

2018

**THE LEGISLATIVE ASSEMBLY FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**WORK HEALTH AND SAFETY AMENDMENT REGULATION 2018 (No 1)**

**EXPLANATORY STATEMENT**

**SL2018-2**

**Presented by  
Rachel Stephen-Smith MLA  
Minister for Workplace Safety and Industrial Relations**

## **WORK HEALTH AND SAFETY AMENDMENT REGULATION 2018 (No 1)**

### **Outline of the amending Regulation**

The purpose of this Amendment Regulation is to adopt chapter 7 and chapter 9 of the national model Work Health and Safety Regulation (the model regulation), which govern the use, storage and handling of hazardous chemicals.

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' 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 (IGA), which commits jurisdictions to implement model laws which comprise a national model Work Health and Safety Act, model Regulations and model Codes of Practice.

On 29 September 2011, the Legislative Assembly passed the *Work Health and Safety Act 2011* (the WHS Act), which gave effect to the Territory's commitment under the IGA. On 1 January 2012, the WHS Act and the supporting *Work Health and Safety Regulation 2011* (the WHS Regulations) came into effect in the Territory.

At that time, the WHS Regulation did not adopt chapter 7 (Hazardous Chemicals), chapter 8 (Asbestos) or chapter 9 (Major Hazard Facilities) of the model regulation, and these matters continued to be regulated under the Territory's dangerous substances legislation.

Subsequently the Territory has incorporated the national model asbestos regulations into its work health and safety framework – this came into effect on 1 January 2015.

This Regulation will now adopt remaining chapters of the model regulations into the Territory's WHS Regulations.

### **Human Rights Considerations**

As indicated in the Explanatory Statement for the related Act (*Work Health and Safety Legislation Amendment Act 2018*), this section provides an overview of the human rights which may be engaged by the Regulation, together with a discussion of the reasonableness of any possible limitations.

Section 28(1) of the *Human Rights Act 2004* (HR Act) provides that human rights may be subject to reasonable limits set by laws that can be demonstrably justified in a free and democratic society. Section 28(2) provides that in deciding whether a limit on a human right is reasonable, all relevant factors must be considered, including the following:

- a.) the nature of the right affected;
- b.) the importance of the purpose of the limitation;
- c.) the nature and extent of the limitation;

- d.) the relationship between the limitation and its purpose; and
- e.) any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve.

### ***The right to privacy and reputation***

Section 12 of the HR Act provides that everyone has a right not to have his or her privacy, family, home or correspondence interfered with unlawfully or arbitrarily.

### **The nature of the right affected**

This Regulation, under section 10A, prescribes dangerous goods for the purposes of Schedule 1 of the WHS Act. Since its enactment in 2011, schedule 1 of the WHS Act has sought to apply the Act outside of the workplace in relation to dangerous goods and high risk plant. However, until the adoption of chapters 7 and 9 of the nationally agreed model WHS regulation under the WHS Regulation, the regulation of hazardous chemicals (dangerous goods) remains the ambit of the *Dangerous Substances Act 2004* (DS Act).

The DS Act currently applies a general duty under s23 to “*Everyone involved in handling a dangerous substance [hazardous chemical] must take all reasonable steps to minimise the risks resulting from handling the substance.*” As such, this is a general safety duty that is applied to both a workplace and non-workplace. Accordingly, it is open for inspectors under the DS Act to enter a premises being used only for residential purposes if dangerous substances are being used at the premises under s142(1)(a) and s142(2). This compliance activity is undertaken for the purposes of ensuring compliance with the DS Act, relevantly, the general safety duty under s23 is in place to ensure the health and safety of anyone as a result of handling a dangerous substance.

The amendments made in this Amendment Regulation to prescribed dangerous goods for the WHS Act for the purposes of schedule 1 of the WHS Act are intended to mirror the application of a safety duty outside of the workplace as it currently exists in the DS Act.

### **The importance of the purpose of the limitation**

It is important to ensure the health and safety of everyone, not just workers, who are exposed to risks to their health and safety from the storage and handling of hazardous chemicals.

The adoption of chapters 7 and 9 of the nationally agreed model legislation will remove, in large part, the regulation of hazardous chemicals (dangerous substances) from the DS Act and insert it under the WHS legislation. In doing so, the general duty under s23 of the DS Act should also be preserved under the WHS legislation.

### **The nature and extent of the limitation**

The provisions relating to entry and inspection of premises that are not workplaces are not an arbitrary interference with an occupier’s privacy.

Schedule 1 of the WHS Act currently allows inspectors to enter premises that are not workplaces if it is, or is reasonably suspected to be, a premises at or in which dangerous

goods are stored or handled under s163. However, given there is currently nothing prescribed as dangerous goods this power of entry is unutilised as there is no subject matter to enforce.

Following the adoption of hazardous chemicals regulation into the WHS legislation, this will give subject matter to the existing, but unutilised, entry and inspection provisions in relation to the use of hazardous chemicals outside of the workplace. As such, this Amendment Regulation will enable the operation of the enforcement of provisions in the WHS Act by allowing inspectors to ensure compliance with the safety duties in relation to the storage and handling of hazardous chemicals. In particular, s2 of schedule 1 of the Act is intended to ensure that the general safety duty under the s23 of the DS Act is adequately transferred to the WHS legislation.

Furthermore, the application of schedule 1 to the storage and handling of dangerous goods outside of the workplace is limited by the following:

- The application of schedule 1 does not apply to all parts of the WHS Act. In line with the model legislation, section 10 of the WHS Regulation already restricts the operation of schedule 1 of the Act by excluding a number of divisions and parts from its operation. These include those parts that largely relate to workplace consultation, representation and participation (e.g. duty to consult workers), those parts relating to discriminatory, coercive and misleading conduct (part 6) and WHS right of entry provisions (part 7).
- In addition, not all duties under part 2 of the WHS Act will operate with respect to the application of schedule 1. This is because of the mechanism utilised under schedule 1 of substituting relevant terms in the WHS Act with non-workplace equivalent terms or phrases. This requires a duty to be capable of being given meaning in a non-workplace setting. Where this cannot be done, the duty will not apply. For example, in applying schedule 1 there is no substitution for the term 'officer' and as such the duties specifically on officers under section 27 of the WHS Act will not apply outside of the workplace. The effect of this is that most of the duties under part 2 of the WHS Act, once translated for the non-workplace context, will simply establish a general duty on both the person in control of a premises where dangerous goods are stored or handled and persons that handle the dangerous goods at that premises.
- Lastly, s10A of this Amendment Regulation which prescribes dangerous goods for the WHS Act for the purposes of schedule 1 will limit the application of the WHS Act outside of the workplace to the use, storage and handling of dangerous goods that are above the threshold quantities stated in table 328 in section 328 of part 7.1 of the Regulation. As such, the purpose is not to regulate the gas cylinder at the family barbeque, rather it is directed at ensuring public health and safety where substantial quantities of dangerous goods are present at domestic residences.

*The relationship between the limitation and its purpose*

Consistent with the general duty that applies under the DS Act, the purpose of this limitation under the WHS Act on an occupier's privacy is to ensure the public health and safety of occupiers, visitors to a residence, passers-by and neighbours when hazardous chemicals are being used. Anyone should have a reasonable expectation that their health and safety is not recklessly or adversely affected by anyone storing or handling hazardous chemicals, whether at the workplace or not.

*Any less restrictive means reasonably available to achieve the purpose the limitation seeks to achieve*

Without the amendments in this Regulation to insert s10A, schedule 1 of the WHS Act would have a limited but unsatisfactory application outside of the workplace. Therefore, the amendments in this Regulation, intended to apply the corresponding provisions of s23 in the DS Act, are considered to be the least restrictive means of minimising the risks to everyone from the storage and handling of hazardous chemicals.

## **Detailed explanation**

### **Clauses 1 to 3 — Preliminary sections**

These clauses state the name of the regulation, that it is to commence on the commencement of the *Work Health and Safety Legislation Amendment Act 2018* and that it amends the *Work Health and Safety Regulation 2011*.

### **Clause 4 — New section 10A**

This clause inserts a new section to prescribe dangerous goods for the purposes of applying schedule 1 of the *Work Health and Safety Act 2011*. In relation to the application of the WHS laws where dangerous goods are stored or handled outside of the workplace, the dangerous goods to be prescribed for the WHS laws are dangerous goods:

- as defined under the *Australian Code for the Transport of Dangerous Goods by Road and Rail* (ADG Code); and
- where the quantities of dangerous goods is more than the relevant threshold quantity for the goods as mentioned in table 328.

### **Clause 5 — Section 15**

This clause substitutes the existing section 15 of the WHS Regulation. Currently section 15 only applies to the Australian Standards. The new section 15 will extend the existing clause to include to the other documents incorporated under the WHS laws.

### **Clause 6 — New chapter 7**

This clause inserts chapter 7 of the nationally agreed model WHS laws in relation to hazardous chemicals.

### **Chapter 7 Hazardous chemicals**

Chapter 7 imposes duties on importers and manufacturers of hazardous chemicals about classification, packing and labelling, safety data sheets and disclosure of chemical identities. It imposes complementary duties on suppliers of hazardous chemicals about packing, labelling and safety data sheets and prohibits supply of certain carcinogenic substances.

It imposes duties on PCBUs at a workplace about the use, handling and storage of hazardous chemicals, control of risk, and information, training and supervision for workers. It requires health monitoring by a PCBU in respect of workers carrying out specified work for the business or undertaking. It imposes duties on owners, builders and operators of certain pipelines.

Schedules 7-14 of the regulations apply to this chapter.

**Part 7.1**                    **Hazardous Chemicals**

**Division 7.1.1**         **Application of Part 7.1**

**Clause 328**             **Application—pt 7.1**

Clause 328 sets out the application of part 7.1 to the following:

- use, handling and storage of hazardous chemicals at a workplace and the generation of hazardous substances at a workplace;
- pipelines which convey hazardous chemicals, however it is not to apply to a pipeline which is regulated under the *Gas Safety Act 2000* or the *Utilities (Technical Regulation) Act 2014*; and
- the handling or storage of those dangerous goods listed in column 2 of Table 328 at places other than a workplace if the quantity of the dangerous goods is more than the relevant threshold mentioned in column 3 of the table.

This clause also exempts from part 7.1 the following:

- the transport of hazardous chemicals and explosives by road, rail, sea or air which are regulated under the *Dangerous Goods (Road Transport) Act 2009*, *Technical Instructions for the Safe Transport of Dangerous Goods by Air* (published by the International Civil Aviation Organisation) and *Dangerous Goods Regulations* (published by the International Air Transport Association);
- hazardous chemicals in batteries when incorporated in a plant; fuel, oil or coolants in a container fitted to a vehicle, vessel, aircraft, mobile plant, appliance or other device for use in the operation of the device; fuel in the fuel contained of a domestic or portable fuel burning appliance, if the quantity does not exceed 25kg or 25L; portable firefighting or medical equipment; refrigeration systems; and potable liquids that are consumer products at retail premises;
- food and beverage within the meaning of foods standards Australia New Zealand Foods standards code that are in a package and form intended for human consumption (subsection 328(6));
- therapeutic goods at the point of intentional intake by or administration to humans;
- veterinary chemicals at the point of intentional administration to animals.

In addition, only clauses 329, 330, 339, 344, and 345 in part 7.1 apply to substances or articles that are categorised only as explosives under the GHS (subsection 328(5)).

**Division 7.1.2**      ***Obligations relating to safety data sheets and other matters***

This Division imposes duties on importers, manufacturers, suppliers of hazardous chemicals about classification, packing and labelling, safety data sheets and disclosure of chemical identities and it imposes obligations on PCBUs in respect of labelling and safety data sheets.

**Subdivision 7.1.2.1**      ***Obligations of manufacturers and importers***

**Section 329**      ***Classification of hazardous chemicals***

Section 329 requires a manufacturer or importer to determine whether a substance, mixture or article manufactured or imported is a hazardous chemical and, if so, to correctly classify the hazardous chemical as required under Part 9.1 of Schedule 9 before supplying it to a workplace.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 330**      ***Manufacturer or importer to prepare and provide safety data sheets***

Section 330 provides that a manufacturer or importer of a hazardous chemical must prepare a safety data sheet before manufacturing or importing the hazardous chemical or, as soon as practicable before supplying it to a workplace. The safety data sheet must include the information outlined in Part 7.1 of Schedule 7 unless the hazardous chemical is a research chemical, waste product or sample for analysis when section 331 applies. The manufacturer or importer is responsible for reviewing the safety data sheet every 5 years and amending it as required under this clause and must provide the current safety data sheet for the hazardous chemical to any person if they are likely to be effected by the chemical or they request it (subsections 330(3) and 330(4)).

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 331**      ***Safety data sheets—research chemical, waste product or sample for analysis***

Section 331 requires the manufacturer or importer of a hazardous chemical which is a research chemical, waste product or sample for analysis to prepare a safety data sheet that complies with Part 7.2 of Schedule 7 if it is not reasonably practicable to comply with Part 7.1 of Schedule 7 (subsection 331(2)).

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 332**      ***Emergency disclosure of chemical identities to registered medical practitioner***

Section 332 places a responsibility on the manufacturer or importer of a hazardous chemical to provide specific information on the hazardous chemical to a registered medical practitioner as soon as practicable if the medical practitioner believes a patient has been exposed to a

hazardous chemical in the workplace and requests information in writing for the purpose of treating the patient.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 333                    *Emergency disclosure of chemical identities to emergency service worker***

Section 333 requires the manufacturer or importer of a hazardous chemical to provide the chemical identity of an ingredient of the hazardous chemical to an emergency service worker as soon as practicable after the worker requests it.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 334                    *Packing hazardous chemicals***

Section 334 provides that the manufacturer or importer of a hazardous chemical must ensure that it is correctly packed in accordance with Part 9.2 of Schedule 9 as soon as practicable after the hazardous chemical is manufactured or imported.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 335                    *Labelling hazardous chemicals***

Section 335 requires the manufacturer or importer of a hazardous chemical to ensure that the hazardous chemical is correctly labelled as soon as practicable after manufacturing or importing the hazardous chemical.

Subsection 335(2) sets out two ways in which a hazardous chemical can be ‘correctly labelled’. Firstly a hazardous chemical can be correctly labelled if the selection and use of the label elements is in accordance with the GHS and it complies with Part 3 of Schedule 9. Alternatively, a hazardous chemical can be correctly labelled if the label includes content that complies with another labelling requirement, provided the content is the same, or substantially the same, as the content that is required by Part 9.3 of Schedule 9.

Subsections 335(3), (4), (5) & (6) exempts hazardous chemicals from this regulation which are:

- consumer products and labelled in accordance with the *Standard for the Uniform Scheduling of Medicines and Poisons 2011* which comply with the provisions in this regulation;
- hazardous chemicals in transit;
- hazardous chemicals which are a therapeutic agent under the *Therapeutic Goods Act 1989* (Cth) and is intended for human consumption or for the administration or use by a person and is labelled according to that Act; and
- toiletries and cosmetics.

Subsection 335(7) exempts hazardous chemicals from this regulation that are:

- a veterinary chemical product within the meaning of the Agvet Code;



- a hazardous chemical that is listed in the Standard for the Uniform Scheduling of Medicines and Poisons, Part 4, Schedule 4, if the chemical product is packaged and supplied in a form intended for direct administration to an animal for therapeutic purposes,
- a hazardous chemical listed in the Poisons Standard Part 4, Schedule 8.

Sub-regulation 335(8) makes it clear that this section does not apply to illicit drugs that are seized under the *Drugs of Dependence Act 1989*.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

### ***Subdivision 7.1.2.2 Obligations of suppliers***

#### ***Section 336 Restriction on age of person who can supply hazardous chemicals***

Section 336 prohibits a PCBU from directing or allowing a worker to supply a hazardous chemical that is a flammable gas or flammable liquid to another person, such as refuelling a car or decanting fuel into a fuel container, unless the worker is at least 16 years of age.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

#### ***Section 337 Retailer or supplier packing hazardous chemicals***

Section 337 prevents a supplier of a hazardous chemical from supplying that chemical to another workplace if the supplier knows or should know that the hazardous chemical is not correctly packed. This section requires that a retailer who supplies a hazardous chemical in a container provided by a person must ensure that the hazardous chemical is correctly packed.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

#### ***Section 338 Supplier labelling hazardous chemicals***

Section 338 prevents a supplier of a hazardous chemical from supplying that chemical to another workplace if the supplier knows or should know that the hazardous chemical is not correctly labelled in accordance with section 335.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

#### ***Section 339 Supplier to provide safety data sheets***

Section 339 requires that the supplier of a hazardous chemical to a workplace ensure that the current safety data sheet for the hazardous chemical is provided at the time the hazardous chemical is first supplied to the workplace. If the safety data sheet is amended, it must be provided at the time when the hazardous chemical is first supplied to the workplace after the amendment.

A hazardous chemical is taken to be first supplied to a workplace if the supply is the first supply of the hazardous chemical for 5 years. In addition, a supplier of a hazardous chemical must provide a current safety data sheet to a person at the workplace on request (sub-

regulation 339(3)). A supplier of a hazardous chemical is exempt from this regulation if the hazardous chemical is a consumer product or the supplier is a retailer.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 340**                    ***Supply of prohibited and restricted carcinogens***

Section 340(1) prevents the supplier of a prohibited carcinogenic substance from supplying the substance unless evidence is provided that the substance is to be used, handled or stored for genuine research or analysis. In addition, the person to be supplied with the substance must apply and receive authorisation from the regulator to use, handle or store the substance under section 384 or the regulator has granted an exemption to the person under Part 11.2 for this purpose.

The maximum penalty for contravening subsection 340(1) is \$6 000 for an individual and \$30 000 for a body corporate.

Subsection 340(2) prevents the supplier of a restricted carcinogenic substance from supplying the substance for restricted use unless evidence is provided that the person has applied to and received from the regulator authorisation to use, handle or store the substance under section 384 or the regulator has granted an exemption to the person under Part 11.2 for this purpose.

The maximum penalty for contravening subsection 340(2) is \$6 000 for an individual and \$30 000 for a body corporate

Subsections 340(3) and 340(4) requires the supplier under subsections 340(1) and 340(2) to keep a record of the name of the person supplied and the name and quantity of the substance supplied for a period of 5 years after the substance was supplied.

The maximum penalty for contravening these subsections is \$1 250 for an individual and \$6 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offences in this section.

**Subdivision 7.1.2.3**    ***Obligations of persons conducting businesses or undertakings***

**Section 341**                    ***Labelling hazardous chemicals—general requirement***

Section 341 requires the PCBU to ensure that a hazardous chemical used, stored or handled at the workplace is correctly labelled as required under section 335.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

Subsection 341(2) provides that a PCBU is not required to ensure that a hazardous chemical used, handled or stored at the workplace is correctly labelled in accordance with section 335 if the chemical:

- was supplied to the PCBU before 29 March 2018, and

- was, at the time it was supplied, labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* as in force at that time.

**Section 342                      *Labelling hazardous chemicals—containers***

Section 342 provides that a PCBU at a workplace must ensure that a hazardous chemical is correctly labelled in accordance with section 335 if the hazardous chemical is manufactured at the workplace or transferred or decanted from its original container at the workplace.

A PCBU is not required to ensure that a hazardous chemical is correctly labelled in accordance with section 335 if the chemical:

- was manufactured, or transferred or decanted from its original contained at the workplace, before 29 March 2018, and
- was at the time it was manufactured, or transferred or decanted from its original contained at the workplace, labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* as inforce at that time.

Subsection 342(3) requires that a container labelled for a hazardous chemical be used only for the use, handling or storage of the hazardous chemical.

Subsection 342(4) provides that section 342 do not apply if the hazardous chemical in the container is used immediately after it is put into the container and the container is thoroughly cleaned immediately after use to remove any trace of the hazardous chemical.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 343                      *Labelling hazardous chemicals—pipe work***

Section 343 requires a PCBU at a workplace to ensure that a hazardous chemical in pipe work is identified as far as is reasonably practicable by a label, sign or by another method on or near the pipe work.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 344                      *Person conducting business or undertaking to obtain and give access to safety data sheets***

Section 344 provides that a PCBU must obtain the current safety data sheet for a hazardous chemical prepared by an Australian manufacturer, importer or supplier of the hazardous chemical when or before the hazardous chemical is first supplied to the workplace or as soon as practicable after the hazardous chemical has been supplied but before it is used in the workplace. If the safety data sheet has been amended, it must be obtained when or before the hazardous chemical is first supplied to the workplace after the amendment. A hazardous chemical is considered to be first supplied to a workplace where it is the first supply for 5 years (subsection 344(2)).

The maximum penalty for contravening subsection 344(1) is \$6 000 for an individual and \$30 000 for a body corporate.

Subsection 344(3) requires a current safety data sheet for a hazardous chemical to be accessible to a worker involved in using, handling or storing a hazardous chemical at a workplace and an emergency service worker or anyone else who is likely to be exposed to the hazardous chemical at the workplace.

Subsection 344(4) provides that the requirements in this section do not apply to a hazardous chemical that is:

- in transit; or
- where the PCBU is a retailer and the hazardous chemical is a consumer product intended for supply to other premises only; or
- to be used in the workplace in quantities and methods that are consistent with domestic use.
- In these circumstances, information about the safe use, handling and storage of the hazardous chemical including the current safety data sheet must be accessible to a worker in the workplace and to an emergency service worker or anyone likely to be exposed to the hazardous chemical in the workplace.

The maximum penalty for contravening subsections 344(3), (5) and (6) is \$3 600 for an individual and \$18 000 for a body corporate.

### **Section 345**            ***Changes to safety data sheets***

Section 345 prevents a PCBU from changing a safety data sheet for a hazardous chemical unless the person is an importer or manufacturer and amends the safety data sheet as allowed under regulation 330.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

### **Division 7.1.3**            ***Register and manifest of hazardous chemicals***

#### **Subdivision 7.1.3.1** ***Hazardous chemicals register***

### **Section 346**            ***Hazardous chemicals register***

Section 346 requires a PCBU to prepare, keep and update a register of hazardous chemicals used, handled or stored at the workplace.

The maximum penalty for contravening subsection 346(1) is \$6 000 for an individual and \$30 000 for a body corporate.

The register must include the current safety data sheet for each hazardous chemical listed and be made available to a worker involved in using, handling or storing a hazardous chemical and to anyone else likely to be affected by a hazardous chemical at the workplace. The maximum penalty for contravening this requirement is \$3 600 for an individual and \$18 000 for a body corporate.

Subsection 346(4) exempts hazardous chemicals in transit from this regulation or the hazardous chemical is a consumer product and the person is not required to obtain a safety data sheet under section 344.

### ***Subdivision 7.1.3.2 Manifest of Schedule 11 hazardous chemicals***

#### ***Section 347 Manifest of hazardous chemicals***

Section 347 states that a PCBU must prepare a manifest of hazardous chemicals if the hazardous chemicals used, handled or stored at the workplace are identified as a Schedule 11 chemical or group of chemicals that exceed the manifest quantity threshold in Schedule 11. The manifest must be amended to reflect any change in the type or quantity of Schedule 11 chemicals, must comply with Schedule 12 and be available for inspection and kept in a place acceptable to the emergency service organisation for the emergency service organisation's ready access (sub-regulations 347(3) and 347(4)).

The maximum penalty for contravening subsection 347(1) is \$6 000 for an individual and \$30 000 for a body corporate.

The maximum penalty for contravening subsection 347(3) is \$3 600 for an individual and \$18 000 for a body corporate.

#### ***Section 348 Regulator must be notified if manifest quantities to be exceeded***

Section 348 requires the PCBU to provide the regulator with a written notice if the quantity of a Schedule 11 hazardous chemical or group of chemicals used, handled or stored at the workplace exceeds the manifest quantity threshold in Schedule 11.

Subsection 348(2) requires written notice to be given to the regulator immediately after it is first known that a Schedule 11 chemical or group of chemicals will be used, handled or stored at the workplace or at least 14 days before Schedule 11 chemicals are first used. In addition, notice must be given immediately after it is known that there is a significant change in the risk of using, handling or storing Schedule 11 chemicals at a workplace or at least 14 days before the change takes effect.

Subsection 348(4) also requires notice to be given as soon as practicable if a Schedule 11 chemical or group of chemicals is no longer used, handled or stored at the workplace and is unlikely to be used, handled or stored at the workplace in the future.

This section also outlines the specific details to be included in the notice (sub-regulation 348(5)). This section also requires the PCBU to provide further information to the regulator on request (sub-regulation 348(6)).

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offences in this section.

### ***Division 7.1.4 Placards***

#### ***Section 349 Outer warning placards—requirement to display***

Section 349 states that a PCBU must ensure that an outer warning placard is displayed prominently at a workplace if the total quantity of a Schedule 11 chemical or group of chemicals exceeds the placard quantity for Schedule 11 hazardous chemicals.

The outer warning placard must comply with Schedule 13 covering placard requirements (subsection 349(2)).

Subsection 349(3) states that this section does not apply to a workplace that is a retail outlet and the Schedule 11 hazardous chemicals are used to refuel a vehicle and is either a flammable gas or flammable liquid.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 350**            **Placard—requirement to display**

Section 350 requires a PCBU to ensure that a placard is displayed prominently at a workplace if the total quantity of a Schedule 11 chemical or group of chemicals exceeds the placard quantity for Schedule 11 hazardous chemicals.

The placard must comply with Schedule 13 covering placard requirements (subsection 350(2)).

This section does not apply where Schedule 11 hazardous chemicals are in bulk in a container intended for transport or where Schedule 11 hazardous chemical is a flammable liquid stored in an underground tank at a retail outlet and used to refuel a vehicle (subsection 350(3)).

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate

**Division 7.1.5**            **Control of risk—obligations of persons conducting businesses or undertakings**

**Subdivision 7.1.5.1**    **General obligations relating to management of risk**

**Section 351**            **Management of risks to health or safety—Act, s 19**

Section 351 requires a PCBU to manage the risks to health and safety associated with using, handling, generating or storing a hazardous chemical at a workplace. Subsection 351(2) outlines the things which a PCBU must take into account when managing risks including the hazardous properties of the chemicals, any potential chemical or physical reaction between the chemical and another substance or mixture, the nature of the work to be carried out with the hazardous chemical or any other matter set out in this regulation.

**Section 352**            **Review of control measures**

Section 352 states that a PCBU must ensure that measures implemented to control risks in relation to hazardous chemicals in the workplace are reviewed and, as necessary, revised in circumstance outlined under this regulation. Control measures should be reviewed and revised in response to the circumstances set out in this regulation. Control measures should also be reviewed and revised if monitoring carried out under section 50 of the WHS Regulation determines that the airborne concentration of hazardous chemicals at the workplace exceeds the relevant exposure standard. Otherwise control measures should be reviewed and revised every 5 years.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate

**Section 353**      **Safety signs**

Section 353 applies if a safety sign is required to control an identified risk in relation to using, handling, generating or storing hazardous chemicals at a workplace. Subsection 353(2) requires a PCBU to display a safety sign at a workplace to warn of a particular hazard associated with hazardous chemicals at the workplace or to indicate the responsibilities of a particular person in relation to the hazardous chemicals. Subsection 353(3) requires the safety sign to be located next to the hazard and clearly visible to a person approaching the hazard. A safety sign in this section does not include a placard (subsection 353(4)).

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 354**      **Identification of risk of physical or chemical reaction**

Section 354 requires a PCBU to identify any risk of a physical or chemical reaction in relation to hazardous chemicals used, handled, generated or stored at the workplace unless the hazardous chemical undergoes a physical or chemical reaction due to a manufacturing process or as part of a deliberate process or activity at the workplace.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

Subsection 354(3) requires a PCBU to take reasonable steps to ensure that a hazardous chemical is used, stored or handled to prevent contamination of food, food packaging or personal use products such as cosmetics. This requirement does not apply to the use of hazardous chemical for agricultural purposes when used in accordance with *Environment Protection Regulation 2005* (subsection 354(4)).

**Section 355**      **Specific control—fire and explosion**

Section 355 means that, where there is a possibility of fire or explosion in a hazardous area caused by an ignition source being introduced into the area, a PCBU at a workplace must exclude the ignition source from the area either outside or within the space.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 356**      **Keeping hazardous chemicals stable**

Section 356 requires a PCBU at a workplace to ensure as far as is reasonably practicable that a hazardous chemical does not become unstable, decompose or change in a way that would create a hazard which is different to the original hazard created by the hazardous chemical or which would significantly increase the risk associated with any hazard in relation to the hazardous chemical as outlined in this regulation.

Subsection 356(2) means that, where the stability of a hazardous chemical at a workplace is dependent on the maintenance of the proportions of ingredients of the hazardous chemical, the PCBU must maintain the proportions as stated in the safety data sheet or by the manufacturer of the hazardous chemical. Where a hazardous chemical is known to be unstable above a particular temperature, the PCBU must ensure that the hazardous chemical is used, handled or stored at the workplace below that temperature.

However, this section does not apply if the hazardous chemical is allowed to change or become unstable without risk to health and safety as part of a deliberate process or activity at the workplace or undergoes a chemical reaction in a manufacturing process.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

#### ***Subdivision 7.1.5.2 Spills and damage***

##### ***Section 357 Containing and managing spills***

Section 357 means that, where there is a risk of a spill or leak of a hazardous chemical in a solid or liquid form, the PCBU must ensure, so far as is reasonably practicable, that a spill containment system is provided to contain the spills or leaks within the workplace including any resulting effluent as outlined in this regulation. In addition, the PCBU must ensure that the spill containment system provides for the clean-up and disposal of a hazardous chemical that spills or leaks and any resulting effluent. The spill containment system provided by the PCBU must not create a hazard by bringing together incompatible (defined in subsection 357(4)) hazardous chemicals to cause a fire, explosion, harmful reaction or flammable, toxic or corrosive vapour.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

##### ***Section 358 Protecting hazardous chemicals from damage***

Section 358 states that a PCBU must ensure that containers of hazardous chemicals and any associated pipe work or attachments are protected against damage caused by an impact or excessive load so far as is reasonably practicable.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

#### ***Subdivision 7.1.5.3 Emergency plans and safety equipment***

##### ***Section 359 Fire protection and firefighting equipment***

Section 359 means that a PCBU must ensure that the workplace is provided with fire protection and firefighting equipment designed and built for the types and amounts of hazardous chemicals at the workplace. The fire protection and firefighting equipment must take account of the matters set out in this section. In addition, the equipment must also be properly installed, tested and maintained with a dated record kept of the latest testing results and maintenance.

Subsection 359(2) states that, if a part of the fire protection and firefighting equipment provided at the workplace becomes unserviceable or inoperative, the PCBU must assess the implications, implement alternative measures to manage the risks and ensure that the equipment is returned to full operation as soon as practicable.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate



**Section 360            *Emergency equipment***

Section 360 requires a PCBU at a workplace that uses, handles, generates or stores hazardous chemicals to ensure that equipment is always available at the workplace to use in an emergency.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 361            *Emergency plans***

Section 361 states that, where the quantity of a Schedule 11 hazardous chemical at a workplace exceeds the manifest quantity, the PCBU must give a copy of an emergency plan prepared under Division 3.2.4 of Part 3.2 of the WHS Regulation to the primary emergency services organisation and revise the plan in response to a written recommendation from the organisation about the content or effectiveness of the plan.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 362            *Safety equipment***

Section 362 means that, where safety equipment is required to control an identified risk regarding using, handling, generating or storing hazardous chemicals at a workplace, the PCBU must ensure that the safety equipment is provided, maintained and readily accessible to persons at the workplace.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

***Subdivision 7.1.5.4 Storage and handling systems***

**Section 363            *Control of risks from storage or handling systems***

Section 363 requires a PCBU to ensure that a system used at the workplace for the handling, use or storage of hazardous chemicals is used only for the purpose for which it was designed, manufactured, modified, supplied or installed. This section also requires the system to be operated, tested, maintained, installed, repaired and decommissioned having regard to the health and safety of workers and other people at the workplace.

Subsection 363(2) also requires sufficient information, training and instruction must be given to the person who operates, tests, maintains or decommissions a system used for hazardous chemicals at a workplace in order to ensure that the Activity is carried out safely.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 364            *Containers for hazardous chemicals used, handled or stored in bulk***

Section 364 requires a PCBU to ensure that a container, in which a hazardous chemical is used, handled or stored in bulk, and any associated pipe work or attachments, have stable foundations and supports to which they are secured in order to prevent any damage to, or movement between, the container, pipe work and attachments and to prevent a notifiable incident.

The maximum penalty for contravening this section is \$1 250 for an individual and \$6 000 for a body corporate.

**Section 365**                    ***Stopping use and disposing of handling systems***

Section 365 provides that a PCBU intending to stop using or to dispose of a system used for hazardous chemicals at a workplace must ensure, so far as is reasonably practicable, that the system is free of the hazardous chemicals or is disposed of. If it is not reasonably practicable to remove the hazardous chemicals from the system, the PCBU must correctly label the system.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 366**                    ***Stopping use of underground storage and handling systems***

Section 366 provides that a PCBU intending to stop using or to dispose of a system used for hazardous chemicals underground must ensure, so far as is reasonably practicable, that the system is removed or disposed of. If it is not reasonably practicable to remove the underground system, the PCBU must ensure that the system is without risk to health and safety.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 367**                    ***Notification of abandoned tank***

Section 367 applies to a PCBU at a workplace if the person controls or manages an underground, partially underground or fully mounded tank. It states that a tank used to store flammable gases and flammable liquids at a workplace, is deemed to be abandoned if the tank has not been used for this purpose for 2 years or it is not intended that the tank be used in this way again. This section requires the PCBU to notify the regulator of the abandonment of the tank as soon as practicable. A tank is defined for this section as including fittings, closures and other equipment attached to the container.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Division 7.1.6**                ***Health monitoring***

**Section 368**                    ***Duty to provide health monitoring***

Section 368 requires a PCBU to ensure that health monitoring is provided to a worker using, handling, generating or storing hazardous chemicals at a workplace in the circumstances set out in this regulation.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 369**                    ***Duty to inform of health monitoring***

Section 369 states that a PCBU required to provide health monitoring to a worker must give information about the health monitoring requirements both to a person carrying out work

using, handling, generating or storing a hazardous chemical and to a worker before the worker commences work using, handling or storing a hazardous chemical.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 370**            ***Duty to ensure that appropriate health monitoring is provided***

Section 370 states that a PCBU, who must provide health monitoring to a worker under section 368, should adopt the type of health monitoring referred to in Schedule 14, table 14.1, column 3 unless an equal or better type of health monitoring procedure is available and recommended by a medical practitioner with experience in health monitoring.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 371**            ***Duty to ensure health monitoring is supervised by registered medical practitioner with experience***

Section 371 requires a PCBU to ensure that the health monitoring of a worker referred to in section 368 is carried out under the supervision of a registered medical practitioner with experience in health monitoring.

The maximum penalty for contravening subsection 371(1) is \$6 000 for an individual and \$30 000 for a body corporate.

The PCBU must consult the worker in relation to the selection of the medical practitioner.

The maximum penalty for contravening subsection 371(2) is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 372**            ***Duty to pay costs of health monitoring***

Section 372 provides for a PCBU to pay all expenses related to health monitoring referred to in section 368. This section also provides for an agreement to be made about sharing costs where more than one PCBU has a duty to provide health monitoring for a worker.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 373**            ***Information that must be provided to registered medical practitioner***

Section 373 states that a PCBU commissioning health monitoring for a worker must provide the information outlined in this section, including the name and address of the PCB and the name and date of birth of the worker to the registered medical practitioner supervising the health monitoring.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 374**            ***Duty to obtain health monitoring report***

Section 374 states that a PCBU who commissioned health monitoring referred to in section 368 is responsible for obtaining a health monitoring report from the registered medical practitioner who supervised the monitoring as soon as practicable after the

monitoring has been carried out. This section prescribes the information to be provided in the health monitoring report.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 375**            ***Duty to give health monitoring report to worker***

Section 375 requires the PCBU who commissions health monitoring to give a copy of the health monitoring report to the worker as soon as practicable after the PCBU obtains the report.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 376**            ***Duty to provide health monitoring report to regulator***

Section 376 sets out specific circumstances in which a PCBU who commissioned the health monitoring for a worker must give a copy of the health monitoring report to the regulator.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 377**            ***Duty to provide health monitoring report to relevant persons conducting business or undertakings***

Section 377 provides that a PCBU who commissions health monitoring for a worker under section 368 must give a copy of the health monitoring report to all other PCBUs who have a duty to provide health monitoring for the worker as soon as practicable after obtaining the report.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 378**            ***Health monitoring records***

Section 378 requires the PCBU to ensure that health monitoring reports in relation to a worker are kept as a confidential record for at least 30 years after the record is made and must not be disclosed to someone else without the worker's written consent except for purposes set out in the section.

The maximum penalty for contravening this section is \$1 250 for an individual and \$6 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offences in this section.

**Division 7.1.7**            ***Induction, information, training and supervision***

**Section 379**            ***Duty to provide supervision***

Regulation 379 requires a PCBU to provide any supervision to a worker necessary to protect them from risks to health and safety arising from circumstances set out in this regulation. The PCBU to ensure that the supervision of the worker is suitable and adequate in terms of the

nature of the risks associated with the hazardous chemical and that the information, training and instruction provided is compliant with section 39 and subsection 19(3)(f) of the WHS Act.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

***Division 7.1.8 Prohibition, authorisation and restricted use***

***Section 380 Using, handling and storing prohibited carcinogens***

Regulation 380 prevents a PCBU from using, handling or storing or directing or allowing a worker to use, handle or store a prohibited carcinogen referred to in parts of Schedule 10 except in circumstances set out in this section. The prohibited carcinogen is allowed if it is used handled or stored for genuine research and analysis and the regulator has authorised the use, handling or storing of the prohibited carcinogen under section 384.

A breach of this provision constitutes a breach of section 43 of the WHS Act.

***Section 381 Using, handling and storing restricted carcinogens***

Regulation 381 prevents a PCBU from using, handling or storing or directing or allowing a worker to use, handle or store a restricted carcinogen referred to in specific clauses of Schedule 10 unless the restricted carcinogen is used handled or stored for genuine research and analysis and the regulator has authorised the use, handling or storing of the restricted carcinogen under section 384.

A breach of this provision constitutes a breach of section 43 of the WHS Act.

***Section 382 Using, handling and storing restricted hazardous chemicals***

Section 382 prevents a PCBU from using, handling or storing or directing or allowing a worker to use, handle or store a restricted hazardous chemical referred to in specific parts of Schedule 10 for the purpose outlined in that Schedule.

Subsection 382(2) prevents a PCBU from using, handling or storing or directing or allowing a worker to use, handle or store polychlorinated biphenyls (PCBs) unless the use, handling or storing is in relation to specific circumstances set out in this subsection, being in relation to existing electrical equipment or construction material; for disposal purposes or for genuine research or analysis.

A breach of this provision constitutes a breach of section 43 of the WHS Act.

***Section 383 Application for authorisation to use, handle or store prohibited and restricted carcinogens***

Section 383 outlines the requirements for the PCBU to apply in writing to the regulator for authorisation to use, handle or store a prohibited or restricted carcinogen referred to in Schedule 10 at the workplace. This section outlines what must be included in the application.

***Section 384 Authorisation to use, handle or store prohibited and restricted carcinogens***

Section 384 states that a regulator may grant an authorisation to a PCBU who applies under section 383 to use, handle or store a prohibited or restricted carcinogen at the workplace only

if the carcinogen will be used, handled or stored for genuine research or analysis. In addition the regulator may authorise a PCBU to use, handle or store a restricted carcinogen at the workplace if the carcinogen will be used for the purpose referred to in Schedule 10.

Subsection 384(2) and 384(5) allows the regulator to refuse to authorise the use, handling or storage of the carcinogen for a use not referred to in the regulation or to impose any conditions necessary to achieve the objectives of the WHS Act or the WHS Regulation. The decision to refuse an authorisation is a reviewable decision under section 676.

A decision to cancel an authorisation is also a reviewable decision under section 676.

**Section 385**                    ***Changes to information in application to be reported***

Section 385 states that a PCBU applying under section 383 for authorisation to use, handle or store a prohibited or restricted carcinogen must give the regulator written notice of any change in information given in the application as soon as practicable after the PCBU becomes aware of the change.

The maximum penalty for contravening this is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 386**                    ***Regulator may cancel authorisation***

Section 386 allows the regulator to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen if the PCBU has not complied with a condition of the authorisation or the risk to the health and safety of a worker from the prohibited or restricted carcinogen has changed since the authorisation was granted.

A decision to cancel an authorisation is a reviewable decision under section 676.

**Section 387**                    ***Statement of exposure to be given to workers***

Section 387 requires a PCBU, authorised under section 384 to use, handle or store a prohibited or restricted carcinogen at the workplace, to provide the worker using, handling or storing the carcinogen a written statement at the end of their engagement containing the information required under this regulation.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 388**                    ***Records to be kept***

Section 388 states that a PCBU, authorised under section 384, must record details of each worker likely to be exposed to the carcinogen during the authorisation period and must keep a copy of each authorisation including conditions imposed on the authorisation. The PCBU must keep the records for 30 years after the authorisation ends.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Division 7.1.9 Pipelines**

**Section 389 Management of risk by pipeline owner**

Section 389 requires the owner of a pipeline used to transfer hazardous chemicals to manage the risks associated with the transfer of the hazardous chemical through the pipeline. This includes risks associated with the testing, installation, commissioning, operation, maintenance and decommissioning of the pipeline.

The owner of a pipeline used to transfer hazardous chemicals must ensure, so far as is reasonably practicable, that an activity, structure, equipment or substance that is not part of the pipeline does not affect the hazardous chemicals or the pipeline in a way that increases risk. General risk management requirements are outlined in part 2.1 of the WHS Regulation.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 390 Pipeline builder's duties**

Section 390 requires a builder of a pipeline that will cross into a public place and be used to transfer Schedule 11 hazardous chemicals to provide the regulator, before building commences, with information outlined in subsection 390(2). The circumstances in which information must be provided to the regulator is set out in this section.

The maximum penalty for contravening this section is \$1 250 for an individual and \$6 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offences in this section.

**Section 391 Management of risk to health and safety by pipeline operator—Act, s 19**

Section 391 requires a PCBU who operates a pipeline used to transfer hazardous chemicals to manage risks to health and safety arising from the activity as outlined under general risk management requirements in part 3.1 of the WHS Regulation.

The PCBU operating the pipeline must ensure that the hazardous chemical is identified by a label, sign or another method on or near the pipeline (subsection 391(2)).

The maximum penalty for contravening subsection 391(2) is \$6 000 for an individual and \$30 000 for a body corporate.

Subsection 391(3) states that the operator of the pipeline that transfers a Schedule 11 hazardous chemical into a public place must notify the regulator of the supplier and receiver of the hazardous chemical and its correct classification.

The maximum penalty for contravening subsection 391(3) is \$1 250 for an individual and \$6 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offences in this section.

## **Part 7.2                    Lead**

This Part applies where lead processes, within the meaning of section 392 are carried out at a workplace. It imposes duties on a PCBU at a workplace to provide information to workers about a lead process, to control risk of lead contamination using specified measures, to identify and notify the regulator of lead risk work, within the meaning of section 394, and provide health monitoring of workers in respect of lead risk work.

### **Division 7.2.1            Lead process**

#### **Section 392                Meaning of lead process – pt 7.2**

Section 392 outlines the Activities in a workplace which are defined as a lead process.

#### **Section 393                Regulator may decide lead process**

Section 393 allows the regulator to decide that a process at a workplace is a lead process if the regulator decides on reasonable grounds that the process creates a risk to the health of a worker in relation to blood lead levels of workers or airborne lead levels at the workplace. This section requires the regulator to give written notice of the decision made in relation to a lead process to the PCBU within 14 days of making that decision.

A decision that a process is a lead process is a reviewable decision under section 676.

#### **Section 394                Meaning of lead risk work – pt 7.2**

Section 394 states that lead risk work means work carried out in a lead process which is likely to cause the blood lead level of a worker to exceed the thresholds outlined in this section.

#### **Section 395                Duty to give information about health risks of lead process**

Section 395 requires a PCBU carrying out a lead process to give information about the lead process to a person before being engaged as a worker to carry out the lead process or to a worker in the circumstances set out in this section. The information must contain the health risks and toxic effects of exposure to lead and the need for and details of health monitoring under Division 7.2.4 of part 7.2.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

### **Division 7.2.2            Control of risk**

#### **Section 396                Containment of lead contamination**

Section 396 requires the PCBU to ensure, as far as is reasonably practicable, that contamination by lead is confined to a lead process area at the workplace.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

#### **Section 397                Cleaning methods**

Section 397 states that the PCBU must ensure that a lead process area at the workplace is kept clean and that the cleaning methods do not create a risk to the health of persons in the



immediate vicinity of the area and do not have the potential to spread the contamination of lead.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 398**                    ***Prohibition on eating, drinking and smoking***

Section 398 provides that a PCBU must take reasonable steps to ensure that a person does not eat, drink, chew gum, smoke or carry materials used for smoking in a lead process area at the workplace. The PCBU must provide workers with an eating and drinking area that, so far as is reasonably practicable, cannot be contaminated with lead from a lead process.

The maximum penalty for contravening this subsection 398(1) is \$6 000 for an individual and \$30 000 for a body corporate.

The maximum penalty for contravening this subsection 398(2) is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 399**                    ***Provision of changing and washing facilities***

Section 399 requires a PCBU to provide and maintain changing rooms, washing, showering and toilet facilities in good working order at the workplace to minimise secondary lead exposure from contaminated clothing, to minimise the ingestion of lead and to avoid the spread of lead contamination. The PCBU must ensure, so far as is reasonably practicable, that workers remove clothing and equipment contaminated with lead, and wash their hands and faces, before entering an eating or drinking area at the workplace.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 400**                    ***Laundry, disposal and removal of personal protective equipment***

Section 400(1) provides that a PCBU must ensure that personal protective equipment likely to be contaminated with lead dust must be sealed in a container and disposed of at the completion of the lead process work at a site equipped to accept lead-contaminated equipment. If it is not reasonably practicable to dispose of the personal protective equipment that is clothing, the clothing should be laundered at a laundry equipped to launder lead-contaminated clothing or be kept in a sealed container until it is re-used for lead process work. If it is not reasonably practicable to dispose of the personal protective equipment that is not clothing, such as work boots, the personal protective equipment should be decontaminated before it is removed from the lead process area or be kept in a sealed container until it is re-used for lead process work.

Subsection 400(2) states that the PCBU must ensure that the sealed container referred to in subsection 400(1) is decontaminated before being removed from the lead process area. Under section 335, the container must also be labelled to indicate the presence of lead.

Subsection 400(3) provides that a PCBU must take all reasonable steps to ensure that clothing contaminated with lead-dust is not removed from the workplace unless it is to be laundered in accordance with this regulation or disposed of.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 401**            **Review of control measures**

Section 401 requires a PCBU to review and, if necessary, revise any measures implemented to control the health risks from exposure to lead at the workplace in the circumstances set out in this regulation. A control measure should be revised if it does not control the risks it was implemented to control and in response to the situations described in this regulation. Otherwise a review of risk control measures should occur every 5 years.

Subsection 401(2) clarifies what change at the workplace includes for the purpose of subsection 401(1)(d).

Subsection 401(3) allows a health and safety representative to request a review of a control measure if they reasonably believe that any of the circumstances outlined in subsection 401(1) affects or may affect the health and safety of a member of the work group and the PCBU has not adequately reviewed the control measure in response to the circumstance.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Division 7.2.3**            **Lead risk work**

**Section 402**            **Identifying lead risk work**

Section 402 states that a PCBU must assess each lead process carried out at the workplace to determine whether lead risk work is carried out in the process. The assessment of lead process must have regard to the matters listed in subsection 402(2). The assessment of a lead process must not take into account the effect of using personal protective equipment on the health and safety of workers. If the PCBU is unable to determine whether lead risk work is carried out, the process is taken to include lead risk work unless determined otherwise.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 403**            **Notification of lead risk work**

Section 403 requires a PCBU who has determined that lead risk work is carried out at the workplace must give the regulator written notice within 7 days of the determination. The notice must state the type of lead process that includes lead risk work. The PCBU must keep a copy of the notice given to the regulator and ensure a copy is readily accessible to a worker likely to be exposed to lead and to the worker's health and safety representative.

Subsection 403(5) requires an emergency service organisation to give notice to the regulator as soon as practicable after determining, in the course of work carried out by an emergency service worker in rescuing a person or providing first aid to a person, that the work is lead risk work.

The maximum penalty for an offence under this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 404**            **Changes to information in notification of lead risk work**

Section 404 states that a PCBU must give the regulator written notice of any change in the information provided in the original notice under section 403 before the change or as soon as

practicable after the PCBU is aware of the change. The PCBU must keep a copy of the notice given to the regulator while the lead risk work is carried out and ensure a copy is readily accessible to a worker likely to be exposed to lead and to the worker's health and safety representative.

The maximum penalty for contravening this section is \$1 250 for an individual and \$6 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offences in this section.

**Division 7.2.4      *Health monitoring***

**Section 405      *Duty to provide health monitoring before first commencing lead risk work***

Section 405 requires a PCBU to ensure that health monitoring is provided to a worker before the worker first commences lead risk work with the PCBU and 1 month after the worker commences lead risk work.

If work is identified as lead risk work after a worker commences work, the PCBU must ensure that health monitoring of the worker is provided as soon as practicable after the lead risk work is identified and 1 month after the first monitoring of the worker.

The maximum penalty for an offence under this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 406      *Duty to ensure that appropriate health monitoring is provided***

Section 406 means that a PCBU must ensure that health monitoring of a worker referred to in section 405 includes health monitoring of the type referred to in schedule 14, table 14.2 unless equal or better type of health monitoring is available and its use is recommended by a registered medical practitioner with experience in health monitoring.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 407      *Frequency of biological monitoring***

Section 407 requires a PCBU to arrange biological monitoring of each worker carrying out lead risk work over specific periods. The frequency of biological monitoring and the measurement of blood lead threshold levels for different categories of workers are outlined in this section.

Subsection 407(2) states that the PCBU must increase the frequency of biological monitoring of a worker who carries out lead risk work if that activity is likely to significantly change the nature or increase the duration or frequency of the worker's lead exposure.

Subsection 407(3) allows the regulator to determine a different frequency for biological monitoring of workers carrying out lead risk work under the circumstances set out in this section. The regulator must give the PCBU written notice of this determination under subsection 407(3) within 14 days after making the determination.

The PCBU must arrange biological monitoring to be carried out at the frequency stated in the determination from the regulator under subsection 407(4). A determination of a different frequency for biological monitoring is a reviewable decision under section 676.

The maximum penalty for an offence under this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 408**            ***Duty to ensure health monitoring is supervised by registered medical practitioner with relevant experience***

Section 408 requires the PCBU to ensure that the health monitoring of a worker referred to in this Division is carried out under the supervision of a registered medical practitioner with experience in health monitoring. The PCBU must consult the worker in relation to the selection of the registered medical practitioner.

The maximum penalty for an offence under this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 409**            ***Duty to pay costs of health monitoring***

Section 409 provides that a PCBU must pay all expenses related to health monitoring referred to in this Division. This section also provides for an agreement to be made about sharing costs where more than one PCBU has a duty to provide health monitoring for a worker.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 410**            ***Information that must be provided to registered medical practitioner***

Section 410 states that a PCBU commissioning health monitoring for a worker must provide the information outlined in this section to the registered medical practitioner supervising the health monitoring.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 411**            ***Duty to obtain health monitoring report***

Section 411 states that a PCBU who commissioned health monitoring referred to in this division must take all reasonable steps to obtain a health monitoring report from the registered medical practitioner who supervised the monitoring as soon as practicable after the monitoring has been carried out. The information to be included in the health monitoring report is outlined in subsection 411(2).

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 412**            ***Duty to provide health monitoring report to worker***

Section 412 provides that the PCBU who commissioned the health monitoring report must give a copy of the report to the worker as soon as practicable after the PCBU obtains the report.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 413**                    ***Duty to give health monitoring report to regulator***

Section 413 sets out the circumstances in which a PCBU who commissioned health monitoring for a worker must give a copy of the health monitoring report to the regulator.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 414**                    ***Duty to give health monitoring report to relevant persons conducting business or undertakings***

Section 414 states that the PCBU commissioning the health monitoring report under this Division must give a copy to all other PCBUs who have a duty to provide health monitoring.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 415**                    ***Removal of worker from lead risk work***

Section 415 requires a PCBU to immediately remove a worker from carrying out lead risk work if biological monitoring of the worker shows that the worker's blood lead level is at or more than:

- for females not of reproductive capacity and males—50µg/dL (2.42µmol/L); or
- for females of reproductive capacity—20µg/dL (0.97µmol/L); or
- for females who are pregnant or breastfeeding—15µg/dL (0.72µmol/L);

In addition, the PCBU must immediately remove the worker if the registered medical practitioner recommends that the worker must be removed from lead risk work or there is an indication that a risk control measure has failed and the worker's blood lead level is likely to reach the relevant level for the worker identified in the section. The PCBU must notify the regulator as soon as practicable if a worker is removed from carrying out lead risk work under subsection 415(1).

The maximum penalty for contravening subsection 415(1) is \$6 000 for an individual and \$30 000 for a body corporate.

The maximum penalty for contravening subsection 415(2) is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 416**                    ***Duty to ensure medical examination if worker removed from lead risk work***

Section 416 requires the PCBU to arrange for a worker who is removed from lead risk work under section 415 to be medically examined by a registered medical practitioner with experience in health monitoring within 7 days after the day the worker is removed.

In addition, the PCBU must consult the worker in the selection of the registered medical practitioner.

The maximum penalty for an offence under this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 417**                    **Return to lead risk work after removal**

Section 417 states that a PCBU who expects a worker, removed from lead risk work under section 415, to return to lead risk work must arrange for health monitoring to take place by a registered medical practitioner with experience in health monitoring. The frequency of health monitoring is decided by the practitioner to determine whether the worker's blood lead level is low enough for the worker to return to carrying out lead risk work.

Subsection 417(3) prevents the PCBU from allowing the worker to return to lead risk work until the worker's blood lead level is less than:

- for females not of reproductive capacity and males—40µg/dL (1.93µmol/L); or
- for females of reproductive capacity—10µg/dL (0.48µmol/L)

In addition, the registered medical practitioner with experience in health monitoring must be satisfied that the worker is fit to return to lead risk work.

The maximum penalty for an offence under this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 418**                    **Health monitoring records**

Section 418 requires the PCBU to ensure that health monitoring reports in relation to a worker are kept as a confidential record for at least 30 years after the record is made and must not be disclosed to someone else without the worker's written consent except in the circumstances set out in the section.

The maximum penalty for contravening this section is \$1 250 for an individual and \$6 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offences in this section.

**Clause 7**                        **— Duty to train workers about asbestos**  
**Section 445(1)**

This clause amends s445(1) to allow a course in asbestos awareness to be declared.

**Clause 8**                        **— Section 445(1)(b)**

The amendments in this clause are consequential on the changes in clause 7.

**Clause 9**                        **— Section 445(1A)**

The amendments in this clause are consequential on the changes in clause 7.

**Clause 10** — **New chapter 9****Chapter 9** **Major hazard facilities**

This Chapter regulates the operation of major hazard facilities. It requires the operator of a facility or proposed facility at which specified quantities of Schedule 15 chemicals are present to notify the regulator.

It imposes duties upon operators of a determined major hazard facility during the determination period about preparation of safety case outlines, hazard identification and risk control, emergency plans, safety management systems, consultation with workers and determination of a safety role for workers. It requires major hazard facilities to be licensed, other than in the determination period.

It imposes complimentary duties upon operators of a licensed major hazard facility about safety case outlines, hazard identification and risk control, emergency plans and safety management systems, and additional duties to provide information to visitors and the local community. It also imposes duties upon workers at licensed major hazard facilities.

**Part 9.1** **Preliminary****Division 9.1.1** **Application and interpretation****Section 530** ***This Chapter does not apply to certain facilities.***

Section 530 states this chapter does not apply in relation to a facility that is regulated by the National Offshore Petroleum Safety and Environmental Management Authority under the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth).

In addition, this chapter does not apply in relation to a pipeline that is regulated under the *Gas Safety Act 2000* or the *Utilities (Technical Regulation) Act 2014*.

**Section 531** ***Meaning of major incident—ch 9***

Section 531 states that a major incident at a major hazard facility is an occurrence that results from an uncontrolled event at the facility involving, or potentially involving, Schedule 15 chemicals and exposes a person to a serious risk to health and safety emanating from an immediate or imminent exposure to the occurrence.

Subsection 531(2) describes an occurrence as including an escape, spillage or leakage, or an implosion, explosion or fire. For example, an occurrence may be initiated by equipment such as a furnace or boiler that of itself does not involve Schedule 15 materials but could indirectly cause a loss of containment of such materials from nearby equipment at the facility by fire or explosion damage.

**Section 532** ***Meaning of hazardous chemicals that are present or likely to be present***

Section 532 refers to the quantity of hazardous chemicals including Schedule 15 chemicals that would meet the maximum capacity of the facility including the maximum capacity of the items listed in the section. This section refers to the maximum quantity of hazardous chemicals which could escape into the facility in the event of a failure of a pipeline located off the premises but connected to the facility and the maximum quantity of hazardous chemicals

loaded or unloaded into or from vehicles, trailers, rolling stock and ships that are present at the facility from time to time.

Subsection 532(3) exempts Schedule 15 chemicals present or likely to be present in the tailings dam of a mine from being considered in determining whether a mine is a major hazard facility.

**Section 533**                    ***Meaning of operator of a facility or proposed facility—ch 9***

Section 533 means that the operator of the facility is the PCBU who has management or control of the facility or power to direct that the whole facility be shut down. The operator of a proposed facility includes the operator of an existing workplace or the operator of facility being designed or constructed or, if more than one person is an operator of the facility, one operator must be nominated for the purpose of this chapter and their details given to the regulator.

Subsection 533(4) requires the nominated person to inform the regulator and may include it in a notification under section 536. If a nomination is not made, the operator of the facility is taken to be each operator with management or control of the facility under subsection 533(1) who is an individual and each officer of the body corporate where the operator under subsection 533(1) is a body corporate.

**Section 534**                    ***Meaning of modification of a major hazard facility***

Section 534 refers to a change or proposed change at the major hazard facility that has or could have the effect of creating a new major incident hazard or increasing the likelihood or severity of a major incident.

Subsection 534(2) defines a change or proposed change at the facility as including a change to any plant, structure, process, chemical or other substance used in a process including the introduction of new plant, a new structure, a new process or a new chemical. It includes a change in the quantity of Schedule 15 chemicals at the facility or a change in its operator or nature of its operation; a change in the workers' safety role; a change to the facility's safety management system or an organisational change at the facility including a change in senior management.

**Division 9.1.2**                ***Requirement to be licensed***

**Section 535**                    ***A major hazard facility must be licensed—Act, s 41***

Section 535 states that a facility in which Schedule 15 chemicals are present or likely to be present in the quantity that exceeds their threshold quantity must be licensed under Part 9.7 and a facility that is determined to be a major hazard facility under section 541 must be licensed under part 9.7. Section 41 of the WHS Act does not permit a workplace which must be licensed under the WHS Regulation to operate without a licence. The operator of a licensed major hazard facility must hold the licence for the facility.

Sub-regulations 535(3) and 535(5) allow a determined major hazard facility to operate during the exemption period without a licence if the operator of the facility is considered to be a suitable person to operate the facility. The exemption period means the period between the determination of the facility as a major hazard facility and the grant of a license under part 9.7.



**Part 9.2**                    **Determinations about major hazard facilities****Section 536**                **Operators of certain facilities must notify regulator**

Section 536 requires the operator of a facility at which Schedule 15 chemicals are present or likely to be present in a quantity that exceeds 10 per cent of their threshold quantity to notify the regulator. The notification should occur as soon as practicable but no more than three months after the operator becomes aware of the circumstances in which the regulator must be notified or a longer period if the regulator is satisfied on application by the operator of a reasonable excuse for the delayed notification.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 537**                **Notification—proposed facilities**

Section 537 allows the operator of a proposed facility at which Schedule 15 chemicals are likely to be present in a quantity that exceeds 10 per cent of their threshold quantity to notify the regulator. A *proposed facility* is defined in the dictionary and the meaning of *likely to be present* is described in section 532.

Subsection 537(2) states that the notification must include information required by section 538 with any necessary changes to enable timely interaction between the regulator and the operator before the facility commences operations.

**Section 538**                **Content of notification**

Section 538 provides information on the content of the notification required under section 536. The notification must contain information about the facility and the operator of the facility and whether the operator is an individual or a body corporate.

**Section 539**                **When regulator may conduct inquiry**

Section 539 allows the regulator to conduct an inquiry under this division if notification under section 536 or 537 discloses, or the regulator reasonably suspects, that the quantity of Schedule 15 chemicals present or likely to be present at a facility exceeds 10 per cent of their threshold quantity but does not exceed their threshold quantity, or where the operator of the facility may not be a suitable person to operate the facility.

**Section 540**                **Inquiry procedure**

Section 540 sets out the procedure for the regulator to conduct an inquiry.

**Section 541**                **Determination in relation to facility, on inquiry**

Section 541 sets out the basis on which the regulator may determine a facility to be a major hazard facility if the inquiry discloses that the quantity of Schedule 15 chemicals at the facility or proposed facility exceeds 10 per cent of their threshold quantity but does not exceed their threshold quantity.

Subsection 541(2) allows the determination to be made if the regulator considers there is a potential for a major incident to occur due to the quantity or combination of Schedule 15

chemicals present or likely to be present and the type of activity involving Schedule 15 chemicals at the facility and the land use and other activities in the surrounding area.

A determination that a facility is a major hazard facility, or that a proposed facility is not a major hazard facility, is a reviewable decision under section 676.

**Section 542**                    ***Determination in relation to over-threshold facility***

Section 542 requires the regulator to make a determination that a facility is a major hazard facility if notification under section 536 or 537 discloses that the quantity of Schedule 15 chemicals present or likely to be present at a facility exceeds their threshold quantity.

A determination that a facility is a major hazard facility is a reviewable decision under section 676.

**Section 543**                    ***Suitability of facility operator***

Section 543 allows the regulator to determine that the operator of the major hazard facility or proposed major hazard facility is not a suitable person to operate the major hazard facility if the regulator is satisfied on reasonable grounds that, after conducting an inquiry under section 540, the operator is not a suitable person to operate the major hazard facility or proposed major hazard facility.

Subsection 543(3) states that the operator of the major hazard facility or proposed major hazard facility is taken to be a suitable person to operate the major hazard facility and to apply for a major hazard facility licence if no determination is made under this section.

A determination that a person is not a suitable operator is a reviewable decision under section 676.

**Section 544**                    ***Conditions on determination of major hazard facility***

Section 544 allows the regulator to impose conditions on a determination made under sections 541 or 542. Some examples of conditions that may be imposed include:

- additional control measures that must be implemented in relation to the carrying out of work or activities at the determined major hazard facility
- the provision of additional information to the regulator
- the recording or keeping of additional information

Subsection 544(3) provides that the operator of a determined major hazard facility is required to ensure that the conditions imposed by the regulator under this section are complied with.

A decision to impose a condition on a determination is a reviewable decision under section 676.

**Section 545**                    ***Notice and effect of determinations***

Section 545 sets out the processes that the regulator must follow when making a determination under this part, including the reasons for the determination, the timeframe for the determination to take effect and any conditions on the determination under section 544. Notice must be given within 14 days of making the determination.

Subsection 545(3) states that the effect of a determination under section 543 means that the operator is not taken to be a suitable person to operate the determined major hazard facility

and the exemption provided by subsection 535(3) does not apply to the determined major hazard facility. The effect of a determination under sections 541 or 542, is outlined in the definition of *determined major hazard facility*.

Subsections 545(4) and 545(5) specify when a determination takes effect and that the determination is of unlimited duration unless it is revoked.

**Section 546**                    ***When regulator may revoke a determination***

Section 546 allows the regulator to revoke a determination under this part if, after consultation with the major hazard facility's contact person or operator, the regulator is satisfied that the reasons for the determination no longer apply.

**Section 547**                    ***Re-notification if quantity of Schedule 15 chemicals increases***

Section 547 applies to a facility which provided notification under sections 536 or 537 that the Schedule 15 chemicals present or likely to be present exceeds 10 per cent of their threshold quantity but did not exceed their threshold quantity and was determined not to be a major hazard facility under section 541.

Subsection 547(2) requires the operator of the facility or proposed facility to re-notify the regulator under sections 536 or 537 if the quantity of Schedule 15 chemicals present or likely to be present at the facility increases, or is likely to increase, to a level that exceeds the level previously notified to the regulator.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 548**                    ***Notification by new operator***

Section 548 applies to a new operator of a facility, determined to be a major hazard facility by the regulator under section 543 under a previous operator. The new operator is required to notify the regulator of relevant information specified in subsection 538(2). A notification under this section applies as if it were a notification under section 536.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 549**                    ***Time in which major hazard facility licence must be applied for***

Section 549 provides that the operator of a determined major hazard facility must apply for a major hazard facility licence within 24 months after the determination of the facility. The regulator may extend the time in which the operator of a determined major hazard facility must apply for a licence if satisfied, on application by the operator, that there has not been sufficient time to comply with Part 9.3.

**Part 9.3**                    ***Duties of Operators of Determined Major Hazard Facilities***

The operator of a determined major hazard facility is required to comply with this part for a specified period and to prepare a safety case in order to apply for a major hazard facility licence. The WHS Act and chapter 7 of the WHS Regulations (Hazardous Chemicals) continue to apply to a determined major hazard facility.

**Division 9.3.1      Application—Pt 9.3**

**Section 550          Application—Pt 9.3**

Section 550 means that this part ceases to apply to a determined major hazard facility at the end of the exemption period applying to that facility under section 535.

**Division 9.3.2      Determined major hazard facility—safety case outline**

**Section 551          Safety case outline must be provided**

Section 551 requires the operator of a determined major hazard facility to provide the regulator with a safety case outline for the major hazard facility within 3 months after the facility is determined to be a major hazard facility.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 552          Safety case outline—content**

Section 552 specifies the content that a safety case outline must cover.

**Section 553          Safety case outline—Alteration**

Section 553 allows the regulator to require the operator to alter the outline of the safety case if the regulator is not satisfied that a safety case outline provided by the operator of a determined major hazard facility will lead to the development of a safety case that complies with section 561.

Subsections 553(2) and 553(3) set out the procedure for the regulator to inform and advise the operator of the requirement to alter a safety case outline, to consider any submission made by the operator and the timeframe for the regulator to inform the operator of the decision on the alteration.

Subsections 553(4), 553(5) and 553(6) provide that the operator must alter the outline as required and give the regulator a copy of the safety case outline that has been altered under this section or that has been altered by the operator under the operator's initiative. The safety case outline as altered becomes the safety case outline for the major hazard facility.

The maximum penalty for an offence under this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Division 9.3.3      Determined major hazard facility—management of risk**

**Section 554          Determined major hazard facility—identification of major incidents and major incident hazards**

Section 554 requires the operator of a determined major hazard facility to identify all major incidents that could occur in the course of the operation of the major hazard facility and all major incident hazards for the major hazard facility including those relating to the security of the major hazard facility.

Subsection 554(2) states that, in complying with section 554, the operator must have regard to any advice and recommendations given by the relevant emergency service organisations

and any government department or agency with a regulatory role in relation to major hazard facilities.

Subsection 554(3) provides that the operator must document all identified major incidents and major incident hazards, the criteria and methods used in identifying these hazards and any external conditions under which the major incident hazards might give rise to the major incidents, including those relating to the security of the major hazard facility.

The maximum penalty for an offence under this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 555**                    ***Determined major hazard facility—safety assessment***

Section 555 requires the operator of a determined major hazard facility to conduct a safety assessment in relation to the operation of the major hazard facility. This section also outlines the detail that must be contained in the safety assessment including the requirement to analyse all aspects of risks to health and safety associated with major incidents and the range of control measures to be implemented in response to the identified risks.

In conducting a safety assessment, the operator must consider major incidents and major incident hazards cumulatively as well as individually and use assessment methods (whether quantitative or qualitative, or both), that are suitable for the major incidents and major incident hazards being considered. The operator is required to document all aspects of the safety assessment including the methods used in investigation and analysis and the reasons for deciding which control measures to implement.

The maximum penalty for contravening subsection 555(1) or 555(4) is \$6 000 for an individual and \$30 000 for a body corporate. The maximum penalty for contravening subsection 555(5) is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 556**                    ***Determined major hazard facility—control of risk—Act, s 20***

Section 556 requires the operator of a determined major hazard facility to implement control measures that eliminate, as far as is reasonably practicable, the risk of a major incident occurring or, if it is not reasonably practicable to eliminate that risk, to minimise that risk. In addition, the operator of a determined major hazard facility must implement risk control measures designed to minimise, in the event of a major incident occurring, its magnitude and the severity of its consequences to persons both on-site and off-site.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 557**                    ***Determined major hazard facility—emergency plan***

Section 557 states that the operator of a determined major hazard facility must prepare an emergency plan that addresses all health and safety consequences of a major incident occurring and includes all matters specified in Schedule 16 and provides for the testing of emergency procedures including the frequency of testing.

Subsection 557(2) states that, in preparing an emergency plan, the operator must consult with the relevant emergency service organisations and the Security and Emergency Management Senior Officials Group (SEMSOG) in relation to the off-site health and safety consequences of a major incident.

Subsection 557(3) requires the operator to ensure that the emergency plan addresses any recommendations made by the emergency service organisations in relation to the testing of the emergency plan, the frequency and method of testing, the incidents or events at the major hazard facility which should be notified to the emergency service organisations and any other requirements listed in this section.

Subsection 557(4) provides that the operator must have regard to any other recommendation or advice given by a person consulted under this section.

Subsection 557(5) requires the operator to keep a copy of the plan at the major hazard facility and provide a copy to the emergency service organisations consulted under this section and any other relevant emergency service organisations.

Subsection 557(6) requires the operator to test the emergency plan in accordance with recommendations made by the emergency service organisations before applying for a licence for the major hazard facility.

Subsection 556(7) provides that the operator must implement the emergency plan as soon as possible if a major incident occurs during the operation of the major hazard facility or an event occurs that could reasonably be expected to lead to a major incident.

Subsection 557(8) provides that the operator must notify the emergency service organisations consulted under subsection 557(2) of the occurrence of an incident or event referred to under this section.

This section applies in addition to section 43.

The maximum penalty for contravening subsection 557(1), 557(5), 557(6) or 557(7), is \$6 000 for an individual and \$30 000 for a body corporate. The maximum penalty for contravening subsection 557(8) is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 558**                    ***Determined major hazard facility—safety management system***

Section 558 means that an operator of a determined major hazard facility must establish a safety management system for the operation of the major hazard facility, in accordance with this section and implement the safety management system so far as is reasonably practicable.

Subsection 558(3) states that the safety management system must provide a comprehensive and integrated system for the management of all aspects of risk control in relation to the occurrence and potential occurrence of major incidents at the major hazard facility and be designed to be used by the operator as the primary means of ensuring the safe operation of the major hazard facility.

The maximum penalty for an offence under this section is \$6 000 for an individual and \$30 000 for a body corporate.

Subsection 558(4) requires the safety management system to be documented and contain information on the operator's safety policy, aims and objectives on safety and matters specified in Schedule 17 and be readily accessible to persons who use it.

**Section 559**                    ***Determined major hazard facility—review of risk management***

Section 559 requires the operator of a determined major hazard facility to review and, if necessary, revise the safety assessment conducted under section 555 to ensure the adequacy of control measures, the emergency plan and the safety management system. In addition, the

operator must conduct a review and revision in the circumstances outlined in subsection 559(2).

Subsection 559(3) provides that, in reviewing and revising the emergency plan, the operator must consult with the emergency service organisations with which the operator consulted under section 557 when the plan was prepared.

Subsection 559(4) allows the health and safety representative to request a review if the representative reasonably believes that the circumstances referred to in subsection 559(2) affects or may affect the health and safety of a member of the work group represented by the health and safety representative and the operator has not adequately conducted a review in response to the circumstance.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

***Division 9.3.4 Determined major hazard facility—safety case***

***Section 560 Safety case must be provided***

Section 560 requires the operator of a determined major hazard facility to provide the regulator with a completed safety case for the major hazard facility within 24 months after the facility was determined to be a major hazard facility.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

***Section 561 Safety case—content***

Section 561 means that the operator must prepare the safety case in accordance with the safety case outline prepared or altered under this division. The content of the safety case is outlined in subsection 561(2).

Subsections 561(3) and 561(4) state that the safety case must include any further information necessary to ensure that all information contained in the safety case is accurate and up to date. The safety case must demonstrate that the major hazard facility's safety management system will, once implemented, control risks arising from major incidents and major incident hazards, adequately control risks associated with the occurrence and potential occurrence of major incidents and meet other requirements outlined in this section.

Subsection 561(5) requires the operator to provide a signed statement that the information is accurate and up-to-date and demonstrates a detailed understanding of all aspects of risk to health and safety, the adequacy of the control measures, the knowledge and skills of the people responsible for the safety management system among other requirements outlined in this section.

Subsection 561(6) provides that, in the event that the operator is a body corporate, that the safety case be signed by the most senior executive officer of the body corporate who resides in the ACT.

***Section 562 Coordination for multiple facilities***

Section 562 allows the regulator to require the operators of two or more major hazard facilities to coordinate the preparation of the safety cases if the regulator is satisfied on

reasonable grounds that such co-ordination is necessary in the interests of the safe operation and effective safety management of any or all of those major hazard facilities. If the regulator requires the coordinated preparation of safety cases, each operator must provide the other operators with information concerning any circumstances at the operator's facility that could constitute a major incident hazard in relation to any of the other major hazard facilities. In complying with this section, the operator is not required to disclose information that may expose the major hazard facility to a major incident hazard in relation to the security of the major hazard facility.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 563**            **Review**

Section 563 requires the operator of a determined major hazard facility to review and, as necessary, revise the major hazard facility's safety case after any review is conducted under section 559.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Part 9.4**                **Licensed Major Hazard Facilities—risk management**

This Part applies to a major hazard facility that is licensed under part 9.7.

**Section 564**            **Licensed Major Hazard Facilities—identification of major incidents and major incident hazards**

Section 564 requires the operator of a licensed major hazard facility to identify all major incidents that could occur in the course of the operation of the major hazard facility and all major incident hazards including major incident hazards relating to the security of the major hazard facility. In complying with this section, the operator must have regard to any advice and recommendations given by the relevant emergency service organisations and any government department or agency with a regulatory role in relation to major hazard facilities.

Subsection 564(3) states that the operator must document all identified major incidents and major incident hazards, the criteria and methods used in identifying the major incidents and major incident hazards and any external conditions under which the major incident hazards might give rise to the major incidents, including those relating to the security of the major hazard facility.

Subsection 564(4) states that all major incidents and major incident hazards identified and documented under section 554 in relation to the major hazard facility are taken to have been identified and documented under this section.

The maximum penalty for an offence under this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 565**            **Licensed Major Hazard Facilities—safety assessment**

Section 565 provides that the operator of a licensed major hazard facility must keep a copy of the safety assessment documented under section 555 as revised under part 9.3 and this part at the facility.



The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 566**                    ***Licensed Major Hazard Facilities—control of risk—Act, s 20***

Section 566 requires the operator of a licensed major hazard facility to implement control measures that eliminate, as far as is reasonably practicable, the risk of a major incident occurring or, if it is not reasonably practicable to eliminate that risk, to minimise that risk. In addition, the operator of a licensed major hazard facility must implement risk control measures designed to minimise, in the event of a major incident occurring, its magnitude and the severity of its consequences to persons both on-site and off-site.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 567**                    ***Licensed Major Hazard Facilities—emergency plan***

Section 567 states that the operator of a licensed major hazard facility must keep a copy of the major hazard facility's emergency plan prepared under section 557 as revised under part 9.3 and this part at the facility. This section requires the operator to test the emergency plan in accordance with recommendations made by the emergency service organisations consulted under section 557 when the plan was prepared.

The operator must implement the emergency plan as soon as possible if a major incident occurs in the course of the operation of the major hazard facility or an event occurs that could reasonably be expected to lead to a major incident. The operator must also notify the emergency service organisations consulted under subsection 557(2) of the occurrence of an incident or event referred to in subsection 557(3) as soon as practicable after the incident or event.

The maximum penalty for contravening subsection 567(1), 567(2) or 567(3) is \$6 000 for an individual and \$30 000 for a body corporate. The maximum penalty for contravening subsection 567(4) is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 568**                    ***Licensed Major Hazard Facilities—safety management system***

Section 568 states that the operator of a licensed major hazard facility must implement the major hazard facility's safety management system established under section 558 as revised under part 9.3 and this part.

Subsection 568(2) requires the operator to use the safety management system as the primary means of ensuring the health and safety of workers engaged or at work in the operation of the major hazard facility in the circumstances set out in this section.

In addition, the operator must use the safety management system to ensure that the health and safety of other persons is not put at risk from work carried out as part of the operation of the major hazard facility.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 569**                    ***Licensed Major Hazard Facilities—review of risk management***

Section 569 requires the operator of a licensed major hazard facility to review and, if necessary, revise the safety assessment to ensure the adequacy of control measures, the emergency plan and the safety management system. In addition, the operator must conduct a review and revision the circumstances outlined in subsection 569(2). In conducting the review and revision of the safety assessment, the operator must comply with the requirements set out in subsections 555(2), 555(3) and 555(4).

In reviewing and revising the emergency plan, the operator must consult with the emergency service organisations with which the operator consulted under section 557 when the plan was prepared. The health and safety representative may request a review if the representative reasonably believes that the circumstances referred to in subsection 559(2) affects or may affect the health and safety of a member of the work group represented by the health and safety representative and the operator has not adequately conducted a review in response to the circumstance.

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 570**                    ***Safety case—review***

Section 570 states that the operator of a licensed major hazard facility must review and as necessary revise the safety case after any review is conducted under section 569. The operator of a licensed major hazard facility is required to tell the regulator about any change in relation to certain information about the licence under section 588.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Section 571**                    ***Information for visitors***

Section 571 provides that the operator of a licensed major hazard facility must ensure that a person who enters the major hazard facility, other than a worker, is informed, as soon as practicable, about hazards at the major hazard facility that may affect the person. The person must be instructed in safety precautions and the actions the person should take if the emergency plan is implemented while the person is on-site

The maximum penalty for contravening this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 572**                    ***Information for local community—general***

Section 572 sets out the information that the operator of a licensed major hazard facility must provide to the community and SEMSOG. The information must be readily accessible and understandable, reviewed and revised if any modification of the major hazard facility occurs and sent out in writing to any community or public library serving the local community. In complying with subsection 572(1), the operator is not required to disclose information that may expose the major hazard facility to a major incident hazard in relation to the security of the major hazard facility.

Subsection 572(4) requires the operator of a licensed major hazard facility, after receiving a written request from a person who reasonably believes that that the occurrence of a major

incident at the major hazard facility may adversely affect his or her health or safety, to provide a copy of the information provided to the local community under this section to the person.

The maximum penalty for contravening subsection 572(1) is \$6 000 for an individual and \$30 000 for a body corporate. The maximum penalty for contravening subsection 572(4) is \$1 250 for an individual and \$6 000 for a body corporate

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for an offence under subsection 572(4).

**Section 573**                    **Information for local community—major incident**

Section 573 states that the operator of a major hazard facility must, as soon as practicable after a major incident occurs, take all reasonable steps to provide the persons specified in subsection 573(2) with information about the major incident. The information must include a general description of the major incident, a description of the actions the operator has taken and proposes to take to prevent any recurrence of the major incident or the occurrence of a similar major incident, and recommended actions that SEMSOG and members of the local community should take to eliminate or minimise risks to health and safety.

The maximum penalty for contravening subsection 573(1) is \$6 000 for an individual and \$30 000 for a body corporate.

Subsection 573(2) also requires information about the major incident to be given to the local community, if a member of the local community was affected by the major incident, to SEMSOG, and to any government department or agency with a regulatory role in relation to major hazard facilities.

**Part 9.5**                    **Consultation and Workers' Safety role**

**Section 574**                    **Safety role for workers**

Section 574 requires the operator of a determined major hazard facility to implement, within the time specified in the safety case outline for the major hazard facility, a safety role for the workers at the major hazard facility to enable them to respond to certain circumstances set out in this section.

Subsection 574(2) states the operator of a licensed major hazard facility must implement a safety role for workers at the facility so as to enable them to contribute to the conduct of a review under section 569.

The maximum penalty for an offence under this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Section 575**                    **Operator of major hazard facility must consult with workers—  
Act, 5 49 (f)**

Section 575 requires the operator of a determined major hazard facility to consult with workers at the major hazard facility in relation to the areas outlined under this section. The duty to consult with workers is covered under section 49 of the WHS Act.

Subsection 575(2) requires the operator of a licensed major hazard facility to consult with workers at the major hazard facility in relation to the areas outlined in this section.

The maximum penalty for an offence under this section is \$6 000 for an individual and \$30 000 for a body corporate.

**Part 9.6**                    ***Duties of Workers at Licensed Major Hazard Facilities***

**Section 576**                ***Licensed major hazard facility—duties of workers***

Section 576 sets out the duties of a worker at a licensed major hazard facility as outlined under this section.

Subsection 576(2) states that a worker is not required to comply with subsection 576(1) if to do so would risk the health or safety of the worker or of another worker or other person.

The maximum penalty for contravening this section is \$3 600 for an individual and \$18 000 for a body corporate.

**Part 9.7**                    ***Licensing of major hazard facilities***

**Division 9.7.1**            ***Licensing process***

**Section 577**                ***Who may apply for a licence***

Section 577 means that only an operator of a determined major hazard facility who is taken to be a suitable operator under section 543 may apply for a major hazard facility licence for that facility.

**Section 578**                ***Application for major hazard facility licence***

Section 578 sets out the information required in the application for a major hazard facility licence.

**Section 579**                ***Additional information***

Section 579 outlines the procedure for the regulator to request further information from the operator if the application does not contain sufficient information to enable the regulator to make a decision whether or not to grant the licence.

Subsection 579(3) and 579(4) state that if the operator does not provide the additional information by the date specified, the application is to be taken to have been withdrawn. The regulator may make more than one request for additional information under this section.

**Section 580**                ***Decision on application***

Section 580 states that the regulator must grant a major hazard facility licence if satisfied that the application has been made in accordance with the WHS Regulation, the safety case for the facility has been prepared in accordance with division 9.3.4 of part 9.3, the operator is able to operate the major hazard facility safely and competently and the operator is able to comply with any conditions that will apply to the licence.

Subsection 580(3) allows the regulator to refuse to grant a major hazard facility licence if it becomes aware of circumstances that satisfy it that the operator (if the operator is an individual) or an officer of the body corporate (if the operator is a body corporate) is not a suitable person to exercise management or control over the major hazard facility.

Subsection 580(4) requires the regulator to refuse to grant a major hazard facility licence if satisfied that the operator, in making the application, has given information that is false or misleading or failed to give any material information that should have been given.

Subsection 580(5) and 580(6) set out the timeframe for the regulator to notify the operator of the decision to grant a licence. If the regulator does not make a decision within 6 months after receiving the application or the additional information requested under section 579, the regulator is taken to have refused to grant the licence.

A refusal to grant a major hazard facility licence including under subsection 580(6) is a reviewable decision under section 676.

**Section 581**            ***Matters to be taken into account***

Section 581 outlines the relevant matters that the regulator must take into account when considering whether to refuse a licence to an operator under subsection 580(3) where the operator is an individual.

Subsection 581(2) sets out the relevant matters that the regulator must take into account when considering whether to refuse a licence to an operator under subsection 580(3) if the operator is a body corporate.

**Section 582**            ***When decision is to be made***

Section 582 states that the regulator must make a decision in relation to an application for a major hazard facility licence within 6 months after receiving the application or the additional information requested under section 579.

**Section 583**            ***Refusal to grant major hazard facility licence—process***

Section 583 sets out the procedure for the regulator to refuse to grant a major facility licence. In the event that the operator makes a submission in response to the regulator's decision, the regulator must consider the submission, decide whether to grant or refuse the licence and provide the decision to the operator, including the reasons for the decision, in writing within 14 days of making the decision.

**Section 584**            ***Conditions of licence***

Section 584 allows the regulator to impose conditions on a major facility licence when granting or renewing the licence in relation to the matters outlined in subsection 584(2). A person must comply with the conditions of a licence under section 45 of the WHS Act.

A decision to impose a condition on a licence is a reviewable decision under section 676.

**Section 585**            ***Duration of licence***

Section 585 provides that, subject to this part, a major hazard facility licence takes effect on the day it is granted and, unless cancelled earlier, expires on the day determined by the regulator, which must be not more than 5 years after the day the licence was granted.

**Section 586**            **Licence document**

Section 586 sets out the form of the licence document issued by the regulator to the operator if the regulator grants a major hazard facility licence. The licence document must include the information outlined in subsection 586(2).

**Section 587**            **Licence document to be available**

Section 587 requires the operator of the major hazard facility to keep the licence document available for inspection under the WHS Act unless the licence document has been returned to the regulator under section 593.

The maximum penalty for contravening this section is \$1 250 for an individual and \$6 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offence in this section.

**Division 9.7.2**        **Amendment of licence and licence document**

**Section 588**            **Changes to information**

Section 588 requires the operator of a licensed major hazard facility to give the regulator written notice of any change to information provided by the operator at any time to the regulator in relation to the licence within 14 days after the operator becomes aware of the change. An example would include changes to the content of the safety case such as modifications, new risk assessments and changes to the safety management system or management structure

The maximum penalty for contravening this section is \$1 250 for an individual and \$6 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offence in this section.

**Section 589**            **Amendment imposed by regulator**

Section 589 allows the regulator on its own initiative to amend a major hazard facility licence, including to vary or delete a condition or to impose a new condition on the licence. The procedure for the regulator to amend the licence and to inform the operator of this decision is outlined in this section.

A decision to amend a licence is a reviewable decision under section 676.

**Section 590**            **Amendment on application by operator**

Section 590 allows the regulator to amend the licence on application by the operator of a licensed major hazard facility. The process for the regulator to either amend or refuse to amend the licence is set out in this section.

A refusal to make the amendment applied for, or a decision to make a different amendment, is a reviewable decision under section 676.

**Section 591**            ***Minor corrections to major hazard facility licence***

Section 591 allows the regulator to make minor corrections to a major hazard facility licence.

**Section 592**            ***Regulator to provide amended licence document***

Section 592 provides that, if the regulator amends a major hazard facility licence and considers that the licence document requires amendment, the regulator must give the operator an amended licence document within 14 days

**Section 593**            ***Operator to return licence***

Section 593 means that if a major hazard facility licence is amended, the operator of the licensed major hazard facility must return the licence document to the regulator for amendment at the written request of the regulator and within the time specified in the request.

The maximum penalty for contravening this section is \$1 250 for an individual and \$6 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offence in this section.

**Section 594**            ***Replacement licence document***

Section 594 sets out the requirements for an operator to apply for a replacement licence in the event that the licence is lost, stolen or destroyed.

The maximum penalty for an operator contravening this section is \$1 250 for an individual and \$6 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offence in this section.

A refusal to issue a replacement licence is a reviewable decision under section 676.

**Division 9.7.3**        ***Renewal of major hazard facility licence***

**Section 595**            ***Regulator may renew licence***

Section 595 allows the regulator to renew a major hazard facility licence on application by the operator.

**Section 596**            ***Application for renewal***

Section 596 sets out the procedures for the operator of a licensed major hazard facility to apply to the regulator to renew a major hazard facility licence.

**Section 597**            ***Licence continues in force until application is decided***

Section 597 provides that, if the operator of a licensed major hazard facility applies under section 596 for the renewal of a major hazard facility licence, the licence is taken to continue in force from the day it would have ended until the operator is given notice of the decision on the application.

**Section 598**                    **Provisions relating to renewal of licence**

Section 598 outlines the provisions relating to the application to renew a licence.

A refusal to renew a licence is a reviewable decision under section 676.

**Section 599**                    **Status of major hazard facility licence during review**

Section 599 states that if, before a major hazard facility licence expires, the regulator gives the operator written notice that it proposes to refuse to renew the licence, the licence continues to have effect under this section. If the operator does not apply for an external review, the licence continues to have effect until the expiry of the licence or the end of the period for applying for an external review. If the operator applies for an external review, the licence continues to have effect until the operator withdraws the application for review or until the external review body, ACAT makes a decision on the review. The licence continues to have effect under this section even if its expiry date passes.

**Division 9.7.4**                **Transfer of major hazard facility licence**

**Section 600**                    **Transfer of major hazard facility licence**

Section 600 allows the regulator, on the application of the operator of a major hazard facility, to transfer a major hazard facility licence to another person who is to become the operator of the major hazard facility. The regulator must be satisfied that the proposed operator will achieve a standard of health and safety in the operation of the facility that is at least equivalent to the standard that the current operator has achieved. This could be achieved, for example, by a signed document committing the operator to adopting the safety case and safety management system in use when the original licence was granted or a safety case and safety management system that provides the same or better level of safety. The process for the regulator to transfer the licence is set out in this section.

A decision to refuse to transfer a major hazard facility licence is a reviewable decision under section 676.

**Division 9.7.5**                **Suspension and cancellation of major hazard facility licence**

**Section 601**                    **Cancellation of major hazard facility licence—on operator's application**

Section 601 sets out the process for the operator to apply to the regulator to suspend or cancel a major hazard facility licence.

A decision to refuse to cancel a licence is a reviewable decision under section 676.

**Section 602**                    **Suspension or cancellation of licence—on regulator's initiative**

Section 602 allows the regulator on its own initiative to suspend or cancel a major hazard facility licence if satisfied on grounds set out in subsection 602(1).

Subsection 602(2) provides the regulator with the ability to disqualify the operator from applying for a further major hazard facility licence if the regulator suspends or cancels a major hazard facility licence.



A decision to suspend a licence, to cancel a licence or to disqualify the operator from applying for a further licence is a reviewable decision under section 676.

**Section 603**                    ***Matters to be taken into account***

Section 603 sets out the matters that the regulator must take into account when making the decision to suspend or cancel a major hazard facility licence or disqualify an operator from applying for a further major hazard facility licence.

**Section 604**                    ***Notice to and submissions by operator***

Section 604 outlines the procedures to be followed by the regulator before suspending or cancelling a major hazard facility licence.

**Section 605**                    ***Notice of decision***

Section 605 outlines the method of delivery and the information to be provided in the notice of the decision by the regulator to the operator in relation to the suspension or cancellation of a major hazard facility licence or the disqualification of an operator from applying for a further major hazard facility licence.

**Section 606**                    ***Immediate suspension***

Section 606 allows the regulator to suspend a major hazard facility licence on a ground referred to in section 602 without giving notice under section 604 on grounds outlined in subsection 606(1). The process for the regulator to inform the operator of the suspension of the major hazard facility licence is set out in this section.

**Section 607**                    ***Operator to return licence document***

Section 607 requires an operator, on receiving a notice under section 605, to return the licence document to the regulator in accordance with the notice.

The maximum penalty for contravening this section is \$1 250 for an individual and \$6 000 for a body corporate.

An infringement notice may be issued under the *Magistrates Court (Work Health and Safety Infringement Notices) Regulation 2011* for the offence in this section.

**Section 608**                    ***Regulator to return licence document after suspension***

Section 608 states that the regulator must return the licence document to the operator within 14 days after the suspension ends.

**Clause 11**                    — **Which decisions under this regulation are reviewable**  
**Section 676, table, new items 31 to 34**

This clause inserts sections from the new chapter 7 (hazardous chemicals) into the table of reviewable decisions in section 676 of the WHS Regulation.

**Clause 12**                    — **Section 676, table, new items 46 to 69**

This clause inserts sections from the new chapter 9 (major hazard facilities) into the table of reviewable decisions in section 676 of the WHS Regulation.

**Clause 13** — **Section 677**

This clause amends section 677 to include chapter 9 (major hazard facilities) consistent with the national model provision such that the division on internal review will not apply to the new major hazard facility chapter.

**Clause 14** — **Application for internal review**  
**Section 678(2)**

This clause amends subsection 678(2) to include section 497(5) consistent with the national model provision regarding timeframes to apply to the regulator for internal review of a decision.

**Clause 15** — **Application for external review**  
**Section 683(1)(a)**

This clause amends section 683(1)(a) to include chapter 9 (major hazard facilities) consistent with the national model provision so as to apply external review provisions to chapter 9.

**Clause 16** — **General power to grant exemptions**  
**Section 684(4)**

This clause amends subsection 684(4) to include chapter 9 consistent with the national model provision.

**Clause 17** — **New division 11.2.3**

This clause inserts the national model provisions under division 11.2.3 in relation to major hazard facilities.

**Division 11.2.3** *Major hazard facilities***Section 688** *Major hazard facility—exemption*

Section 688 provides that the regulator may exempt the operator of a major hazard facility or proposed major hazard facility from any regulatory provision relating to that facility. The exemption may be granted on the written application of the operator of the major hazard facility or proposed major hazard facility. A decision under this section is a reviewable decision under section 676.

**Section 689** *Major hazard facility—regulator to be satisfied about certain matters*

Section 689 specifies the matters that the regulator must be satisfied about, and have regard to, before granting an exemption in relation to a major hazard facility or proposed major hazard facility under section 688.

**Clause 18** — **New section 690**

This clause inserts section 690 of the national model provisions to provide that an application for an exemption must be made in the manner and form required by the regulator.

**Clause 19** — **Schedule 5, section 5.1.12**

This clause amends section 5.1.12 of schedule 5 consistent with the national model provision upon the commencement of schedule 11 in this Amendment Regulation.

**Clause 20** — **New schedules 6 to 18****Schedule 6** *Classification of mixtures***Section 1** *Purpose of this schedule*

This section states that the tables in this schedule replace some of the GHS tables.

**Table 6.1** *Classification of mixtures containing respiratory or skin sensitisers*

Table 6.1 provides the cut/off values/concentration limits of ingredients of a mixture classified as either a respiratory sensitiser or a skin sensitiser that would trigger classification of the mixture.

**Table 6.2** *Classification of mixtures containing carcinogens*

Table 6.2 specifies the cut-off values/concentration limits of ingredients of a mixture classified as a carcinogen that would trigger classification of the mixture.

**Table 6.3** *Classification of mixtures containing reproductive toxicants*

Table 6.3 outlines the cut-off values/concentration limits of ingredients of a mixture classified as a reproductive toxicant or for effects on or via lactation that would trigger classification of the mixture.

**Table 6.4** *Classification of mixtures containing specific target organ toxicants (single exposure)*

Table 6.4 specifies the cut-off values/concentration limits of ingredients of a mixture classified as a specific target organ toxicant that would trigger classification of the mixture.

**Table 6.5** *Classification of mixtures containing specific target organ toxicants (repeated exposure)*

Table 6.5 provides the cut-off values/concentration limits of ingredients of a mixture classified as a specific target organ toxicant that would trigger classification of the mixture.

**Schedule 7** *Safety data sheets***Section 7.1** *Safety data sheets—content*

Section 7.1 sets out the information about the chemical to be contained in a safety data sheet and states that the safety data sheet must be in English.

**Section 7.2**                    ***Safety data sheets—research chemical, waste product or sample for analysis***

Section 7.2 outlines the information to be contained in a safety data sheet for a hazardous chemical that is a research chemical, waste product or sample for analysis for the purpose of section 331.

**Schedule 8**                    ***Disclosure of ingredients in safety data sheet***

**Section 8.1**                    ***Purpose of this schedule***

Section 8.1 outlines the purpose of the schedule to set out the way in which the ingredients of a hazardous chemical must be disclosed in section 3 of a safety data sheet prepared under the WHS Regulation.

**Section 8.2**                    ***Identity of ingredients to be disclosed***

Section 8.2 applies if an ingredient in a hazardous chemical causes the correct classification of the chemical to include a hazard class and hazard category referred to in table 8.2. The identity of the ingredient must be disclosed in English on the label and safety data sheet of the hazardous chemical.

**Section 8.3**                    ***Generic names used to disclose identity of ingredients***

Section 8.3 applies if an ingredient of a hazardous chemical must be disclosed under clause 1 and this clause and sets out the grounds on which the ingredient may be disclosed by its generic name.

**Section 8.4**                    ***Disclosing proportions of ingredients***

Section 8.4 sets out the grounds on which the proportions of the ingredients to the hazardous chemical must be disclosed.

**Schedule 9**                    ***Classification, packaging and labelling requirements***

**Part 9.1**                        ***Correct classification***

**Section 9.1**                    ***Correct classification of a substance, mixture or article***

Section 9.1 states that a substance or mixture (other than a research chemical, sample for analysis or waste product) is *correctly classified* if a determination is made about whether the substance or mixture can be classified into a hazard class under the GHS including a mixture classification referred to in Schedule 6.

Subsection 9.1(2) states that a substance or mixture that is a research chemical, sample for analysis or waste product is *correctly classified* if, so far as is reasonably practicable having regard to the known or suspected properties of the substance or mixture, a determination is made about the identity of the substance or mixture; and a determination is made about whether the substance or mixture can be classified into a hazard class under the GHS.

**Part 9.2**                    **Correct packing****Section 9.2**                **Correctly packing hazardous chemicals**

Section 9.2 outlines the requirements for a hazardous chemical to be correctly packed in a container.

**Part 9.3**                    **Correct labelling****Section 9.3**                **Labelling hazardous chemicals—general**

Section 9.3 sets out the requirements for a hazardous chemical to be correctly labelled if the chemical is packed in a container that has a label in English.

**Section 9.4**                **Labelling hazardous chemicals—small container**

Section 9.4 applies if a hazardous chemical is packed in a container that is too small for a label attached to it to include all the information referred to in section 9.3(1).

**Section 9.5**                **Labelling hazardous chemicals—research chemicals or samples for analysis**

Section 9.5 applies to a hazardous chemical that is a research chemical or sample for analysis. The hazardous chemical is *correctly labelled* if the chemical is packed in a container that has a label in English including the product identifier and a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

**Section 9.6**                **Labelling hazardous chemicals—decanted or transferred chemicals**

Section 9.6 applies if a hazardous chemical is decanted or transferred from the container in which it is packed and either will not be used immediately or is supplied to someone else. The hazardous chemical is *correctly labelled* if the chemical is packed in a container that has a label in English including the product identifier and a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

**Section 9.7**                **Labelling hazardous chemicals—known hazards**

Section 9.7 applies to a hazardous chemical if the chemical is not being supplied to another workplace and the hazards relating to the chemical are known to the workers involved in using, handling or storing the chemical, the hazardous chemical is *correctly labelled* if the chemical is packed in a container that has a label in English including the product identifier and a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

**Section 9.8**                **Labelling hazardous chemicals—waste products**

Section 9.8 applies to a waste product if it is reasonably likely that the waste product is a hazardous chemical.

**Section 9.9                    *Labelling hazardous chemicals—explosives***

Section 9.9 applies to a hazardous chemical that may be classified in the explosives hazard class.

**Section 9.10                  *Labelling hazardous chemicals—agricultural and veterinary chemicals***

Section 9.10 applies to an agricultural or veterinary chemical which is **correctly labelled** if the chemical is labelled in accordance with the requirements of the Australian Pesticides and Veterinary Medicines Authority.

**Schedule 10                  *Prohibited carcinogens, restricted carcinogens and restricted hazardous chemicals***

**Table 10.1                  *Prohibited carcinogens***

Table 10.1 lists prohibited carcinogens.

**Table 10.2                  *Restricted carcinogens***

Table 10.2 itemises restricted carcinogens and their restricted use.

**Table 10.3                  *Restricted hazardous chemicals***

Table 10.3 itemises restricted hazardous chemicals and their restricted use.

**Schedule 11                  *Placard and manifest quantities***

**Table 11.1**

Table 11.1 sets out the placard and manifest quantities of hazardous chemicals.

**Section 11.1                  *Determination of classification of flammable liquids***

Section 11.1 sets out how the classification of flammable liquids must be determined.

**Schedule 12                  *Manifest requirements***

**Section 12.1                  *Manifest—general information***

Section 12.1 outlines the general information required in a manifest of hazardous chemicals.

**Section 12.2                  *Manifest—bulk storage and containers***

Section 12.2 sets out the information required in a manifest for a hazardous chemical stored at a workplace in bulk or in a container.

**Section 12.3                  *Manifest—identification of hazardous chemical***

Section 12.3 requires the manifest of hazardous chemicals to include the shipping name, the UN number, the class and division as stated in Table 3.2.3 of the ADG Code and specific

information required for a flammable liquid category 4, an unstable explosive, organic peroxide type A or self-reactive substance type A.

**Section 12.4**            ***Manifest—storage area for packaged hazardous chemicals***

Section 12.4 applies to a manifest for a storage area for packaged hazardous chemicals if the storage area contains a packaged hazardous chemical or a hazardous chemical in an intermediate bulk container and is required under these regulations to have a placard and the hazardous chemicals are dangerous goods under the ADG Code.

Subsection 12.4(2) and 12.4(3) set out the content of the manifest of hazardous chemicals.

**Section 12.5**            ***Manifest—hazardous chemicals being manufactured***

Section 12.5 provides the content for the manifest for each area where hazardous chemicals are being manufactured.

**Section 12.6**            ***Manifest—hazardous chemicals in transit***

Section 12.6 applied to information required in a manifest where hazardous chemicals are in transit.

**Section 12.7**            ***Manifest—plan of workplace***

Section 12.7 applies to the scale plan required in a manifest of hazardous chemicals in a workplace.

**Schedule 13**            ***Placard requirements***

**Section 13.1**            ***Displaying placards***

Section 13.1 sets out the requirements for a PCBU to display placards at a workplace in relation to a hazardous chemical.

**Section 13.2**            ***Maintaining placards***

Section 13.2 outlines the requirements for a PCBU, who must display a placard, to maintain and amend the placard.

**Section 13.3**            ***Outer warning placards—requirements***

Section 13.3 sets out when a PCBU must display an outer warning placard at the workplace in relation to a hazardous chemical and the format of the outer warning placard.

**Section 13.4**            ***Placards for particular hazardous chemicals stored in bulk***

Section 14.4 outlines specific hazardous chemicals requiring a placard that are stored in bulk.

**Section 13.5**            ***Placards for unstable explosives, organic peroxides type A or self-reactive substances type A stored in bulk***

Section 13.5 applies to placards displayed for unstable explosives, organic peroxides type A or self-reactive substances type A that are stored in bulk.

**Section 13.6**            ***Placards for packaged Schedule 11 hazardous chemicals (other than flammable liquids category 4) and IBCs***

Section 13.6 relates to placards displayed at a workplace for packaged Schedule 11 hazardous chemicals (other than flammable liquids category 4) and intermediate bulk containers (IBCs).

**Section 13.7**            ***Placards for flammable liquids category 4 packaged or in bulk***

Section 13.7 applies to placards to be displayed for flammable liquids category 4 packaged or in bulk.

**Schedule 14**            ***Requirements for health monitoring***

**Table 14.1**            ***Hazardous chemicals (other than lead) requiring health monitoring***

Table 14.1 itemises the hazardous chemicals other than lead requiring health monitoring and the type of health monitoring for each chemical.

**Table 14.2**            ***Lead requiring health monitoring***

Table 14.2 outlines the type of health monitoring required for lead.

**Schedule 15**            ***Hazardous chemicals at major hazard facilities (and their threshold quantity)***

**Section 15.1**            ***Definitions—sch 15***

Section 15.1 provides the definitions for this Schedule.

**Section 15.2**            ***Relevant hazardous chemicals***

Section 15.2 states that the hazardous chemicals that characterise a workplace as a facility for the purposes of these regulations are the chemicals specifically referred to in table 15.1 and chemicals that belong to the types, classes and categories referred to in table 15.2.

**Section 15.3**            ***Threshold quantity of one hazardous chemical***

Section 15.3 sets out how the threshold quantity of a hazardous chemical is determined under this Schedule.

**Section 15.4**            ***Threshold quantity of more than 1 hazardous chemical***

Section 15.4 outlines the formula to be applied to calculate the threshold where there is more than one hazardous chemical.



**Section 15.5**            **How table 15.6.2 must be used**

Section 15.5 outlines how table 15.1 in this Schedule, which specifies the threshold quantity of a hazardous chemical, is to be applied.

**Section 15.6**            **How table 15.6.3 must be used**

Section 15.6 outlines how table 15.2 in this Schedule, which specifies the threshold quantities for explosive materials, is to be applied.

**Table 15.6.1**

Table 15.6.1 specifies the threshold quantity of a hazardous chemical.

**Table 15.6.2**

Table 15.6.2 specifies the threshold quantities for explosive materials.

**Table 15.6.3**

Table 15.6.3 provides the criteria for toxicity.

**Schedule 16**            **Matters to be included in emergency plan for major hazard facility**

**Section 16.1**            **Site and hazard detail**

Section 16.1 outlines the information required on the site and hazard detail.

**Section 16.2**            **Command structure and site personnel**

Section 16.2 requires detail of the command structure and site personnel.

**Section 16.3**            **Notifications**

Section 16.3 outlines the responsibilities for notification in the event of a major incident or an event that could be expected to lead to a major incident.

**Section 16.4**            **Resources and equipment**

Section 16.4 identifies the resources and equipment required to handle on-site and off-site emergencies.

**Section 16.5**            **Procedures**

Section 16.5 sets out the procedures required for safe evacuation, the control points for utilities; the control of incidents involving Schedule 15 chemicals and for decontamination following an incident.

**Schedule 17**            **Additional matters to be included in safety management system of major hazard facility**

**Section 17.1**      ***Safety policy and safety objectives***

Section 17.1 outlines the requirement to have a safety policy and objectives.

**Section 17.2**      ***Organisation and personnel***

Section 17.2 provides for the identification of personnel competent to participate in the safety management system and a description of the command structure in place to support the system.

**Section 17.3**      ***Operational controls***

Section 17.3 requires a description of the operational controls for the safe operation of plant.

**Section 17.4**      ***Duties of operators***

Section 17.4 provides for the description of the means by which the operator complies with their duties under the Act and Chapter 9 of the regulations.

**Section 17.5**      ***Management of change***

Section 17.5 requires a description of the procedures for managing change.

**Section 17.6**      ***Principles and standards***

Section 17.6 provides for a statement of principles concerning design and engineering standards to ensure the safe operation of the major hazard facility.

**Section 17.7**      ***Performance monitoring***

Section 17.7 outlines the requirements for performance standards for measuring the effectiveness of the safety management system.

**Section 17.8**      ***Audit***

Section 17.8 requires the auditing of performance against the performance standards.

**Schedule 18**      ***Additional matters to be included in safety case for a major hazard facility***

**Part 18.1**      ***Facility description***

**Section 18.1**      ***The facility***

Section 18.1 requires the safety case to include a brief description of the nature of the facility and its operation, including a description of on-site activities and processes that involve or will involve Schedule 15 chemicals.

**Section 18.2**            ***The surrounding area***

Section 18.2 requires the safety case to include a scaled plan of the facility and its surrounding area.

**Part 18.2**            ***Safety information***

**Section 18.3**            ***Control measures to limit the consequences of major incidents***

Section 18.3 requires the safety case to include detailed description of the control measures designed to limit the consequences of major incidents.

**Section 18.4**            ***Performance monitoring***

Section 18.4 states that the safety case must include a detailed description of the performance standards and performance indicators required by item 7 of Schedule 17 to be included in the safety management system.

**Section 18.5**            ***Safety management system***

Section 18.5 provides that the safety case must clearly reference the relevant part of the documented safety management system.

**Section 18.6**            ***Safety and reliability of facility structures and plant***

Section 18.6 requires a description of the steps taken to ensure that safety and reliability are incorporated into the design and construction of all aspects of the major hazard facility itself.

**Section 18.7**            ***Major incident history***

Section 18.7 states that a summary of the major incidents that have occurred at the major hazard facility over the previous 5 years must be provided.

**Clause 21**            — **Dictionary, note 2**

This clause adds note 2 to the dictionary to insert additional terms relevant to the insertion of chapters 7 & 9 into the Regulation.

**Clause 22**            — **Dictionary, new definitions**

This clause adds new definitions to the WHS Regulation following the insertion of chapters 7 and 9 into the Regulation.

**Clause 23**            — **Dictionary, definition of *boiler*, paragraph (b)(ii), notes**

This clause clarifies the note to the existing definition of *boiler* in the WHS Regulation.

**Clause 24**            — **Dictionary, new definitions**

This clause adds new definitions to the WHS Regulation following the insertion of chapters 7 and 9 into the Regulation.

**Clause 25** — Dictionary, definition of *class*, new paragraph (c)

This clause adds a new paragraph to the existing definition of *class* following the insertion of chapters 7 and 9 into the Regulation.

**Clause 26** — Dictionary, new definitions

This clause adds new definitions to the WHS Regulation following the insertion of chapters 7 and 9 into the Regulation.

**Clause 27** — Dictionary, definition of *exposure standard*, notes

This clause clarifies the note to the existing definition of *exposure standard* in the WHS Regulation.

**Clause 28** — Dictionary, new definitions

This clause adds new definitions to the WHS Regulation following the insertion of chapters 7 and 9 into the Regulation.

**Clause 29** — Dictionary, definition of *flammable gas*

This clause amends the existing definition of *flammable gas* following the adoption of chapters 7 and 9 into the Regulation.

**Clause 30** — Dictionary, new definition of *flammable liquid*

This clause adds new definitions to the WHS Regulation following the insertion of chapters 7 and 9 into the Regulation.

**Clause 31** — Dictionary, definition of *GHS*

This clause inserts a new definition of *GHS* following the insertion of chapters 7 and 9 into the Regulation.

**Clause 32** — Dictionary, new definitions

This clause adds new definitions to the WHS Regulation following the insertion of chapters 7 and 9 into the Regulation.

**Clause 33** — Dictionary, definition of *licence-holder*, new paragraph (d)

This clause adds a new paragraph to the existing definition of *licence-holder* following the insertion of chapters 7 and 9 into the Regulation.

**Clause 34** — Dictionary, new definitions

This clause adds new definitions to the WHS Regulation following the insertion of chapter 9 into the Regulation.

**Clause 35** — Dictionary, definition of *registered training organisation (RTO)*, new note

This clause adds a new note to the existing definition of *registered training organization (RTO)* in the WHS Regulation.

**Clause 36** — Dictionary, new definitions

This clause adds new definitions to the WHS Regulation following the insertion of chapters 7 and 9 into the Regulation.

**Clause 37** — Dictionary, definition of *Safe Work Australia*, new note

This clause adds a new note to the existing definition of *Safe Work Australia* in the WHS Regulation.

**Clause 38** — Dictionary, new definitions

This clause adds new definitions to the WHS Regulation following the insertion of chapters 7 and 9 into the Regulation.

**Clause 39** — Dictionary, definition of *VET course*, new note

This clause adds a new note to the existing definition of *VET course* in the WHS Regulation.