19.5% by volume – any worker carrying out work in the space is provided with air supplied respiratory equipment.

This Section also clarifies that in this Section, *purging* means the method used to displace any contaminant from a confined space

This Section refers to the term ‘contaminant’, which is defined in the dictionary to mean any substance that may be harmful to health or safety.

### **Section 72 – Specific control – flammable gases and vapours**

*Section 72* requires a PCBU to ensure, so far as is reasonably practicable, that while work is being carried out in a confined space, the concentration of any flammable gas, vapour or mist in the atmosphere of the space is less than 5% of its lower explosive limit (LEL). If this is not reasonably practicable, and the concentration of any flammable gas, vapour or mist in the atmosphere of the confined space is equal to or greater than 5% but less than 10% of its LEL, the PCBU must ensure that any worker is immediately removed from the space unless a suitably calibrated, continuous-monitoring flammable gas detector is used in the space. The PCBU must ensure that any worker is immediately removed from the space if the concentration of any flammable gas, vapour or mist in the atmosphere of the confined space is equal to or greater than 10% of its LEL.

### **Section 73 – Specific control – fire and explosion**

*Section 73* requires a PCBU to ensure that an ignition source is not introduced into the space if there is a possibility of fire or explosion in a confined space being caused by an ignition source being introduced into the space.

## **Section 74 – Emergency procedures**

*Section 74* requires a PCBU to establish first aid and rescue procedures to be followed in the event of an emergency in a confined space, and to ensure that the procedures are practised to ensure that they are efficient and effective. The PCBU is required to ensure that first aid and rescue procedures are initiated from outside the confined space as soon as practicable in an emergency.

Furthermore, the PCBU must ensure that access is large enough to facilitate emergency access, that access is not obstructed, and that plant, equipment and personal protective equipment provided for first aid or emergency rescue are maintained in good working order.

This Section refers to the term ‘personal protective equipment’, which is defined in the Dictionary to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

## **Section 75 – Personal protective equipment in emergencies**

*Section 75* applies to a worker who is to enter a confined space in order to carry out first aid or rescue procedures in an emergency.

This Section requires the PCBU to take all reasonable steps to ensure that air supplied respiratory equipment is provided to and available for use by the worker in an emergency where the atmosphere in the confined space does not have a safe oxygen level, or has a harmful concentration of an airborne contaminant, or there is a serious risk of the atmosphere developing such a condition while the worker is in the space.

The PCBU is required to ensure that suitable personal protective equipment is provided and available for use by the worker in an emergency in which an engulfment has occurred inside the confined space, or there is a serious risk of an engulfment occurring while the worker is in the space.

This Section refers to the term ‘personal protective equipment’, which is defined in the Dictionary to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

## **Section 76 – Information, training and instruction for workers**

*Section 76* requires a PCBU to ensure that relevant workers are provided with suitable and adequate information, training and instruction in relation to particular listed issues. The PCBU is also required to keep a record of this training for 2 years.

This Section clarifies the meaning of relevant worker to include workers (and their supervisors) who may enter the confined space, or carry out regulated confined space functions (including emergency procedures), whether they enter the confined space or not.

This Section refers to the term ‘personal protective equipment’, which is defined in the dictionary to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

## **Section 77 – Confined space entry permit and risk assessment must be kept**

*Section 77* states that if a PCBU prepares a risk assessment under Section 66, or issues a confined space entry permit under Section 67, the PCBU must keep a copy of the risk assessment for at least 28 days after the work to which it relates is completed, and keep a

copy of the confined space entry permit until the work to which it relates is completed. In addition to this, the PCBU must keep the copy of the assessment or permit (as the case requires) for at least 2 years after the occurrence of a notifiable incident in connection with the work to which the assessment or permit relates.

This Section also requires the PCBU to ensure that, for the period for which the assessment or permit must be kept under this Section, a copy is available for inspection under the WHS Act, and by any relevant worker on request.

## **Part 4.4 – Falls**

Part 4.4 applies to situations where a person could fall from one level to another, where that fall is reasonably likely to cause injury to the person or any other person. This part also establishes requirements for control measures to eliminate or minimise the risk, and establishes more onerous requirements where the risk of a fall is not eliminated.

Duty holders under this Part may also have health and safety duties under Regulation 19, 20 or 21 of the WHS Act, and duties under Division 5.2 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part.

There is additional Regulation about management of risk in Part 3.1 – Managing risk to health and safety, about workplace environmental conditions in Part 3.2 – General Workplace Management and about construction work involving risk of a person falling in Chapter 6 – Construction work. Part 4.5 – High-risk work may apply in respect of some work involving risk of falls.

Defined terms which are relevant to this Part include *building maintenance equipment*, *building maintenance unit*, *fall arrest system*, *temporary work platform*, *theatrical performance* and *work positioning system*.

### **Section 78 – Management of risk of fall – Act, s19**

*Section 78* requires a PCBU at a workplace to manage, in accordance with Part 3.1, the risk of a fall by a person from one level to another, where that fall is reasonably likely to cause injury to the person or any other person.

Sub-section 78(2) explains that a fall from one level to another includes a potential fall in or on an elevated workplace, or in the vicinity of an opening or edge through which or over which a person could fall, or a surface through which a person could fall, or any other place from which a person could fall.

Sub-section 78(3) requires the PCBU to ensure, so far as is reasonably practicable, that any work that involves the risk of a fall is carried out on the ground or on a solid construction.

Sub-section 78(4) requires the PCBU to provide safe means of access to, and exit from, the workplace or areas where there is a risk of a fall within the workplace.

Sub-section 77(5) defines the term solid construction for the purpose of this Regulation.

### **Section 79 – Specific requirements to minimise risk of fall**

*Section 79* applies if it is not reasonably practicable to eliminate the risk of a fall referred to in Section 78. This Section requires a PCBU to minimise the risk of a fall by providing adequate protection against the fall risk.

Sub-section 79(3) explains that adequate protection is taken to be provided if the PCBU provides and maintains a safe system of work, including:

- providing a fall prevention device if it is reasonably practicable to do so;
- providing a work positioning system, if it is not reasonably practicable to provide a fall prevention device; or
- providing a fall arrest system, so far as is reasonably practicable, if it is not reasonably practicable to provide either a fall prevention device or a work positioning system.

Sub-section 79(4) clarifies that Section 79 does not apply to the performance of stunt work, acrobatics, theatrical performance, a sporting or athletic activity or horse riding.

Sub-section 79(5) provides examples of fall prevention devices which include a secure fence, edge protection, working platforms and covers.

### **Section 80 – Emergency and rescue procedures**

*Section 80* requires a PCBU who implements a fall arrest system as a control measure to establish emergency and rescue procedures in relation to the use of the system,

Sub-section 80(3) provides that the PCBU must also ensure that the emergency and rescue procedures are tested so that they are effective.

Sub-section 80(4) provides that a PCBU is also required to provide relevant workers with suitable and adequate information, training and instruction in relation to the emergency and rescue procedures.

Sub-section 80(5) defines relevant worker as including both a worker who uses or is required to use a fall arrest system, as well as a worker who may be involved in initiating or implementing the emergency and rescue procedures.

### **Part 4.5 – High-risk work**

Part 4.5 outlines the licensing requirements for the following classes of work:

- basic scaffolding, intermediate scaffolding, advanced scaffolding;
- dogging, basic rigging, intermediate rigging, advanced rigging;
- crane and hoist operation – tower crane, self-erecting tower crane, derrick crane, portal boom crane, bridge and gantry crane, vehicle loading crane, non-slewing mobile crane, slewing mobile crane with a capacity up to 20 tonnes, slewing mobile crane with a capacity up to 60 tonnes, slewing mobile crane with a capacity up to 100 tonnes, slewing mobile crane with a capacity over 100 tonnes, materials hoist, personnel and materials hoist, boom-type elevating work platform, concrete placing boom;
- reach stacker;
- forklift operation – forklift truck, order-picking forklift truck; and
- pressure equipment operation – standard boiler operation, advanced boiler operation, turbine operation, reciprocating steam engine.

This Part prescribes requirements for the authorisation of work for section 43 of the WHS Act and the required qualifications for section 44 of the WHS Act.

Schedules 3 and 4 of these Regulation apply to this Part. Part 4.4 – Falls and Chapter 6 – Construction work may also apply to some classes of high-risk work.

Defined terms in the dictionary which are relevant to this Part include:

- *accredited assessor*
- *boiler*
- *boom-type elevating work platform*
- *bridge crane*
- *certification*
- *class*
- *competency assessment*
- *concrete placing boom*
- *conveyor*
- *crane*
- *derrick crane*
- *direct fired process heater*
- *dogging work*
- *external review*
- *forklift truck*
- *gantry crane*
- *heritage boiler*
- *high-risk work*
- *high-risk work licence*
- *hoist*
- *licence holder*
- *mast climbing work platform*
- *materials hoist*
- *non-slewing mobile crane*
- *notice of satisfactory assessment*
- *order-picking forklift truck*
- *personnel and materials hoist*
- *portal boom crane*
- *pressure equipment*
- *reach stacker*
- *reciprocating steam engine*
- *registered training organisation (RTO)*
- *relevant fee*
- *rigging work*
- *scaffold*
- *scaffolding work*
- *self-erecting tower crane*
- *slewing mobile crane*
- *slinging techniques*
- *suspended scaffold*
- *tower crane, turbine*
- *vehicle loading crane, and*
- *VET course.*

## **Division 4.5.1 – Licensing of high-risk work**

Division 1 of this Part outlines how to apply for a high-risk work licence and places certain requirements on the regulator relating to the granting or refusing an application. It contains provisions covering the replacement, surrender, renewal and suspension and cancellation of licences.

As per Section 83, a reference to a high-risk work licence in this subdivision includes a reference to an equivalent licence that is granted under a corresponding WHS law and is being used in accordance with the terms and conditions under which it was granted.

### **Subdivision 4.5.1.1 – Requirement to be licensed**

#### **Section 81 – Licence required to carry out high-risk work**

*Section 81* specifies that a person must not carry out a class of high-risk work prescribed in schedule 3 unless the person holds a high-risk work licence for that particular class of high-risk work.

#### **Section 82 – Exceptions**

*Section 82* identifies the specific and limited circumstances in which a person is not required to hold a high-risk work licence for carrying out high-risk work.

This Section refers to the terms ‘boiler’, ‘certification’ and ‘heritage boiler’, which are defined in the dictionary.

#### **Section 83 – Recognition of high-risk work licences in other jurisdictions**

*Section 83* clarifies that a reference to a high-risk work licence in subdivision 1 includes a reference to an equivalent licence that was granted by a corresponding regulator under a corresponding WHS law and is being used according to the terms and conditions under which it was granted.

Sub-section 83(2) stipulates that this Section does not apply to a licence that is suspended or cancelled, or has expired in the corresponding jurisdiction.

#### **Section 84 – Duty of person conducting business or undertaking to ensure direct supervision**

*Section 84* provides that a PCBU must ensure that a person who is carrying out high-risk work as part of training towards a high-risk work certification is directly supervised except in the limited circumstances stated in sub-section 84(2), such as if the nature or circumstances of a particular task make direct supervision impracticable or unnecessary and if the reduced level of supervision will not place the health or safety of the supervised person or any other person at risk.

Sub-section 84(3) also provides the meaning of direct supervision for the purpose of Section 84.

## **Section 85 – Evidence of licence – duty of person conducting business or undertaking**

*Section 85* requires a PCBU to sight specific written evidence that the worker has the relevant high-risk licence for that work before directing or allowing a worker to carry out or supervise high-risk work.

This Section refers to the term ‘certification’, which is defined in the dictionary.

## **Subdivision 4.5.1.2 – Licensing process**

### **Section 86 – Who may apply for a licence**

*Section 86* specifies that only a person who holds a qualification set out in schedule 4 to this Regulation may apply for a high-risk work licence.

### **Section 87 – Application for high-risk work licence**

*Section 87* sets out the requirements for an application for a high-risk work licence. The application must be made in the approved form, include certain information listed in sub-section 87(2) and be accompanied by the relevant fee.

This Section refers to the term ‘certification’, which is defined in the dictionary.

### **Section 88 – Additional information**

*Section 88* allows the regulator to seek additional information from the applicant if an application for a high-risk work licence does not contain sufficient information for the regulator to make a decision whether or not to grant the licence.

Sub-section 88(2) requires that the request for additional information must be made in writing and specify the date by which the information is to be given.

Sub-section 88(3) provides that the application is taken to be withdrawn if the additional information is not provided by the specified date.

Sub-section 88(4) allows the regulator to make more than one request for additional information.

### **Section 89 – Decision on application**

*Section 89* requires the regulator to award a high-risk work licence if the regulator is satisfied about the matters listed in sub-section (2).

Sub-section 89(2) and (3) sets out the matters that the regulator must be satisfied of before deciding to grant or refuse a high-risk work licence. The regulator must notify the applicant within 14 days after making a decision to grant the high-risk work licence.

Sub-section 89(5) provides that an application is taken to have been refused if the regulator does not make a decision within 120 days after receiving the application or the additional information requested under Section 88.

This Section refers to the term ‘certification’, which is defined in the dictionary.

A note provides that a refusal to grant a licence under this Section is a reviewable decision under Section 676.

## **Section 90 – Matters to be taken into account**

*Section 90* identifies the matters that the regulator must consider when determining whether the applicant for a high-risk work licence is able to carry out the work to which the licence relates safely and competently.

The matters to be considered include the cancellation or suspension of any equivalent licence held by the applicant or any refusal to issue an equivalent licence to the applicant under the WHS Act, these Regulation or any other law of the Commonwealth or a State or corresponding WHS law dealing with an WHS matter, including a law that may have been repealed upon the commencement of the new WHS laws. Other matters include any enforceable undertakings the applicant has entered into and the applicant's record.

## **Section 91 – Refusal to grant high-risk work licence – process**

*Section 91* outlines the action that the regulator must take if the regulator proposes to refuse to grant a high-risk work licence.

A note provides that a refusal to issue a licence under this Section is a reviewable decision under Section 676.

## **Section 92 – Duration of licence**

*Section 92* provides that a high-risk work licence takes effect on the day it is granted and expires 5 years after that day unless it is cancelled earlier.

## **Section 93 – Licence document**

*Section 93* provides that if the regulator grants a high-risk work licence, the applicant must be issued with a licence document that contains the name of the licence holder, a copy of the licence holder's signature, a recent photograph of the licence holder, the date of birth of the licence holder, and the date on which the licence was granted.

Sub-section 93(2) prescribes the information that must be included in the licence document.

Sub-section 93(3) provides that the licence document must contain a description of each class of licence and the work that is within the scope of each licence if more than one class of high-risk work licence is granted to a person.

Sub-section 93(4) provides that if the licence holder holds more than one high-risk work licence, the licence holder may be issued one licence document in relation to some or all of those licences.

If a licence document is issued under sub-section 93(4), then the licences to which that licence document relates will expire on the date that the first of those licences expires.

## **Section 94 – Licence document to be available**

*Section 94* requires the licence holder to keep the licence document available for inspection under the WHS Act.

Sub-section 94(2) clarifies that the requirement in sub-section 94(1) does not apply if the licence document is not in the licence holder's possession because it has been returned to the regulator to be amended under Section 97 or the licence holder has applied for, but has not yet received, a replacement licence document under Section 98.

### **Section 95 – Reassessment of competency of licence holder**

*Section 95* allows the regulator to direct a licence holder to obtain a reassessment of their competency to carry out the high-risk work covered by the licence, if the regulator reasonably believes that the licence holder may not be competent to carry out that work (for example, if the regulator receives information that the licence holder has carried out high-risk work incompetently).

### **Subdivision 4.5.1.3 – Amendment of licence document**

#### **Section 96 – Notice of change of address**

*Section 96* requires the licence holder of a high-risk work licence to notify the regulator in writing of a change of residential address within 14 days of the change occurring.

#### **Section 97 – Licence-holder to return licence**

*Section 97* provides that if a high-risk work licence is amended, the licence holder must comply with the written request of the regulator to return the licence document to the regulator within the time specified in the request.

#### **Section 98 – Replacement licence document**

*Section 98* sets out the requirements for a licence holder to notify the regulator, as soon as practicable, if the original licence document is lost, stolen or destroyed and to apply for a replacement licence document.

Sub-section 98(5) requires the regulator to issue a replacement licence document if the regulator is satisfied that the original licence document was lost, stolen or destroyed.

Sub-section 98(6) provides that if the regulator refuses to issue a replacement licence document, the regulator must notify the licence holder in writing of this decision, within 14 days after making the decision.

A note provides that a refusal to issue a replacement licence document under this Section is a reviewable decision under Section 676.

#### **Section 99 – Voluntary surrender of licence**

*Section 99* provides that a licence holder may voluntarily surrender the licence document to the regulator, resulting in the expiry of the licence document.

### **Subdivision 4.5.1.4 – Renewal of high-risk work licence**

#### **Section 100 – Regulator may renew licence**

*Section 100* provides that the regulator may renew a high-risk work licence on application by the licence holder.

### **Section 101 – Application for renewal**

*Section 101* sets out the requirements for an application for renewal of a high-risk work licence, such as the name of the applicant, a recent photograph of the applicant and a declaration that he or she has maintained his or her competency to carry out the high-risk work.

Sub-sections 101(3) and (4) provides that the application must be made before the expiry of the licence and be accompanied by the relevant fee.

### **Section 102 – Licence continues in force until application is decided**

*Section 102* provides that if a licence holder has applied to renew a high-risk work licence, the licence continues to be valid until the licence holder is notified about the decision on the application.

### **Section 103 – Renewal of expired licence**

*Section 103* allows a person who has an expired high-risk work licence to apply for the licence to be renewed within 12 months of the licence expiring, or a longer time if the regulator is satisfied that exceptional circumstances exist. As the licence has expired, the applicant cannot carry out the work covered by the licence until the licence is renewed. If the licence lapses beyond the time periods stated in this Section, the applicant is required to apply for a new licence under Section 87.

### **Section 104 – Provisions relating to renewal of licence**

*Section 104* provides that the following requirements also apply in relation to the requirements to renew a licence:

- providing additional information in support of an application for high-risk work under Section 88;
- the regulator being satisfied about certain matters before granting a high-risk work licence under Section 89; 90; and 92; and
- the process for refusing an application for high-risk work under Section 91,

*Sub-section 104(2)* provides that the regulator may renew a high-risk work licence granted to a person under a corresponding WHS law if that licence has not been renewed under that law.

A note provides that a refusal to renew a licence under this Section is a reviewable decision under Section 676.

### **Section 105 – Status of licence during review**

*Section 105* specifies the status of a high-risk work licence during internal review and external review if the regulator has notified the licence holder before a high-risk work licence expires that the regulator proposes to refuse to renew the licence.

Sub-section 105(6) stipulates that the licence continues to have effect under this Section even if its expiry date passes.

## **Subdivision 4.5.1.5 – Suspension and cancellation of high-risk work licence**

### **Section 106 – Suspension or cancellation of licence**

*Section 106* establishes the power of the regulator to suspend or cancel a high-risk work licence. It provides that the regulator may suspend or cancel a high-risk work licence if the regulator is satisfied about certain matters and specifies the action the regulator may take if the regulator suspends or cancels a licence.

Sub-section 106(2) provides that the regulator may disqualify the licence holder from applying for further high-risk work licence of the same class or another licence under the Regulation to carry out work which requires skills which are the same as or similar to those required for the work authorised by the licence that has been suspended or cancelled.

A note provides that the suspension, cancellation or disqualification of a licence under this Section is a reviewable decision under Section 676.

This Section refers to the term ‘certification’, which is defined in the dictionary.

### **Section 107 – Matters taken into account**

*Section 107* provides that the regulator must consider submissions made by the licence holder under Section 108 and advice received by from a corresponding regulator before making a decision under Section 106 to suspend or cancel a high-risk work licence.

### **Section 108 – Notice to and submissions by licence holder**

*Section 108* prescribes what the regulator must do before suspending or cancelling a high-risk work licence, including giving the licence holder a written notice of the proposed suspension or cancellation and any proposed disqualification that outlines all relevant allegations, facts and circumstances known to the regulator.

### **Section 109 – Notice of decision**

*Section 109* requires the regulator to notify the licence holder in writing of the decision to cancel or suspend a high-risk work licence under Section 106 within 14 days after making the decision.

Sub-section 109(2) prescribes the information which must be included in the written notice.

### **Section 110 – Immediate suspension**

*Section 110* allows the regulator to immediately suspend a high-risk work licence without providing notice under Section 109 in circumstances where the work carried out under the high-risk work licence should cease because the work may involve an immediate serious risk to the health or safety of a person.

Sub-section 110(2) prescribes the steps that the regulator must take if it proposes to suspend a licence including providing the licence holder with the reasons for the suspension and the date the suspension takes effect.

### **Section 111 – Licence holder to return licence document**

*Section 111* provides that a licence holder must return the licence document to the regulator in accordance with a notice received under Section 109.

## **Section 112 – Regulator to return licence document after suspension**

*Section 112* provides that when the period of licence suspension ends, the regulator must return the licence document to the licence holder within 14 days after the suspension ends.

## **Part 4.6 – Demolition work**

Part 4.6 Demolition work provides notification and licensing requirements in relation to demolition work.

Defined terms in the dictionary which are relevant to this Part include *demolition work*, *emergency service organisation* and *emergency service worker*.

## **Section 142 – Notice of demolition work**

*Section 142* requires a PCBU to give the regulator written notice, in a manner and form required by the regulator, of the following types of proposed demolition work at least 5 days prior to the commencement of the work:

- demolition of a structure or part thereof which is load bearing or related to the physical integrity of the structure, that is at least 6 metres in height;
- demolition work involving load shifting machinery on a suspended floor; and
- demolition work involving explosives.

Sub-section 142(3) prescribes different notification requirements for emergency service organisations that may have carried out demolition work for the purposes of rescuing a person or providing first aid to a person. These organisations must give the regulator notice as soon as is practicable after carrying out the work.

## **Part 4.7 – General Electrical Safety in Workplaces and Energised Electrical Work**

This Part sets out how risks to health and safety associated with electrical work are to be managed at the workplace.

This Part also includes specific duties in relation to PCBUs:

- with management or control of electrical equipment in a workplace;
- to minimise the risks associated with the carrying out of electrical work; and
- to minimise the risks associated with their carrying out work in the vicinity of overhead or underground electric lines by following the specified steps set out in the Section.

In relation to general electrical safety in the workplace, this Part includes requirements for inspecting and testing electrical equipment in certain high-risk environments and requirements to provide and use effective residual current devices in the prescribed circumstances.

Duty holders under this Part may also have health and safety duties under Regulation 19, 20 and 21 of the WHS Act. PCBUs may have duties under Divisions 5.1 and 5.2 of the WHS Act to consult another duty holder and with workers about matters in this Part.

Defined terms in the dictionary which are relevant to this Part include:

- *amusement device*

- *competent person*
- *control measure*
- *electrical risk*
- *electricity supply authority*
- *extra-low voltage*
- *person with management or control of a workplace*
- *personal protective equipment, and*
- *safe work method statement.*

## **Division 4.7.1 – Preliminary**

### **Section 144 – Meaning of *electrical equipment* – pt 4.7**

*Section 144* defines the term ‘electrical equipment’ for this Part.

### **Section 145 – Meaning of *electrical installation*– pt 4.7**

*Section 145* defines the term ‘electrical installation’ for this Part, for the avoidance of doubt, to clarify that this Part covers electrical installations – which are essentially grouped items of electrical equipment as defined by the Section.

### **Section 146 – *Meaning of electrical work*– pt 4.7**

*Section 146* defines the term ‘electrical work’ for this Part. This Section does this by broadly describing electrical work in sub-section 146(1), and then setting out what work is *not* electrical work for the purposes of this Part in sub-section 147(2). Electrical work does not include work such as replacing a light bulb, assembling electrical equipment as part of a manufacturing process, or certain work done as part of a person’s training to obtain an electrical licence.

## **Division 4.7.2 – General risk management**

### **Section 147 – Risk management – Act, s19**

*Section 147* provides that a PCBU at a workplace must manage risks to health and safety associated with electrical risks at the workplace, in accordance with Part 3.1 of the Regulation.

## **Division 4.7.3 – Electrical equipment and electrical installations**

### **Section 148 – Electrical equipment and electrical installations to which this division applies – div 4.7.3**

*Section 148* ensures that the duties placed on a PCBU in relation to electrical equipment or an electrical installation under Division 4.7.3 only arise if the electrical equipment or an electrical installation is under the persons’ management or control.

### **Section 149 – Unsafe electrical equipment**

*Section 149* requires a PCBU to ensure that any unsafe electrical equipment at a workplace is disconnected or isolated from its electricity supply and is not reconnected until it is repaired or tested and found to be safe, or is replaced or permanently removed from use.

Sub-section 149(2) clarifies that for the purposes of Section 149, electrical equipment is unsafe if there are reasonable grounds for believing it to be unsafe.

### **Section 150 – Inspection and testing of electrical equipment**

*Section 150* sets out the requirements for when a PCBU must ensure that electrical equipment used in certain high-risk environments is regularly inspected and tested by a competent person.

Sub-section 150(2) provides that when equipment is new or unused at a workplace, a PCBU is not required to comply with sub-section (1) but must ensure that the equipment is inspected for obvious damage before being used.

Sub-section 150(3) provides that a PCBU must retain any record of testing carried out until the next test, or the equipment is permanently removed from the workplace or disposed of.

Sub-section 150(4) includes requirements for the content of records of testing.

### **Section 151 – Untested electrical equipment not to be used**

*Section 151* stipulates that a PCBU must ensure, so far as is reasonably practicable, that electrical equipment is not used if the equipment is required to be tested under Section 150 but has not been tested.

## **Division 4.7.4 – Electrical work on energised electrical equipment**

This Division refers to the term ‘electric equipment’, which is defined in Section 144.

### **Section 152 – Application - division 4.7.4**

*Section 152* provides that division 4 does not apply to work carried out by or on behalf of an ‘electricity supply authority’ on the electrical equipment, including electric line-associated equipment, controlled or operated by the authority to generate, transform, transmit or supply electricity.

### **Section 153 – Persons conducting a business or undertaking to which this division applies**

*Section 153* provides that the duties placed on a PCBU in relation to ‘electrical work’ under this Division only apply to a PCBU who is carrying out the electrical work, except for the duties under sections 156, 159 and 160 which apply more broadly.

### **Section 154 – Electrical work on energised electrical equipment – prohibited**

*Section 154* requires a PCBU to ensure that electrical work is not carried out on electrical equipment – including electrical equipment that forms part of an electrical installation – while it is energised (or ‘live’), unless the requirements in relation to energised electrical work under the division are met.

### **Section 155 – Duty to determine whether equipment is energised**

*Section 155* provides that a PCBU must ensure that before electrical work is carried out on electrical equipment, the equipment is tested by a competent person to determine if it is energised.

‘Competent person’ is a defined term and a person is required to be licensed or permitted to carry out work (including testing) on energised electrical equipment.

*Sub-section 155(2)* requires the PCBU to ensure that each exposed part is treated as energised until it is isolated and determined not to be energised and each high-voltage exposed part is earthed after being de-energised.

*Section 156* provides that a PCBU must ensure that electrical equipment that has been de-energised so that work can be carried out on it is not inadvertently re-energised while the work is being carried out.

### **Section 157 – Electrical work on energised electrical equipment – when permitted**

*Section 157* provides that a PCBU must ensure that electrical work on energised electrical equipment is not carried out unless one or more of the circumstances listed in sub-section 157(1) applies.

### **Section 158 – Preliminary steps**

*Section 158* sets out the preliminary steps a PCBU must ensure have been completed before work on energised electrical equipment commences. It includes (among other things) a requirement that a risk assessment be carried out by a competent person and recorded.

### **Section 159 – Unauthorised access to equipment being worked on**

*Section 159* provides that a PCBU must ensure that only persons authorised by the PCBU enter the immediate area where energised electrical work is being carried out.

### **Section 160 – Contact with equipment being worked on**

*Section 160* provides that a PCBU must ensure that – while energised electrical work is being carried out – persons (including the person carrying out the work) are prevented from inadvertently contacting an exposed energised component of the electrical equipment

### **Section 161 – How the work is to be carried out**

*Section 161* sets out requirements for carrying out energised electrical work, including requirements in relation to equipment used in carrying out the work (including personal protective equipment) and requirements for a safety observer in the prescribed circumstances.

*Section 161* also requires work to be carried out in accordance with a safe work method statement (SWMS) prepared for the work. The requirements for safe work method statements in sub-section 161(3) are aligned as far as possible with equivalent requirements under the construction regulations.

This Section refers to the term ‘personal protective equipment’, which is defined in the dictionary to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

## **Section 162 – Record keeping**

*Section 162* sets out record keeping and access requirements in relation to risk assessments and safe work method statements prepared under this Part.

## **Division 4.7.5 – Electrical equipment and installations and construction work – additional duties**

This Division refers to the term ‘electric equipment’, which is defined in Section 144.

### **Section 163 – Duty of person conducting business or undertaking**

*Section 163* requires a PCBU that carries out construction work to comply with AS/NZS 3012:2010.

Sub-section 163(2) and (3) set out interpretation rules if the AS/NZS is inconsistent with key definitions or requirements under this Part.

## **Division 4.7.6 – Residual current devices**

### **Section 164 – Use of socket outlets in hostile operating environment**

*Section 164* sets out requirements for residual current devices (RCDs) in higher risk environments, as defined in sub-section 164(1). The duty to ensure an appropriate RCD is used in these environments is qualified by what is reasonably practicable. For example the RCD may be either portable or non-portable depending on what is reasonably practicable in the circumstances.

If an RCD is required under sub-section 164(2) then sub-section (3) sets out minimum requirements in relation to the tripping current the RCD must have if electricity is supplied to the equipment through a socket outlet not exceeding 20 amps.

Sub-section 164(4) sets out the circumstances in which an RCD is not required.

### **Section 165 – Testing of residual current devices**

*Section 165* requires a person with management or control of a workplace to take all reasonable steps to ensure that RCDs used at the workplace are tested regularly by a competent person to ensure the devices are operating effectively. It also requires records of all such testing (other than a daily test) to be kept until the device is next tested or is permanently removed from use.

## **Division 4.7.7 – Overhead and underground electric lines**

### **Section 166 – Duty of person conducting business or undertaking**

*Section 166* requires a PCBU to ensure, so far as is reasonably practicable, that no person, plant or thing at the workplace comes within an unsafe distance of an overhead or underground electric line. Further provision on what constitutes an ‘unsafe distance’ may be made separately under general electrical safety laws, relevant codes of practice or guidance material.

Sub-section 166(2) sets out the requirements that apply if it is not reasonably practicable to ensure that the safe distance is observed including a risk assessment requirement. The provision requires the relevant work to be carried out in accordance with any control measures determined in accordance with the risk assessment, and also any relevant requirement of an electricity supply authority with responsibility for the electric line.

## **Part 4.8 – Diving work**

Part 4.8 sets out how the risks associated with diving work are to be managed. Specifically, this part requires a PCBU to ensure:

- the fitness and competence of persons who carry out general diving work and high-risk diving work; and
- the health and safety of persons who carry out general diving work and high-risk diving work; and
- the health and safety of other persons at workplaces where general diving work or high-risk diving work is carried out.

Part 4.8 prohibits workers from carrying out specified diving work unless relevant competency requirements are met (as set out in Division 4.8.2).

Duty holders under this Part may also have health and safety duties under section 19 or 28 of the WHS Act. PCBUs may have duties under Divisions 5.1 and 5.2 of the WHS Act to consult with other PCBUs and workers about matters in this Part. This Part prescribes required qualifications for section 44 of the WHS Act. Section 27 of the WHS Act applies to officers in respect of this Part.

There are additional Regulation about management of risk in Part 3.1 – Risk Management, about provision of information in Part 3.2 – General workplace management and about construction work involving diving work in Chapter 6 – Construction Work.

Defined terms in the dictionary which are relevant to this Part include incidental diving work, limited diving and limited scientific diving work.

Defined terms in the dictionary which are relevant to this Part include:

- *appropriate training in underwater medicine*
- *certificate of medical fitness*
- *competent person*
- *current certificate of medical fitness*
- *EANx*
- *fitness criteria*
- *general diving work*
- *high-risk diving work*
- *incidental diving work*
- *limited diving*
- *limited scientific diving work*
- *registered medical practitioner, and*
- *VET course.*

## **Division 4.8.1 – Preliminary**

### **Section 167 – Purpose - pt 4.8**

*Section 167* provides that the purpose of Part 4.8 is to impose duties on a person carrying out a business or undertaking at a workplace to ensure the fitness, competence, and health and safety of persons who carry out general diving work and high-risk diving work, as well as the health and safety of other persons at workplaces where general diving work or high-risk diving work is carried out.

## **Division 4.8.2 – General diving work – Fitness and competence of worker**

### **Section 168 – Person conducting business or undertaking must ensure fitness of workers**

*Section 168* prohibits a PCBU at a workplace from directing or allowing a worker to carry out (or undergo training for) general diving work if the worker does not hold a current certificate of medical fitness. Sub-section 168(2) further provides that a PCBU must not direct or allow a worker to carry out diving work unless the diving work or training complies with any conditions on the current certificate of medical fitness of the worker.

### **Section 169 – Certificate of medical fitness**

*Section 169* provides that a certificate of medical fitness must be issued by a registered medical practitioner with appropriate training in underwater medicine and sets out the details that must be included in the certificate.

This Section refers to the term ‘appropriate training in underwater medicine’, which is defined in the Dictionary to mean training that results in knowledge of the matters specified in clause M3 of Appendix M to AS/NZS 2299.1:2007 (Work diving operations – Standard operational practice).

### **Section 170 – Duty to keep certificate of medical fitness**

*Section 170* requires a PCBU to keep the certificate of medical fitness of a worker who carries out general diving work for 1 year after the work is carried out.

### **Section 171 – Competence of worker – general diving work – Act, s 44**

*Section 171* provides that a person must not carry out general diving work (other than incidental diving work and limited scientific diving work) unless that person has one or more of a number of qualifications. This Section also states that the person must have, through training, qualification or experience, acquired sound knowledge and skill in relation to the listed issues.

This Section refers to the term ‘incidental diving work’, which is defined in the dictionary.

### **Section 172 – Competence of worker – incidental diving work – Act, s 44**

*Section 172* provides that a person must not carry out incidental diving work unless the person has the training, qualification or experience and relevant diving experience referred to in paragraph 171(b).

Sub-section 172(2) specifies the meaning of relevant diving experience for this Section.

### **Section 173 – Competence of worker – limited scientific diving work – Act, s 44**

*Section 173* provides that a person who is not permanently resident in Australia must not carry out limited scientific diving work unless the person has the listed training, qualification or experience and relevant diving experience obtained outside Australia.

Sub-section 173(2) specifies the meaning of relevant diving experience for this Section.

### **Section 174 – Competence of competent person supervising general diving work – Act, s 44**

*Section 174* provides that a person appointed under Section 177 must not perform any function associated with that appointment unless the person has specified qualifications and experience in the type of diving work to be supervised.

### **Section 175 – Evidence of competence – duty of person conducting business or undertaking**

*Section 175* prohibits a PCBU from directing or allowing a worker to carry out general diving work unless the person sees written evidence that the worker has the relevant competence. Sub-section 175(3) provides that the written evidence must be kept for at least 1 year after the diving work is performed.

Sub-section 175(2) similarly prohibits a PCBU from directing or allowing a person appointed as a competent person to supervise diving work (under Section 177) to supervise diving work unless the PCBU sees written evidence that the person appointed has the competence required under Section 174. Sub-section 175(3) provides that the written evidence must be kept for at least 1 year after the last occasion that supervision work is performed.

## **Division 4.8.3 – Managing risks – general diving work**

### **Section 176 – Management of risks to health and safety – Act, s19**

Sub-section 176(1) provides that a PCBU must manage risks to health and safety associated with general diving work in accordance with Part 3.1.

Sub-sections 176(2) and (3) provide that a PCBU must ensure that a risk assessment is conducted by a competent person and recorded in writing.

### **Section 177 – Appointment of competent person to supervise diving work**

*Section 177* requires a PCBU to appoint one or more competent persons to supervise general diving work carried out in the business or undertaking, and to perform other functions required in Division 4.8.3 of this Regulation.

### **Section 178 – Additional control – dive plan**

*Section 178* states that a PCBU must not direct or allow general diving work to be carried out unless a dive plan has been prepared by a competent person for the dive (or for a similar prior dive), and includes a specified list of matters which the dive plan must cover.

### **Section 179 – Dive plan must be complied with**

*Section 179* requires a PCBU to ensure, so far as is reasonably practicable, that general diving work is carried out in accordance with the dive plan prepared for that work, and that a competent person is appointed (under Section 177) to brief workers on the dive plan before commencing work under the plan.

### **Section 180 – Additional control – dive safety log to be kept**

*Section 180* requires a PCBU to keep a dive safety log that contains specified information about each dive carried out by a worker. The list includes general information, and specifies particular additional information where a repetitive factor is involved, or if EANx or mixed gas is used instead of air.

### **Section 181 – Use of dive safety log**

*Section 181* applies to a PCBU at a workplace where general diving work is carried out. A PCBU is required to:

- ensure that, after each dive, the return of each diver is verified in the dive safety log, by both the diver and the competent person appointed under Section 177 to supervise the diving work;
- ensure that the competent person appointed under Section 177 to supervise the diving work makes and verifies entries in the dive safety log of the number of workers and other persons, if diving from a vessel, before the dive work commences and before the vessel leaves the location after the dive work is completed; and
- ensure that a dive safety log is kept for at least 1 year after the last entry is made.

Sub-section 181(5) provides that an event is verified in the dive safety log by signing the log or, if the log is electronic, by entering the verifier's unique identifier.

### **Section 182 – Record keeping**

*Section 182* applies if a PCBU prepares a risk assessment or dive plan (under Regulation 176 or 178). This Section sets out record keeping requirements for these documents, namely:

- the PCBU must keep the risk assessment for at least 28 days after the work is completed and the dive plan until the dive work is completed;
- if a notifiable incident occurs, the PCBU must keep the relevant documents for at least 2 years after the incident occurs; and
- the PCBU must make the record readily accessible to any worker involved in the work, and available for inspection under the WHS Act during the period for which the relevant record must be kept.

## **Division 4.8.4 – High-risk diving work**

### **Section 183 – Duties of person conducting business or undertaking – Act, s 44**

*Section 183* requires a PCBU to ensure that the fitness and competence of persons carrying out high-risk diving work, and the undertaking of that high-risk diving work, meets the requirements of AS/NZS 2299.1:2007, or an alternative standard approved by the regulator where in force.

### **Section 184 – Duty of worker – competence – Act, s 44**

*Section 184* provides that a worker must not carry out high-risk diving work unless the worker has the qualifications, knowledge, skills and experience required by AS/NZS 2299.1:2007 for the kind of work they intend to carry out.

## Chapter 5 – Plant and Structures

This Chapter imposes duties upon designers, manufacturers, importers and suppliers of plant, in order to ensure health and safety in respect of subsequent use of plant. It imposes duties upon PCBUs that commission plant or structures to comply with designer or manufacturer information, and relevant health and safety instructions in doing so. It imposes complementary duties on PCBUs with management and control of plant, as well as imposing a range of additional control measures for specific types of plant. It provides for the registration of plant and plant designs, and imposes additional duties in respect of plant and plant designs that are required to be registered.

Duty holders under this Chapter may have health and safety duties under Regulation 21, 22, 23, 24, 25 and 26 of the WHS Act, and duties under Division 5.1 and Division 5.2 of the WHS Act to consult with other duty holders and workers about matters in this Chapter. This Chapter requires authorisation of plant and plant design for section 42 of the WHS Act. Section 27 of the WHS Act applies to officers in respect of this Chapter.

There is additional Regulation about the provision of information in Part 3.2 – *General Workplace Management*. There are additional Regulation imposing duties on designers, manufacturers and suppliers in respect of plant and structures in Part 4.3 – *Confined Spaces* and imposing duties on designers of structures and PCBUs that commission a structure in Chapter 6 – *Construction work*.

Defined terms in the dictionary which are relevant to this Part include:

- *amusement device*
- *boom-type elevating work platform*
- *building maintenance equipment*
- *building maintenance unit*
- *competent person*
- *concrete placement unit with delivery boom*
- *control measure*
- *crane*
- *designer*
- *direct fired process heater*
- *earthmoving machinery*
- *external review*
- *fault*
- *gantry crane*
- *gas cylinder*
- *hazardous chemical*
- *hoist*
- *importer*
- *industrial lift truck*
- *industrial robot*
- *lift*
- *manufacturer*
- *mast climbing work platform*
- *mobile crane*

- *operator protective device*
- *person with management or control of plant at a workplace*
- *plant*
- *powered mobile plant*
- *presence-sensing safeguarding system*
- *pressure equipment*
- *pressure piping*
- *pressure vessel*
- *relevant fee*
- *scaffold*
- *self-erecting tower crane*
- *supplier*
- *suspended scaffold*
- *theatrical performance*
- *tower crane*
- *tractor*
- *vehicle hoist, and*
- *work box.*

## **Part 5.1 – General duties for plant and structures**

The note to Part 5.1 states that provisions are included in Schedule 1 to the WHS Act to extend the operation of this Part to plant outside the workplace.

### **Division 5.1.1 – Preliminary**

#### **Section 185 – Application – pt 5.1 to plant**

*Section 185* provides that this Part applies to all plant, other than plant that relies exclusively on manual power for its operation and is designed to be primarily supported by hand. This Section also specifies that this Part applies to explosive power tools designed to be supported by hand.

#### **Section 186 – Application - pt 5.1 to structures**

*Section 186* provides that this Part applies to structures.

### **Division 5.1.2 – Duties of persons conducting businesses or undertakings that design plant**

#### **Section 187 – Provision of information to manufacturer**

*Section 187* requires a designer of plant to ensure that, when a design is made available to the manufacturer, the manufacturer is provided with information to enable the plant to be manufactured in accordance with the design specifications. This Section also lists other information about the plant that must be made available to the manufacturer, if applicable, and notes that a designer also has duties under section 22 of the WHS Act.

### **Section 188 – Hazard identified in design during manufacture**

*Section 188* provides that, if a manufacturer of plant advises the designer of the plant that there is a hazard in the design for which there is no control measure, the designer must revise the information originally supplied to the manufacturer to eliminate or minimise the risk, or notify the manufacturer in writing if the designer considers that it is unnecessary to revise the information. This Section notes that a designer also has duties under section 22 of the WHS Act.

### **Section 189 – Guarding**

*Section 189* provides that, if a designer of plant uses guarding to control risk, the designer must ensure, as far as reasonably practicable, that the guarding prevents access to the danger point or area of the plant, by designing the guarding as specified in the Section. This Section also requires the designer to ensure that guarding would withstand impact or shock; that it is difficult to bypass or disable, and that, if the plant contains moving parts that may break or be ejected, guarding would control any risks.

Sub-section 189(6) requires the designer to ensure that guarding can be removed for repair, servicing and maintenance when the plant is not in normal operation, and that the plant cannot be restarted unless the guarding is replaced.

### **Section 190 – Operational controls**

*Section 190* lists requirements for the design of operator's controls for plant. If the need to operate plant during maintenance or cleaning cannot be eliminated, the designer is required to design operator's controls that cannot be operated by anyone other than the person maintaining or cleaning the plant, and that the plant can be operated without risk, or with minimal risk, during maintenance or cleaning.

### **Section 191 – Emergency stop controls**

*Section 191* requires that for plant that is designed to be operated or attended by more than one person, and with more than one emergency stop control, the designer must ensure that the design provides for stop controls of the 'stop and lock off' type so that the plant cannot be restarted unless they are reset after use. This Section also lists additional requirements for the design of emergency stop controls.

### **Section 192 – Warning devices**

*Section 192* provides that, if the design of plant includes an emergency warning device, the designer must ensure that it is positioned to work to best effect.

## **Division 5.1.3 – Duties of persons conducting businesses or undertakings that manufacture plant**

### **Section 193 – Control of risk – Act, s23**

*Section 193* requires a manufacturer of plant to ensure that the plant is manufactured, inspected and tested, if required, in accordance with the information provided by the designer of the plant under the WHS Act and this Regulation.

This Section also sets out the steps a manufacturer must take when a hazard is identified in the design of the plant during the manufacturing process for which the designer has not provided a control measure.

### **Section 194 – Guarding**

*Section 194* requires a manufacturer of plant to ensure that guarding used to control risk would withstand impact or shock. This Section also requires a manufacturer to ensure that guarding is removable to allow repair, servicing and maintenance when the plant is not in normal operation, and that the plant cannot be restarted unless the guarding is replaced.

### **Section 195 – Information must be obtained and provided**

*Section 195* requires a manufacturer of plant to take all reasonable steps to obtain the information the designer of plant is required to provide under section 22(4)(a) and (c) of the WHS Act and Regulation 187 and 188. This Section also requires the manufacturer to provide a person to whom the manufacturer supplies the plant, the information supplied by the designer under section 22(4) of the WHS Act and Section 187. If the manufacturer identifies a hazard during the manufacturing process, the manufacturer must ensure that the person to whom the plant is supplied receives the information the designer is required to provide under section 22(4) of the WHS Act and Section 188.

## **Division 5.1.4 – Duties of persons conducting businesses or undertakings that import plant**

### **Section 196 – Information to be obtained and provided by importer**

*Section 196* requires an importer of plant to take all reasonable steps to obtain the information to be provided by a manufacturer, and the information to be provided by the designer of the plant to the manufacturer, and give that information to any person to whom the importer supplies the plant.

### **Section 197 – Control of risk**

*Section 197* requires an importer of plant to ensure that the plant is inspected, having regard to the information provided by the manufacturer, and if that information requires the plant to be tested, that it is tested in accordance with the information.

This Section also provides that, if any hazards are identified, the importer must not supply the plant until the risks have been eliminated. If it is not reasonably practicable to eliminate the risks, the importer must advise the person to whom the plant is supplied of the risks and take all reasonable steps to ensure that the designer and manufacturer are consulted regarding any alteration made to the plant to control the risk.

## **Division 5.1.5 – Duties of persons conducting businesses or undertakings that supply plant**

### **Section 198 – Information to be obtained and provided by supplier**

*Section 198* requires a supplier of plant to take all reasonable steps to obtain the information to be provided by the manufacturer, and to ensure that the person to whom the plant is supplied is given the information when the plant is supplied.

### **Section 199 – Supply of second-hand plant – duties of supplier**

*Section 199* requires a supplier of second-hand plant to ensure, as far as reasonably practicable, that any faults in the plant are identified. The supplier must ensure that written notice is provided to the person to whom the plant is to be supplied, before the plant is supplied, advising of the condition of the plant, of any faults identified, and if appropriate, that the plant should not be used until the faults are rectified. This requirement does not apply to plant to be used as scrap or spare parts.

### **Section 200 – Second-hand plant to be used for scrap or spare parts**

*Section 200* requires a supplier of plant to be used for scrap or spare parts to inform the person to whom the plant is supplied, either in writing or by marking the plant; that the plant is being supplied for that purpose and in its current form is not to be used as plant.

## **Division 5.1.6 – Duties of persons conducting businesses or undertakings that install, construct or commission plant**

### **Section 201 – Duties of persons conducting businesses or undertakings that install, construct or commission plant**

*Section 201* requires a PCBU that installs, constructs or commissions plant to be used, or expected to be used, as or at, a workplace, to ensure that the plant is installed, constructed or commissioned having regard to the information provided by the designer or manufacturer under the WHS Act and these Regulation, or instructions provided by a competent person, to the extent that these instructions relate to health and safety.

### **Section 202 – Duties of persons conducting businesses or undertakings that install, construct or commission structures**

*Section 202* requires a PCBU that installs, constructs or commissions a structure to be used, or expected to be used, as or at, a workplace, to ensure that the structure is installed, constructed or commissioned having regard to the information provided by the designer or manufacturer under the WHS Act and these Regulation, or instructions provided by a competent person, to the extent that these instructions relate to health and safety.

## **Division 5.1.7 – General duties of persons conducting a business or undertaking involving the management or control of plant**

A note to Division 7 states that a person with management or control of plant at a workplace is the PCBU at the workplace to the extent that the business or undertaking involves the management or control of plant in whole or in part at the workplace.

### **Subdivision 5.1.7.1 – Management of risks**

#### **Section 203 – Management of risks to health and safety – Act, s21**

*Section 203* requires a person with management or control of plant to manage risks to health and safety associated with plant.

### **Subdivision 5.1.7.2 – Additional control measures for general plant**

#### **Section 204 – Control of risks arising from installation or commissioning**

*Section 204* provides that a person with management or control of plant at a workplace must not commission the plant unless the person has established, so far as is reasonably practicable, that the plant is without risks to health and safety. The person must not decommission or dismantle the plant unless this can be carried out, so far as is reasonably practicable, without risks to health and safety.

A person with management or control of plant at the workplace must ensure that a person who installs, assembles, constructs, commissions or decommissions or dismantles the plant is a competent person, and that the person is provided with the information available for eliminating or minimising risks to health or safety. The processes for the installation, construction, commissioning, decommissioning and dismantling must include inspections that ensure, so far as is reasonably practicable, that risks are monitored.

#### **Section 205 – Preventing unauthorised alterations to or interference with plant**

*Section 205* requires the person with management or control of plant at a workplace to, so far as is reasonably practicable, prevent alterations to or interference with the plant that are not authorised by the person

#### **Section 206 – Proper use of plant and controls**

*Section 206* requires the person with management or control of plant at a workplace to take reasonable steps to ensure that plant is used only for the purpose for which it was designed, unless the person has determined that the proposed use does not increase the risk to health or safety. In making that determination, the person must ensure that the risk is assessed by a competent person. The person must take reasonable steps to ensure that health and safety features and warning devices are used in accordance with the instructions and information provided under Section 39.

#### **Section 207 – Plant not in use**

*Section 207* requires the person with management or control of plant to ensure, so far as is reasonably practicable, that plant not in use does not create a risk to health or safety.

#### **Section 208 – Guarding**

*Section 208* provides that, if guarding is used to control risk associated with plant at a workplace, a person with management or control of the plant must ensure, as far as reasonably practicable, that the guarding prevents access to the area of the plant requiring guarding, by using the guarding specified in the Section for particular circumstances.

The guarding must withstand impact or shock, difficult to bypass or disable, does not create risks in itself and is reasonably maintained. If the plant contains moving parts that may break or be ejected, the guarding must control any risk, as far as is reasonably practicable.

Sub-section 208(5) requires the person with management or control of the plant to ensure that guarding can be removed for maintenance and cleaning when the plant is not in normal operation, and that the plant cannot be restarted unless the guarding is replaced.

### **Section 209 – Guarding and insulation from heat and cold**

*Section 209* requires the person with management or control of plant at a workplace to ensure, so far as is reasonably practicable, that any pipe or other part of the plant associated with heat or cold is guarded or insulated so that the plant is without risks to health and safety.

### **Section 210 – Operational controls**

*Section 210* lists requirements for operator's controls on plant at a workplace. If the need to operate plant during maintenance or cleaning cannot be eliminated, the person with management or control of the plant at a workplace must ensure that the operator's controls cannot be operated by anyone other than the person maintaining or cleaning the plant, or a person authorised by the person with management or control, and that the plant can be operated without risk, or with minimal risk, during maintenance or cleaning.

### **Section 211 – Emergency stops**

*Section 211* requires that if plant at a workplace is designed to be operated or attended by more than one person and more than one emergency stop control is fitted, the person with management or control of the plant must ensure that the emergency stop controls are of the 'stop and lock-off' type so that the plant cannot be restarted unless they are reset after use. This Section also lists additional requirements for the emergency stop controls.

### **Section 212 – Warning devices**

*Section 212* requires that, if plant includes an emergency warning device, it is positioned on the plant to work to best effect.

### **Section 213 – Maintenance and inspection of plant**

*Section 213* requires the person with management or control of plant to ensure that the maintenance, repair, inspection and, if necessary, testing of the plant is carried out by:

- a competent person, in accordance with the manufacturer's instructions;
- if there are no manufacturer's instructions, in accordance with the recommendations of a competent person; or
- in relation to inspection, if it is not reasonably practicable to carry out the inspection in accordance with the manufacturer's instructions or in accordance with the recommendations of a competent person, annually.

### **Subdivision 5.1.7.3 – Additional control measures for certain plant**

#### **Section 214 – Powered mobile plant – general control of risk – Act, s 21**

*Section 214* provides that the person with management or control of powered mobile plant must, as far as is reasonably practicable, manage the risks to health and safety of:

- the plant overturning;
- things falling on the operator of the plant;
- the operator being ejected from the plant;
- the plant colliding with any person or thing; or
- mechanical failure of pressurised elements of plant that may release fluids that pose a risk to health and safety.

#### **Section 215 – Powered mobile plant – specific control measures**

*Section 215* requires a PCBU with management or control of powered mobile plant at a workplace to ensure, as far as reasonably practicable, that a suitable combination of operator protective devices for the plant is provided, maintained and used. The PCBU must ensure, as far as is reasonably practicable, that no one other than the operator rides on the plant unless they are provided with a level of protection equivalent to that provided to the operator. The PCBU must also ensure that the plant does not collide with pedestrians or other powered mobile plant.

Sub-section 215(5) provides that, if there is a possibility of the plant colliding with pedestrians or other powered mobile plant, it must have a warning device that will warn persons who may be at risk from the movement of the plant.

#### **Section 216 – Roll-over protection on tractors**

*Section 216* requires a person with management or control of a tractor at a workplace to ensure that the tractor is not used, unless it is securely fitted with a rollover protective structure. Sub-section 216(2) provides that, if a tractor is used in a place that is too low for the tractor to work while it is fitted with a roll-over protective structure, the structure may be lowered or removed while the tractor is used in such a situation (but only if other measures to minimise the risk of roll-over are in place).

Sub-section 216(3) states that this Section does not apply if the tractor is:

- installed in a fixed position, and in a manner which would no longer permit it to be used as powered mobile plant;
- less than 560 kilograms or 15,000 kilograms or more in mass; or
- being used for a historical purpose or activity.

This Section includes definitions of ‘roll-over protective structure’ and ‘historical purpose or activity’, and notes that Regulation 214 and 215 also applies to a tractor.

#### **Section 217 – Protective structures on earthmoving machinery**

*Section 217* requires a person with management or control of earthmoving machinery at a workplace to ensure that the machinery is not used unless it is securely fitted with a protective structure.

Sub-section 217(2) clarifies that this provision does not apply to earthmoving machinery that has a weight of less than 1,500 kilograms (not including attachments to the machinery) and is not designed to have a seated operator.

This Section includes a definition of 'protective structure' and notes that sections 214 and 215 also apply to earthmoving machinery.

### **Section 218 – Industrial lift trucks**

*Section 218* provides that a person with management or control of an industrial lift truck at a workplace must ensure that it is equipped with lifting attachments suitable for the load to be lifted or moved; and that it is operated in a manner that ensures that the risks to the operator of the truck and other persons are eliminated or minimised as far as is reasonably practicable.

This Section also requires the person with management or control to ensure that the industrial lift truck is not used to carry a passenger unless it is designed to do so, and that the passenger seat complies with the requirements specified in the Section.

### **Section 219 – Plant that lifts or suspends loads**

*Section 219* requires the person with management or control of plant used to lift or suspend persons or things at the workplace to ensure, as far as reasonably practicable, that the plant used is specifically designed to lift or suspend the load.

Sub-section 219(3) provides that, if it is not reasonably practicable to use plant specifically designed to lift or suspend the load, the person must ensure that:

- the plant used does not cause a greater risk than if specifically designed plant were used; and
- if the plant is lifting or suspending persons, the use of the plant complies with Section 220.

Sub-sections 219(4) to (7) specify how the person must ensure lifting and suspension are carried out.

### **Section 220 – Exception – Plant not specifically designed to lift or suspend a person**

*Section 220* provides an exception to the requirement in Section 219 for a person with management or control of plant at a workplace to ensure that plant not specifically designed to lift or suspend persons, or things, does not cause a greater risk than if specifically designed plant were used. The exception applies to plant that is not specifically designed to lift or suspend a person.

This Section provides that the person with management or control of this type of plant at a workplace must ensure that:

- the persons are lifted or suspended in a work box that is securely attached to the plant;
- the persons in the work box remain substantially within the work box while they are being lifted or suspended;
- if there is a risk of a person falling from a height, a safety harness is provided and worn by the person in order to prevent, so far as is reasonably practicable, injury as a result of the fall; and

- means are provided to enable the persons being lifted or suspended to safely exit from the plant if it fails in its normal operation.

Section 220(2) provides that this Section does not apply to plant used in connection with stunt work, acrobatics or theatrical performances, which are governed by Part 4.4.

### **Section 221 – Plant used in connection with tree lopping**

*Section 221* includes an exception to the requirements in Section 220 in relation to work boxes used to lift or suspend people that are used in connection with tree lopping.

### **Section 222 – Industrial robots**

*Section 222* requires a person with management or control of an industrial robot or other remotely or automatically energised plant at a workplace not to allow or direct a worker to work in the immediate vicinity of the plant if it could start without warning and cause a hazard, unless suitable control measures are in place to control the risks to health and safety.

Sub-section 222(3) provides that, if the remote or automatic energising of the plant could lead to risks to health and safety, the person must ensure that access to the area in the immediate vicinity of the plant is controlled at all times as specified in the Section.

### **Section 223 – Lasers**

*Section 223* requires a person with management or control at a workplace of laser equipment that may create a risk to health and safety to ensure that laser equipment intended for use on plant is designed, constructed and installed so as to prevent accidental irradiation.

This Section requires the person to ensure laser equipment on plant is protected so that any operator of the plant or other person is not exposed to the radiation specified in the Section. In addition, the person must ensure that the visual equipment used for the observation or adjustment of laser equipment on plant causes no risk to health or safety from laser rays. Furthermore, the person must ensure that the workers operating the laser equipment are trained in the proper operation of the equipment.

Sub-section 223(6) requires the person to ensure that Class 3B and Class 4 lasers (within the meaning of Australian Standard 2397: “Safe Use of Lasers in the Building and Construction Industry”) are not used in construction work.

### **Section 224 – Pressure equipment**

*Section 224* requires a person with management or control of pressure equipment at a workplace to ensure the equipment is inspected regularly by a competent person, and that any gas cylinder inspected is marked with a current inspection mark to show the most recent inspection.

Sub-section 224(2) provides that the person with management or control of gas cylinders at a workplace that is a gas cylinder filling station must ensure that:

- a gas cylinder is not filled with gas unless it bears a current inspection mark; and
- each gas cylinder is only filled with gas for which that cylinder is designed.

This Section refers to the term ‘gas cylinder’, which is defined in the Dictionary.

This Section refers to the term ‘pressure equipment’, which is defined in the Dictionary to mean boilers, pressure vessels and pressure piping.

### **Section 225 – Scaffolds**

*Section 225* applies to:

- a suspended scaffold;
- a cantilevered scaffold;
- a spur scaffold;
- a hung scaffold; and
- any other scaffold from which a person or thing could fall more than 4 metres.

Sub-section 225(2) provides that the person with management or control of a scaffold at a workplace must ensure that the scaffold is not used unless the person receives written confirmation from a competent person that construction of the scaffold has been completed.

Sub-section 225(3) provides that the person with management or control of a scaffold at a workplace must ensure that the scaffold and its supporting structure are inspected by a competent person at the times specified in the sub-section.

Sub-section 225(4) states that, if an inspection indicates that a scaffold at a workplace, or its supporting structure, creates a risk to health or safety, the person with management or control of the scaffold must ensure that any necessary work is carried out, and that the scaffold and its supporting structure are inspected by a competent person before the scaffold is used again.

Sub-section 225(5) requires the person with management or control of a scaffold at a workplace to prevent authorised access to the scaffold while it is incomplete or unattended, for example, by danger tags.

### **Section 226 – Plant with presence sensing safeguarding system – records**

*Section 226* requires a person with management or control of plant with a presence sensing safeguarding system at a workplace to keep a record of safety integrity tests, inspections, maintenance, commissioning, decommissioning, dismantling and alterations of the plant for the periods specified in the Section. The records must be available for inspection under the WHS Act and made available to any person when the person with management or control of the plant relinquishes control.

## **Part 5.2 – Additional duties relating to registered plant and plant designs**

The note to Part 5.2 clarifies that a person with management or control of plant at a workplace is the PCBU to the extent that the business or undertaking involves the management or control of plant in whole or in part at the workplace. The note also clarifies that Part 5.2 applies in addition to Part 5.1, and specifies that, in this Part, ‘plant’ includes a structure, as per the definition of ‘plant’.

## **Division 5.2.1 – Application -pt 5.2**

### **Section 227 – Application - pt 5.2**

*Section 227* states that Part 5.2 applies to plant that is required to be registered under Part 5.3 or plant the design of which is required to be registered under Part 5.3.

## **Division 5.2.2 – Duty of persons conducting a business or undertaking who design plant to record plant design**

### **Section 228 – Records and information**

*Section 228* states that, if the design of plant requires registration under Part 5.3, the designer of the plant must make a record containing the method used to determine the control measures for the plant, and the control measures resulting from that determination, and copies of the information that is provided to a manufacturer:

- under section 22 of the WHS Act;
- under Section 187; and
- under Section 188.

### **Section 229 – Record of standards or engineering principles used**

*Section 229* states that, if the design of the plant is required to be registered under Part 5.3, the designer of the plant must record any published technical standard used to design the plant, or if none was used, any engineering principles used to design the plant.

### **Section 230 – Records to be available for inspection**

*Section 230* requires a designer of plant to keep the records made under Regulation 228 and 229 available for inspection under the WHS Act, for the design life of the plant.

## **Division 5.2.3 – Duties of persons conducting a business or undertaking**

### **Section 231 – Duty of persons conducting businesses or undertakings that manufacture plant**

*Section 231* provides that a manufacturer must not supply plant specified in Part 1 of Schedule 5 unless the design of that plant is registered under Part 5.3.

### **Section 232 – Duty of persons conducting businesses or undertakings that import plant**

*Section 232* states that an importer must not supply plant specified in Part 1 of Schedule 5 unless the design of that plant is registered under Part 5.3.

### **Section 233 – Duty of persons conducting businesses or undertakings that supply plant**

*Section 233* states that a supplier must not supply plant specified in Part 1 of Schedule 5 unless the design of that plant is registered under Part 5.

## **Section 234 – Duty of persons conducting businesses or undertakings that commission plant**

*Section 234* states that a PCBU that commissions plant must not commission an item of plant that is specified in Part 2 of Schedule 5 for use in a workplace unless that item of plant is registered under Part 5.3.

Sub-section 234(3) clarifies that this Section does not prevent a PCBU that commissions plant from performing any necessary adjustments, tests and inspections as part of the commissioning process before the plant is commissioned at a workplace.

## **Division 5.2.4 – Duties of persons conducting a business or undertaking involving the management or control of plant**

### **Subdivision 5.2.4.1 – Control measures for registered plant**

#### **Section 235 – Major inspection of registered mobile cranes and tower cranes**

*Section 235* requires a person with management or control of a registered mobile crane or tower crane at a workplace to ensure that a competent person carries out the maintenance, repair, inspection and, if necessary testing of the crane. This Section requires that the crane must be inspected:

- at the end of the design life recommended by the manufacturer for the crane;
- if there are no manufacturer's recommendations, in accordance with the recommendations of a competent person; or
- if it is not reasonably practicable to inspect the crane at the end of its design life, or in accordance with the recommendations of a competent person, then every 10 years from the date that the crane was first commissioned or first registered, whichever occurs first.

Sub-section 235(4) defines 'competent person' for the purposes of Section 235.

#### **Section 236 – Lifts**

*Section 236* provides that a person with management or control of a lift at a workplace (including maintenance of a lift) must ensure, if there is a risk that people could fall down the lift well, that secure barriers are in place to prevent people falling, and secure working platforms or equivalent arrangements are provided to prevent a person working in the lift well from falling.

This Section requires the person with management or control of a lift to ensure that there is a safe means of entry to and exit from the base of the lift well. In addition, the person with management or control of a lift must ensure a sign is fixed prominently in the lift stating the safe working load specified in the design of the lift.

#### **Section 237 – Records of plant**

*Section 237* applies to plant that is required to be registered under Part 5.3. This Section requires the person with management or control of the plant at the workplace to keep a record of all tests, inspections, maintenance, commissioning, decommissioning, dismantling and alterations of the plant for the period specified in the Section.

This Section specifies that the person must keep the record available for inspection and make it available to any person to whom the person relinquishes control of the plant.

#### **Subdivision 5.2.4.2 – Control measures for amusement devices**

This subdivision refers to the term ‘amusement device’, which is defined in the dictionary.

#### **Section 238 – Operation of amusement devices**

*Section 238* requires a person with management or control of an amusement device at a workplace to ensure that the amusement device is operated only by a person who has been provided with instruction and training in the proper operation of the device.

Sub-section 238(2) requires the person to ensure that:

- the amusement device is checked on the day, before it is operated;
- the amusement device is tested without passengers, before being operated with passengers; and
- the daily checks and operation of the amusement device without passengers are properly and accurately recorded in the log book for the amusement device.

#### **Section 239 – Storage of amusement devices**

*Section 239* requires a person with management or control of an amusement device at a workplace to ensure that the device is stored without risk to health and safety and that the person who stores the device is a competent person or supervised by a competent person.

#### **Section 240 – Maintenance, inspection and testing of amusement device**

*Section 240* provides that a person with management or control of an amusement device at a workplace must ensure that a competent person carries out the maintenance, inspection and, if necessary, testing of the amusement device in accordance with the designer’s and/or the manufacturer’s recommendations, or in accordance with the maintenance manual if a competent person has prepared a manual for the amusement device.

Sub-section 240(2) states that a person is not competent to carry out a detailed inspection of an amusement device that includes an electrical installation unless the person is qualified, or is assisted by a person who is qualified, to inspect electrical installations.

#### **Section 241 – Annual inspection of amusement device**

*Section 241* requires the person with management or control of an amusement device at a workplace to ensure that a detailed inspection of the device is carried out at least once every 12 months by a competent person. This Section lists the checks that must be carried out at the annual inspection, and includes a requirement for a detailed inspection of the amusement device to ensure compliance with the WHS Act and these Regulation.

Sub-section 241(3) provides that the regulator may extend the date for an inspection for up to 35 days if an inspection is scheduled to coincide with the same event each year. If the date is extended, under sub-section 241(4) the new date is the date from which future annual inspections are determined.

Sub-section 241(5) defines ‘competent person’ for the purpose of this Section.

### **Section 242 – Log book and manuals for amusement device**

*Section 242* provides that the person with management or control of an amusement device at a workplace must, in addition to keeping records as required under Section 237, record the dates and details of the erection or storage of the amusement device in the log book for the amusement device, and ensure the log book and operating and maintenance manuals are kept with the amusement device.

Section 242(2) requires the person with management or control of an amusement device at a workplace to provide people involved in the commissioning, use, storage and testing, de-commissioning, dismantling and disposal, of an amusement device with the log book and the operating and maintenance manuals for the amusement device.

## **Part 5.3 – Registration of plant designs and items of plant**

The note to Part 5.3 states that, in this Part, ‘plant’ includes a structure.

### **Division 5.3.1 – Plant designs to be registered**

#### **Section 243 – Plant design to be registered – Act, s 42**

*Section 243* states that the design of plant specified in Part 5.1 of Schedule 5 must be registered under this Part.

#### **Section 244 – Altered plant designs to be registered – Act, s 42**

*Section 244* states that if the design of plant specified in Part 1 of Schedule 5 and registered under this Part is altered, the altered design must be registered under this Part. Section 42 of the WHS Act refers to the requirements to authorise plant design. This Section notes that a reference to the alteration of a design means an alteration that may affect health or safety.

#### **Section 245 – Recognition of designs registered by corresponding regulator**

*Section 245* relates to the recognition of designs registered elsewhere in Australia. It specifies that a design of plant, or an altered design of plant, registered by a corresponding regulator under a corresponding WHS law, is not required to be registered under this Part.

### **Division 5.3.2 – Items of plant to be registered**

#### **Section 246 – Items of plant to be registered**

*Section 246* states that the items of plant specified in Part 2 of Schedule 5 must be registered under this Part. The purpose of registering an item of plant is to ensure that it is inspected by a competent person and is safe to operate.

#### **Section 247 – Recognition of plant registered by corresponding regulator**

*Section 247* states that an item of plant registered by a corresponding regulator under a corresponding WHS law is not required to be registered under this Part.

### **Division 5.3.3 – Registration process for plant designs**

#### **Section 248 – Application of division 5.3.3**

*Section 248* states that this Division applies to the registration of a plant design specified in Part 5.1 of Schedule 5 as requiring registration.

#### **Section 249 – Who can apply to register a plant design**

*Section 249* provides that a PCBU that designs plant may apply to the regulator for the registration of a design of plant. This Section also provides that a person with management or control of an item of plant may apply to the regulator for the registration of that item of plant.

#### **Section 250 – Application for registration**

*Section 250* sets out requirements for how an application for registration of a plant design must be made and the information required. This Section also provides that the application must be accompanied by the relevant fee.

#### **Section 251 – Design verification statement**

*Section 251* specifies the content and the inclusions required in the design verification statement for a design of plant, such as the name, business address and qualifications of the applicant.

#### **Section 252 – Who can be the design verifier**

*Section 252* specifies who is eligible to be a design verifier for a design of plant. This Section states that a person is not eligible to be the design verifier if the person was involved in the production of the design, or engaged by the PCBU that produced the design at the time the design was produced, unless the PCBU uses the quality system specified in sub-section 252(3).

#### **Section 253 – Duty of design verifier**

*Section 253* states that a design verifier of a design of plant specified in Part 1 of Schedule 5 must document the design verification process and the results of that process.

#### **Section 254 – Design verification statements not to be made in certain circumstances**

*Section 254* specifies that a person must not make design verification statements for a design of plant specified in Part 5.1 of Schedule 5 if the person is not eligible to be a design verifier for that design, or if the person has not carried out a verification of the design.

#### **Section 255 – Additional information**

*Section 255* enables the regulator to ask an applicant to provide additional information so that the regulator can make a decision on whether or not to grant the registration. This Section also provides that if the applicant did not provide the additional information by the date specified, the application is taken to be withdrawn.

### **Section 256 – Decision on application**

*Section 256* specifies the circumstances in which the regulator must grant or refuse to grant the registration. This Section also provides that if the regulator did not make a decision within 120 days after receiving the application or additional information requested under Section 255, the regulator is taken to have refused the application.

A note provides that a refusal to grant a registration under this Section is a reviewable decision under Section 676.

### **Section 257 – Refusal of registration – process**

*Section 257* sets out the process the regulator must follow if an application for registration is to be refused.

A note provides that a refusal to grant a registration under this Section is a reviewable decision under Section 676.

### **Section 258 – Conditions of registration**

*Section 258* enables the regulator to impose conditions on the registration of plant design when granting the registration.

A note states that a person must comply with the conditions of registration, and provides that a decision to impose a condition on a registration is a reviewable decision under Section 676.

### **Section 259 – Duration of registration of plant design**

*Section 259* provides that a registration of a plant design is granted for an unlimited duration.

### **Section 260 – Plant design registration number**

*Section 260* sets out the obligations to be met relating to the plant design registration number issued by the regulator if the regulator registers a plant design. These obligations are on the regulator, the person to whom the plant design registration number is issued, and the person with management and control of the workplace.

### **Section 261 – Registration document**

*Section 261* sets out the requirements for the content of the registration document issued by the regulator when registering plant design.

### **Section 262 – Registration document to be available**

*Section 262* requires a registration holder to keep the registration document available for inspection under the WHS Act, other than when the registration document is not in the registration holder's possession as provided for under Section 287.

### **Section 263 – Disclosure of design information**

*Section 263* prohibits the regulator from disclosing to any person any confidential information provided by an applicant for registration of a design of an item of plant, except in the circumstances set out in this Section.

This Section also provides that the regulator may provide a copy of the design verification statement to the people specified in the Section.

Sub-section 263(4) provides that, if the registration holder for the design of the plant cannot be located or no longer exists, the regulator may provide the person with management or control of plant with the minimum information about the plant design necessary for the safe operation of the plant.

### **Division 5.3.4 – Registration process for an item of plant**

#### **Section 264 – Application - Division 4**

*Section 264* provides that this Division applies to the registration of an item of plant specified in Part 2 of Schedule 5 as requiring registration.

#### **Section 265 – Who can apply to register an item of plant**

*Section 265* provides that a person with management or control of an item of plant may apply to the regulator for the registration of that item of plant.

#### **Section 266 – Application for registration**

*Section 266* sets out the requirements for an application for registration of an item of plant. This Section also provides that the application must be accompanied by the relevant fee.

#### **Section 267 – When is a person competent to inspect plant**

*Section 267* sets out the qualifications required for a person to be competent to inspect an item of plant.

#### **Section 268 – Additional information**

*Section 268* enables the regulator to ask an applicant to provide additional information so that the regulator can make a decision on whether or not to grant the registration. This Section also provides that if the applicant does not provide the additional information by the date specified, the application is taken to be withdrawn.

#### **Section 269 – Decision on application**

*Section 269* specifies the circumstances in which the regulator must grant or refuse to grant the registration. This Section requires the regulator to refuse to grant a registration if the regulator is satisfied that the applicant has given information that is false or misleading in a material particular, or failed to give any material information. If the regulator decides to grant the registration, it must notify the applicant within 14 days after making the decision. This Section also provides that if the regulator does not make a decision within 120 days after receiving the application, or additional information requested under Section 268, the regulator is taken to have refused the application.

A note provides that a refusal to register an item of plant under this Section is a reviewable decision under Section 676.

### **Section 270 – Refusal of registration – process**

*Section 270* sets out the process the regulator must follow if the regulator proposes to refuse to grant an application for registration.

A note provides that a refusal to register an item of plant under this Section is a reviewable decision under Section 676.

### **Section 271 – Conditions of registration**

*Section 271* enables the regulator to impose conditions on the registration of an item of plant. The person must comply with the conditions of registration.

A note provides that the imposition of a condition when renewing registration of an item of plant under this Section is a reviewable decision under Section 676.

### **Section 272 – Duration of registration**

*Section 272* provides that a registration of an item of plant takes effect on the day it is granted and expires 5 years after that day.

### **Section 273 – Plant registration number**

*Section 273* provides that, if the regulator registers an item of plant, the regulator must issue a plant registration number to the registration holder within 14 days after the registration, to give to the person with management or control of the plant at a workplace. The person with management or control of the plant must ensure that the registration number is marked on the item of plant.

### **Section 274 – Registration document**

*Section 274* sets out the contents required in the registration document to be issued by the regulator if the regulator registers an item of plant. This Section provides that the registration document must be issued to the applicant within 14 days after the regulator makes the decision.

### **Section 275 – Registration document to be available**

*Section 275* requires a registration holder of an item of plant to keep the registration document available for inspection under the WHS Act, except when the registration document is not in the registration holder's possession, in the circumstances set out in Regulation 287 or 288.

### **Section 276 – Regulator may renew registration**

*Section 276* enables the regulator to renew the registration of an item of plant.

### **Section 277 – Application for renewal**

*Section 277* sets out how an application for renewal of registration of an item of plant must be made and the information required. This Section also provides that the application must be accompanied by the relevant fee.

### **Section 278 – Registration continues in force until application is decided**

*Section 278* states that, if a registration holder applies under *Section 277* for the renewal of a registration, the registration is taken to continue in force from the day it has ended until the registration holder is given notice of the decision on the application.

### **Section 279 – Decision on application**

*Section 279* requires the regulator to renew the registration of an item of plant, provided the regulator is satisfied that the application for renewal has been made in accordance with this Division and the plant has been maintained and inspected in accordance with *Section 213*.

A note provides that refusal to renew registration of an item of plant under this Section is a reviewable decision under *Section 676*.

### **Section 280 – Status of registration during review**

*Section 280* provides that if the regulator gives a registration holder written notice before the plant registration expires, that it proposes to refuse to renew the registration, and the registration holder seeks a review, the registration continues to have effect in accordance with this Section.

## **Division 5.3.5 – Changes to registration and registration documents**

### **Section 281 – Application - division 5.3.5**

*Section 281* provides that this Division applies to the registration of a plant design and the registration of an item of plant.

### **Section 282 – Changes to information**

*Section 282* requires a registration holder to give the regulator written notice of any change to specified information the registration holder has given to the regulator within 14 days after the registration holder became aware of the change. This Section also requires a registration holder of an item of plant to give written notice to the regulator if the item of plant is altered such that the plant requires new control measures; or if the plant is usually fixed and is relocated; or if the registration holder no longer has management or control of the item of plant.

### **Section 283 – Amendment of registration imposed by regulator**

*Section 283* enables the regulator, on its own initiative, to amend a registration, including by varying or deleting a condition, or imposing a new condition on the registration. This Section also specifies the process to be followed by the regulator before amending a registration.

A note provides that an amendment of registration on the regulator's initiative under this Section is a reviewable decision under *Section 676*.

### **Section 284 – Amendment on application by registration holder**

*Section 284* enables the regulator to amend a registration at the request of the registration holder. This Section also specifies the process the regulator must follow if the regulator proposes to refuse to amend the registration.

A note provides that a refusal to amend registration on application, or a decision to make a different amendment, under this Section is a reviewable decision under Section 676.

### **Section 285 – Minor corrections to registration**

*Section 285* enables the regulator to make minor amendments to a registration, including correcting an obvious error or changing an address.

### **Section 286 – Regulator to give amended registration document**

*Section 286* requires the regulator, if it amends a registration and considers that the registration document requires amendment, to give the registration holder an amended registration document within 14 days of making the decision.

### **Section 287 – Registration holder to return registration document**

*Section 287* requires a registration holder to return the registration document to the regulator for amendment at the written request of the regulator within the time specified in the request.

### **Section 288 – Replacement registration document**

*Section 288* requires a registration holder to give written notice to the regulator if the registration document is lost, stolen or destroyed. This Section sets out the application requirements for a replacement document, and provides that the regulator may issue a replacement registration document if the regulator is satisfied that it has been lost, stolen, or destroyed. If the regulator refuses to issue a replacement document, it must give the registration holder written notice of the decision, with reasons, within 14 days of making the decision.

A note provides that a refusal to issue a replacement registration document under this Section is a reviewable decision under Section 676.

## Chapter 6 – Construction Work

This Chapter imposes duties on persons in relation to construction work as defined in Section 6.1.1 and high-risk construction work as defined in the Section 6.1.2.

This Chapter requires PCBUs that commission construction work in relation to a structure to consult with the designer and requires designers of structures to provide a written report regarding health and safety.

This Chapter also requires PCBUs to control risks associated with construction work and high-risk construction work and imposes duties in respect of safe work method statements, excavation work and trenches. It also imposes duties upon principal contractors, including a duty to prepare a written WHS management plan, signage obligations and obligations to ensure compliance with other Regulation at the workplace.

This Chapter sets out the requirements for general induction training and the requirement that workers undertaking construction work hold a general construction induction training card.

Duty holders under this Chapter may also have health and safety duties under Regulation 19, 20, 21, 22, 26, 28 or 29 of the WHS Act, and duties under Division 5.1 and Division 5.2 of the WHS Act to consult with other duty holders and workers about matters in this Chapter. This Chapter prescribes required qualifications for section 44 of the WHS Act. Section 27 of the WHS Act applies to officers in respect of this Chapter.

There is additional Regulation in other Chapters which may apply to construction work, including:

- Part 3 – General risk and workplace management;
- duties on designers in Part 4.3 – Confined spaces and on designers and PCBUs who commission a structure in Chapter 5 – Plant and Structures;
- Part 4.3 – Confined spaces;
- Part 4.4 – Falls;
- Part 4.7 – General electrical safety in workplaces and energised electrical work;
- Part 4.8 – Diving work; and
- Chapter 5 – Plant and structures.

Defined terms in the dictionary which are relevant to this Chapter include:

- *airborne contaminant*
- *asbestos*
- *card holder*
- *confined space*
- *contaminant*
- *control measure*
- *designer*
- *essential services*
- *excavation*
- *excavation work*

- *general construction induction training*
- *general construction induction training card*
- *general construction induction training certification*
- *person with management or control of a workplace*
- *pipeline*
- *powered mobile plant*
- *registered training organisation (RTO)*
- *relevant fee*
- *safe work method statement*
- *shaft*
- *specified VET course*
- *trench*
- *tunnel, and*
- *WHS management plan.*

## **Part 6.1 – Preliminary**

Part 6.1 sets out the meaning of terms used in this part. Terms defined include construction work, structure, high-risk construction work, construction project, and principal contractor.

This Part refers to the term ‘excavation’, which is defined in the dictionary.

### **Section 289 – Meaning of *construction work* - ch 6**

*Section 289* sets out the meaning of construction work. Sub-section 289(3) states what construction work does not include. This includes activities such as the manufacture of plant, the construction or assembly of a structure that once constructed or assembled is intended to be transported to another place, testing of a minor nature carried out in relation to a structure, or mining in the exploration for or extraction of minerals.

### **Section 290 – Meaning of *structure* - ch 6**

*Section 290* states that the meaning of structure in Chapter 6 has the same meaning as it has in the WHS Act. However, sub-section 290(2) provides that Chapter 6 does not apply to plant unless the plant is of a kind listed in subparagraph (a), work on the plant is carried out in connection with construction work, or the plant is fixed and work on the plant may involve 5 or more PCBUs at any point in time.

### **Section 291 – Meaning of *high-risk construction work* - ch 6**

*Section 291* sets out what kind of work is ‘high-risk construction work’ for the purposes of Chapter 6. Examples of high-risk construction work include construction work that involves a risk of a person falling more than 2 metres, work carried out on a telecommunication tower, or construction work that involves the demolition of an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure.

This Section refers to the term ‘trench’, which is defined in the dictionary.

### **Section 292 – Meaning of *construction project* - ch 6**

*Section 292* provides that for the purposes of Chapter 6, a ‘construction project’ is a project that involves construction work where the cost of the construction work is \$250,000 or more.

### **Section 293 – Meaning of *principal contractor* - ch 6**

*Section 293* provides that for the purposes of Chapter 6 the ‘principal contractor’ for a construction project is:

- the PCBU that commissions the construction project, or
- a person engaged by the PCBU to have management or control of the workplace and to discharge the duties of a principal contractor.

Sub-section 293(3) also states that the principal contractor for a construction project in relation to residential premises is the PCBU directly or indirectly engaged by the owner of the premises to undertake a construction project and who has management or control of the workplace.

Sub-section 293(4) clarifies that there is only one principal contractor for a construction project at any specific time.

This Section refers to the term ‘construction project’, which is defined in Section 292.

## **Part 6.2 – Duties of designer of structure and person who commissions construction work**

Part 6.2 sets out the duties placed on designers of structures, and the duties that apply to a PCBU who commissions construction work in relation to a structure.

### **Section 294 – Person who commissions work must consult with designer**

*Section 294* provides that a PCBU who commissions construction work in relation to a structure, or part of the structure, must consult with the designer of the structure so far as is reasonably practicable about how to ensure that risks to health and safety arising from the design during construction are eliminated so far as is reasonably practicable, or if this is not possible, minimised so far as is reasonably practicable.

Sub-section 294(2) states that consultation must include any information that the person who commissions the construction work has in relation to the hazards and risks at the workplace where the construction work is to be carried out.

### **Section 295 – Designer must give safety report to person who commissions design**

*Section 295* requires the designer of a structure or any part of a structure that is to be constructed to give a written report to the PCBU who commissioned the design. The report must address the matters specified in the Section.

Sub-section 295(2) provides that if the PCBU who commissions a construction project did not commission the design of the project, the PCBU must take all reasonable steps to obtain a copy of the written report in relation to that design.

This Section refers to the term ‘construction project’, which is defined in Section 292.

## **Section 296 – Person who commissions project must give information to principal contractor**

*Section 296* provides that if a PCBU who commissions a construction project engages a principal contractor for the construction project, the PCBU must give the principal contractor any relevant information that the person has about hazards and risks at or in the vicinity of the workplace where the construction work is to be carried out.

This Section refers to the term ‘construction project’, which is defined in Section 292.

## **Part 6.3 – Duties of Person Conducting Business or Undertaking**

Part 6.3 sets out the duties of a PCBU carrying out construction work. As a principal contractor is also a PCBU, this part also applies to a principal contractor. It sets out general requirements relating to managing risks and security of the workplace, as well as requirements related to safe work method statements for high-risk construction work and requirements associated with excavation work.

### **Division 6.3.1 – General**

#### **Section 297 – Management of risks to health and safety – Act, s 19**

*Section 297* requires a PCBU to manage risks associated with carrying out construction work in accordance with Part 3.1 of the Regulation.

#### **Section 298 – Security of workplace**

*Section 298* provides that a person with management or control of a workplace at which construction work is carried out must ensure so far as is reasonably practicable that the workplace is secured from unauthorised access. Sub-section 298(2) sets out the matters the PCBU must have regard to when complying with this duty.

### **Division 6.3.2 – High-risk construction work – safe work method statements**

#### **Section 299 – Safe work method statement required for high-risk construction work**

*Section 299* applies to a PCBU whose business or undertaking involves high-risk construction work. The PCBU must prepare, or ensure that another person has prepared, a safe work method statement for the high-risk construction work before the work is carried out. Sub-section 299(2) and (3) require the safe work method statement to state certain information prescribed in the Section, and be written in a way that can be accessed and understood by the people who will use it.

This Section refers to the term ‘construction project’, which is defined in Section 292.

#### **Section 300 – Compliance with safe work method statement**

*Section 300* states that a PCBU whose business or undertaking involves high-risk construction work must have arrangements in place to ensure that the high-risk construction work is carried out in accordance with the relevant safe work method statement.

Sub-section 300(2) also specifies that the PCBU must ensure that the work is stopped immediately or as soon as it is safe to do so and is resumed only in accordance with the statement if the high-risk construction work is not being carried out in accordance with the safe work method statement.

### **Section 301 – Safe work method statement – copy to be given to principal contractor**

*Section 301* applies to a PCBU whose business or undertaking involves high-risk construction work. The PCBU must, before the work commences, ensure that a copy of the relevant safe work method statement is given to the principal contractor.

This Section refers to the term ‘construction project’, which is defined in Section 292.

### **Section 302 – Review of safe work method statement**

*Section 302* provides that a PCBU must ensure a safe work method statement is reviewed and revised as necessary if relevant control measures under Section 38 are revised.

### **Section 303 – Safe work method statement must be kept**

*Section 303* states that a PCBU must keep a copy of the safe work method statement until the high-risk construction work to which it relates is completed. However, sub-section 303(2) provides that the PCBU must keep the statement for a period of 2 years if a notifiable incident occurs in connection with the high-risk construction work to which the statement relates.

Sub-sections 303(3) and (4) provide that a copy of the statement must be readily accessible to any worker engaged by the PCBU to carry out the high-risk construction work and be kept available for inspection under the WHS Act.

## **Division 6.3.3 – Excavation work**

This Division refers to the term ‘excavation’, which is defined in the dictionary.

### **Section 304 – Excavation work – underground essential services information**

*Section 304* applies to a part of a workplace where excavation work is being carried out and any adjacent areas. Sub-section 304(2) and (3) set out what a person with management or control of the workplace must do in relation to obtaining and providing to other people current underground essential services information before directing or allowing excavation work to start.

Sub-section 304(4) applies to both a person with management or control of the workplace, and a PCBU who has been given essential services information, and sets out how the information is to be used.

Sub-sections 304(5) and (6) provide that a person with management or control of the workplace must ensure that the information is available for inspection under the WHS Act, and specify how long it must be kept available.

This Section also defines ‘underground essential services’ and ‘underground essential services information’ for the purposes of the Section.

This Section refers to the term ‘essential services’, which is defined in the dictionary.

### **Section 305 – Management of risk to health and safety associated with excavation work - Act, s 19**

Sub-section 305(1) provides that a PCBU must manage risks to health and safety associated with excavation work in accordance with Part 3.1.

Sub-section 305(2) sets out some examples of the kind of risks that are associated with excavation work, such as the risk that a person may fall into an excavation or become trapped by the collapse of an excavation.

Sub-section 305(3) specifies some of the matters that a PCBU must consider when managing risks to health and safety associated with excavation work. Matters include the nature of the excavation, the range of possible methods of carrying out the work, and the means of entry into and exit from the excavation, if applicable.

Note: This Section refers to the term ‘airborne contaminant’, which is defined in the dictionary to mean a contaminant in the form of a fume, mist, gas, vapour or dust, and includes microorganisms.

### **Section 306 – Additional controls – trenches**

*Section 306* applies to a PCBU who proposes to excavate a trench at least 1.5m deep. Sub-section 306(1) provides that the PCBU must ensure so far as is reasonably practicable that the work area is secured to prevent unauthorised access. Sub-section 306(2) sets out the matters a PCBU must have regard to when complying with this obligation.

Sub-section 306(3) requires a PCBU to ensure all sides of the trench are adequately supported by shoring, benching or battering to minimise the risk to any person from the collapse of the trench. Sub-sections 306(4) and (5) however provide an exception to this sub-section 306(3) does not apply if a geotechnical engineer has provided written advice that all sides of the trench are safe from collapse.

Note: This Section refers to the term ‘trench’, which is defined in the dictionary

## **Part 6.4 – Additional Duties of Principal Contractor**

Part 6.4 imposes additional duties on a principal contractor for a construction project. These duties are in addition to those imposed by the WHS Act and the Regulation on a person with management or control of a workplace, or a PCBU generally.

### **Section 307 – Application - pt 6.4**

*Section 307* provides that Part 6.4 applies in relation to a construction project and imposes duties on the principal contractor for the project that are additional to the duties imposed under Part 6.3.

This Section refers to the term ‘construction project’, which is defined in Section 292.

### **Section 308 – Specific control measure – signage identifying principal contractor**

*Section 308* provides that the principal contractor for a construction project must install signs that are clearly visible from outside the workplace and display certain information about the principal contractor.

This Section refers to the term ‘construction project’, which is defined in Section 292.

### **Section 309 – WHS management plan – preparation**

*Section 309* requires the principal contractor for a construction project to prepare a written WHS management plan for the workplace before work on the project starts.

The WHS management plan must include the specific information prescribed in sub-section 309(2), such as arrangements for consultation and cooperation between PCBUs and any site specific health and safety rules.

This Section refers to the term ‘construction project’, which is defined in Section 292.

### **Section 310 – WHS management plan – duty to inform**

*Section 310* provides that the principal contractor for a construction project must ensure so far as reasonably practicable that each person who will carry out construction work is made aware of the content of the WHS management plan and the person’s right to inspect the WHS plan under Section 313.

This Section refers to the term ‘construction project’, which is defined in Section 292.

### **Section 311 – WHS management plan – review**

*Section 311* provides that a principal contractor for a construction project must review and revise the WHS management plan when necessary, and ensure that each person carrying out construction work for the project is made aware of the changes.

This Section refers to the term ‘construction project’, which is defined in Section 292.

### **Section 312 – High-risk construction work – safe work method statements**

*Section 312* requires the principal contractor of a construction project to take all reasonable steps to obtain a copy of the safe work method statement relating to high-risk construction work before the work commences.

A note to this Section alerts the reader to Section 309 which requires that a WHS management plan contain arrangements for cooperation between PCBUs at the construction project workplace, including in relation to the preparation of SWMS.

This Section refers to the term ‘construction project’, which is defined in Section 292.

### **Section 313 – Copy of WHS management plan must be kept**

*Sub-section 313(1)* provides that a principal contractor keep a copy of the WHS management plan until the project to which it relates is completed. *Sub-section 313(2)* provides an exception to this, and requires that if a notifiable incident occurs in connection with the construction project to which the plan relates, the plan must be kept for 2 years. *Sub-section 313(3)* and *sub-section 313(4)* provide that a copy of the plan must be readily accessible to any person who is to carry out construction work in connection with the project, and must be available for inspection under the WHS Act.

*Sub-section 313(5)* clarifies, by including a definition of WHS management plan for the purpose of this Section, that both the initial plan and all revised plans must be kept

This Section refers to the term ‘construction project’, which is defined in Section 292.

### **Section 314 – Further health and safety duties – specific sections**

*Section 314* provides that the principal contractor for a construction project must put in place arrangements for ensuring compliance at the workplace with the following provisions:

- general working environment (Division 2 of Part 3.2)
- provision of first aid (Division 3 of Part 3.2)
- preparation and implementation of emergency plans (Division 4 of Part 3.2)
- provision and use of personal protective equipment (Division 5 of Part 3.2)
- managing risks from airborne contaminants (Division 7 of Part 3.2)
- managing risks from hazardous atmospheres (Division 8 of Part 3.2)
- storage of flammable or combustible substances (Division 9 of Part 3.2)
- falling objects (Division 10 of Part 3.2)
- falls (Part 4.4)

This Section refers to the term ‘construction project’, which is defined in Section 292.

### **Section 315 – Further health and safety duties – specific risks – Act, s20**

*Section 315* provides that the principal contractor for a construction project must, in accordance with Part 3.1, manage risks to health and safety in relation to waste at the workplace, storage of plant that is not in use, traffic in the vicinity of the workplace that may be affected by the work, and essential services. This Section refers to the term ‘essential services’, which is defined in the dictionary.

This Section refers to the term ‘construction project’, which is defined in Section 292.

## **Part 6.5.1 – General Construction Induction Training**

Part 6.5 sets out the requirements for general construction induction training.

### **Division 6.5.1 – General construction induction training requirements**

#### **Section 316 – Duty to provide general construction induction training**

*Section 316* places an obligation on a PCBU to ensure that general construction induction training is provided to a worker engaged by the person who is to carry out construction work. The obligation arises if the worker has not successfully completed general construction induction training, or has successfully completed general construction induction training more than 2 years previously and has not carried out construction work in the preceding 2 years.

#### **Section 317 – Duty to ensure worker has been trained**

Sub-section 317 prohibits a PCBU from allowing or directing a worker to carry out construction work unless the worker is appropriately trained. A worker must have successfully completed general construction induction training and, if the training was completed more than 2 years previously, have carried out construction work since that time.

Sub-section 317(2) requires a PCBU to ensure that the worker holds a general construction induction training card or the appropriate certification that was issued within the preceding 60 days.

### **Section 318 – Recognition of general construction induction training cards issued in other jurisdictions**

*Section 318* provides for the mutual recognition of construction induction training cards in different jurisdictions. Sub-section 318(1) provides that a reference in Division 1 to a general construction induction card includes a reference to a card issued under a corresponding WHS law that is being used in accordance with any relevant terms and conditions. This means, for example, that if a worker holds a current general construction induction card, a PCBU does not need to provide general construction induction training, regardless of which jurisdiction the card was issued in. Sub-section 318(2) ensures that this Section, and mutual recognition, does not apply to a card that is suspended or cancelled or has expired in the corresponding jurisdiction.

## **Division 6.5.2 – General construction induction training cards**

### **Section 319 – Issue of card**

*Section 319* sets out how a person who has successfully completed general construction induction training may apply to the regulator for a general construction induction card. Sub-sections 319(2) (3) and (4) set out specific information that must be included in an application, and the manner and form in which the application must be made.

Sub-sections 319(6) to (8) set out how a decision is to be made by the regulator. The regulator must issue a general construction induction training card to the applicant if the regulator is satisfied with certain things. If the regulator has not made a decision on the application within 60 days then the applicant is taken to hold a general construction induction training card until a decision is made.

### **Section 320 – Content of card**

*Section 320* sets out the information that must be included on a general construction induction training card.

### **Section 321 – Replacement card**

*Section 321* sets out how a card holder may apply to the regulator for a replacement general construction induction training card if the original card is lost, stolen or destroyed. Sub-section 321(4) provides that if the regulator is satisfied that the card was lost, stolen or destroyed; the regulator may issue a replacement card.

### **Section 322 – Refusal to issue or replace card**

*Section 322* sets out the circumstances in which the regulator may refuse to issue a general construction induction training card or a replacement general construction induction training card.

A note provides guidance for the reader that a refusal to issue a general construction induction training card or a replacement general construction induction training card under this Section is a reviewable decision under Section 676.

### **Section 323 – Cancellation of card – grounds**

*Section 323* sets out the grounds on which the regulator may cancel a general construction induction training card that was issued by the regulator.

A note provides guidance for the reader a decision to cancel a general construction induction training card under this Section is a reviewable decision under Section 676.

### **Section 324 – Cancellation of card – process**

*Section 324* sets out the process that the regulator must follow before cancelling a general construction induction training card.

Sub-section 324(2) sets out the information that must be provided to the card holder in writing if the regulator has made a decision to cancel a general construction induction training card.

## **Division 6.5.3 – Duties of workers**

### **Section 326 – Duties of workers**

*Section 326* provides that workers carrying out construction work must:

- keep general construction induction training cards or the appropriate certification as set out in Section 319(5) available for inspection under the WHS Act; and
- return the general construction induction training card to the regulator on receiving a cancellation notice under Section 324(2).

### **Section 327 – Alteration of general construction induction training card**

*Section 327* provides that a person who holds a general construction induction training card must not intentionally or recklessly alter the card.

## **Chapter 11 – General**

This Chapter sets out the requirements for the processes of internal review and external review of reviewable decisions. It outlines how the regulator may exempt a person or a class of persons from complying with a provision of the Regulation. It also prescribes the list of serious illnesses requiring notification under section 36 of the WHS Act and the requirements for inspectors' identity cards for the purpose of section 157 of the WHS Act. Defined terms in the dictionary which are relevant to this Chapter include *internal review* and *external review*.

### **Part 11.1 – Review of Decisions under these Regulation**

#### **Division 11.1.1 – Reviewable decisions**

##### **Section 676 – Which decisions under these Regulation are reviewable**

*Section 676* sets out all the decisions made under these Regulation that are reviewable and who is eligible to apply for a review of each reviewable decision.

#### **Division 11.1.2 – Internal review**

##### **Section 677 – Application**

*Section 677* provides that the internal review process does not apply to a reviewable decision made under Chapter 9 (Major hazard facilities) or under Part 11.2 (Exemptions) of this Regulation. The application process for a major hazard facility licence or an exemption is lengthy and involves close communication between the applicant and the regulator. Internal review would further delay resolution of the matter and would therefore not be suitable. Decisions under Chapter 9 and Part 11.2 are subject to external review by the AAT.

##### **Section 678 – Application for internal review**

*Section 678* sets out the time limits in which an eligible person may apply for an internal review of a reviewable decision. The application must be made in the manner and form required by the regulator.

##### **Section 679 – Internal reviewer**

*Section 679* allows the regulator to appoint a person or a body to conduct internal reviews. It provides that the person who made the reviewable decision cannot conduct an internal review in relation to that decision.

##### **Section 680 – Decision of internal reviewer**

*Section 680* provides that the internal reviewer may confirm or vary the reviewable decision or set aside the original decision and substitute another decision.

Section 680 also specifies the timeframes and processes the internal reviewer must follow when reviewing a reviewable decision. This includes reviewing the reviewable decision and making a decision as soon as practicable and within 14 days after the application is received.

The internal reviewer may ask the applicant to provide additional information. The applicant must provide the information within the time specified by the internal reviewer (which must not be less than 7 days). Once the additional information is received, the internal reviewer must make a decision as soon as practicable and within 14 days. If the additional information is not provided by the applicant, the reviewable decision is taken to have been confirmed at the end of the time period.

If the reviewable decision is not varied or set aside within the 14 day time period, the reviewable decision is taken to have been confirmed by the internal reviewer.

### **Section 681 – Decision on internal review**

*Section 681* provides that the internal reviewer must give written notice of the decision on the internal review and the reasons for the decision to the applicant within 14 days of making the decision.

### **Section 682 – Internal review – reviewable decision continues**

*Section 682* clarifies that an application for an internal review does not affect the operation of the reviewable decision or prevent the taking of any lawful action to implement or enforce the decision, subject to any contrary provision.

## **Division 11.1.3 – External review**

### **Section 683 – Application for external review**

*Section 683* provides that an eligible person may apply for an external review of a reviewable decision made by the regulator under Chapter 9 (Major Hazard Facilities) or under Part 11.2 (Exemptions) of the Regulation, or a decision made in relation to an internal review.

## **Part 11.2 – Exemptions**

This Part deals with granting exemptions and the requirements for applying for an exemption.

### **Division 11.2.1 – General**

#### **Section 684 – General power to grant exemptions**

*Section 684* provides that the regulator may exempt a person or class of persons from compliance with any of these Regulation, either on the regulator's own initiative or on the written application of one or more persons. The exemption may be subject to certain limitations set out in this Part.

While this Section may raise queries about the exercise of executive power because it appears to be a 'Henry VIII' clause, it does not operate in the context of that description.

Rather, it merely allows for some of the technical requirements imposed in the Regulation to be set aside where the regulator is satisfied that there will not be an adverse outcome for work health and safety.

### **Section 685 – Matters to be considered when granting exemptions**

*Section 685* sets out certain matters that the regulator must have regard to in deciding whether or not to grant an exemption under Section 684. These include whether the granting of the exemption will result in a standard of health and safety at the relevant workplace that is at least equivalent to the standard that would be achieved by compliance with the relevant provision/s.

This power vested in the regulator cannot be exercised to override a requirement in the WHS Act itself, but merely regulatory obligations. Further, the power is subject to the overriding responsibilities of the regulator under the WHS Act. Section 152 of the WHS Act sets out the functions of the regulator. Relevant functions include to monitor and enforce compliance with this Act.

It would be inconsistent with the functions of the regulator to provide an exemption that does not contribute to general compliance with the WHS Act. At the same time, the exemption power allows for the detail of the regulatory framework to be set aside in appropriate circumstances.

An exemption can be granted on the regulator's own initiative. This allows the regulator to take proactive action to overcome a technical issue (and impose conditions in doing so if it sees fit) rather than waiting for an application to be made.

The exemption-making power does not allow for exemption from compliance with two significant risk-management areas, high-risk work licences and major hazard facility, exemptions for which are dealt with separately. High-risk work licence exemptions (Section 687) and major hazard facilities (Section 688) requires the regulator to be satisfied that a relevant equivalent standard of health and safety is achieved before the exemption can be granted.

The making of a Section that allows the regulator to grant exemptions is expressly contemplated in the Section-making power granted in the WHS Act. Subsection 276(3) provides that Regulation may be made to:

- e) prescribe exemptions from complying with any of the Regulation on the terms and conditions (if any) prescribed; and
- f) allow the regulator to provide exemptions from complying with any of the Regulation on the terms and conditions (if any) prescribed or, if the Regulation allow, on the terms and conditions (if any) determined by the regulator.

There are two additional protections from an abuse of executive power, if that is a concern. Firstly the Regulation will be subject to disallowance where the exemption exempts a class of persons (see Section 692 (2) which provides that “an exemption document that exempts a class of persons is a legislative instrument”). An exemption for one person is not a legislative instrument (sub-section 692(3)).

Secondly, decisions relating to conditions on exemptions are subject to external review by ACAT, as per Section 683.

Safe Work Australia have developed national guidance material explaining how the exemption application and decision making process is intended to operate and published this along with principles to guide decision making on its website.

## **Division 11.2.2 – High-risk work licences**

### **Section 686 – High-risk work licence – exemption**

*Section 686* provides that the regulator may exempt a person or a class of persons from a requirement to hold a high-risk work licence. The exemption may be granted on the written application of any person concerned.

A note provides that a refusal to exempt a person from the requirement to hold a high-risk work licence is a reviewable decision under Section 676.

### **Section 687 – High-risk work licence – regulator to be satisfied about certain matters**

*Section 687* provides that the regulator must be satisfied about certain matters before granting an exemption in relation to holding a high-risk work licence under Section 686.

## **Division 11.2.4 – Exemption process**

### **Section 690 – Placeholder**

### **Section 691 – Conditions of exemption**

*Section 691* allows the regulator to impose any conditions it considers appropriate on an exemption granted under Part 11.2. The conditions imposed on the exemption may require the applicant to do certain things as stated in this Section.

A note provides that the imposing of conditions on an exemption granted on application under Part 11.3 is a reviewable decision under Section 676.

### **Section 692 – Form of exemption document**

*Section 692* provides that an exemption must be in writing and lists the matters that it must state.

### **Section 693 – Compliance with conditions of exemption**

*Section 693* specifies that a person who is granted an exemption must comply with the conditions of the exemption. The person must also ensure that any person under the management or control of that person complies with the conditions of the exemption.

### **Section 694 – Notice of decision in relation to exemption**

*Section 694* requires the regulator to give the applicant a copy of the exemption within 14 days of making the decision to grant the exemption or, if the regulator made the decision on its own motion, to each person to whom the exemption will apply.

### **Section 696 – Notice of refusal of exemption**

*Section 696* requires that if the regulator refuses to grant an exemption, the regulator must notify the applicant in writing about the refusal within 14 days after making the decision. The notice must state the reasons for the refusal.

A note provides that a refusal to grant an exemption under this Section is a reviewable decision under Section 676.

### **Section 697 – Amendment or cancellation of exemption**

*Section 697* provides that the regulator may amend or cancel an exemption at any time.

A note provides that an amendment or cancellation of an exemption granted on application under Part 11.2 is a reviewable decision under Section 676.

### **Section 698 – Notice of amendment or cancellation**

*Section 698* sets out what the regulator must do if it decides to amend or cancel an exemption.

The regulator must notify the applicant in writing about the amendment or cancellation within 14 days after making the decision. The notice must state the reasons for the amendment or cancellation. The amendment or cancellation takes effect either on the giving of the notice to the applicant or on a later date specified in the notice. A notice that affects one person is not a legislative instrument.

If the exemption affects a class of persons, the notice is a legislative instrument, and the amendment or cancellation takes effect in accordance with the *Legislation Act 2001*.

## **Part 11.3 – Miscellaneous**

### **Section 699 – Incident notification – prescribed serious illnesses – Act, s36**

*Section 699* specifies certain conditions to be a serious illness for the purposes of section 36 of the WHS Act.

### **Section 700 – Inspectors' identity cards – Act, s157(1)(e)**

*Section 700* lists the matters that an identity card given by the regulator to an inspector for the purposes of subsection 157(1) of the WHS Act must include.

### **Section 701 – Review of decisions – stay of decision – Act, s228 (6) (a)**

*Section 701* stipulates the prescribed period for s 228 (6)(a) is 90 days.

### **Section 702 – Confidentiality of information – exception relating to administration or enforcement of others laws**

*Section 702* provides that a corresponding WHS law is prescribed for subparagraph 271(3) (c) (ii) of the WHS Act.

## **Chapter 20 – Transitional**

Chapter 20 provides for the transition of provisions from the current Work Safety Regulation to the new Work Health and Safety Regulation.

### **Part 20.2 Transitional - general**

*Sections 801- 805* provide for transitional provisions for various provisions.

### **Part 20.3 Work Safety Regulation 2009**

*Sections 806- 810* provide for the continuing effect of the Work Safety Regulation in respect of confined spaces and high-risk work licences.

### **Part 20.4 Occupational Health and Safety (Certification and Plant Users and Operators) Regulation 2009**

Sections 811 – 816 provide for the continuing effect of certificates of competency issued under the Occupational Health and Safety (Certification and Plant Users and Operators) Regulation 2009.

## **Schedules**

### **Schedule 3 – High-risk work licences and classes of high-risk work**

This schedule identifies high-risk licences and the description of the high-risk work attached to each licence.

### **Schedule 4 – High-risk work licences – competency requirements**

This schedule identifies competency requirements for a person to be issued with a high-risk licences.

### **Schedule 5 – Registration of plant and plant design**

This schedule identifies the plant requiring design registration (part 5.1), and the plant requiring plant item registration (part 5.2).

Both parts also provide for exceptions to the requirements.