

# Work Health and Safety Amendment Regulation 2022 (No 1)

Subordinate law SL2022–12

made under the

*Work Health and Safety Act 2011*, section 276 (Regulation-making powers)

## EXPLANATORY STATEMENT

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### OVERVIEW OF THE REGULATION

The Work Health and Safety Amendment Regulation 2022 (No 1) makes a number of amendments to the *Work Health and Safety Regulation 2011* (WHS Regulation):

#### **Asbestos Licensing – Automatic Recognition**

The *Work Health and Safety Act 2011* (WHS Act) gives effect to the Territory's commitment under the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* to adopt and implement the model work health and safety laws in the ACT.

Asbestos assessor and removal work is required to be licensed under the ACT's WHS laws. The WHS Regulation provides that a person conducting a business or undertaking (PCBU) must ensure that work to assess or remove asbestos is carried out by a licensed asbestos assessor or removalist (s485). Arrangements for asbestos assessor licences are made under ss489-490 and asbestos removalists under ss485-488 of the WHS Regulations.

Consistent with the model WHS laws adopted in the ACT, sections 488(1) and 490(1) of the *Work Health and Safety Regulation 2011* (WHS Regulation) allow for the recognition of licensees under corresponding state/territory WHS laws to operate in the ACT. However, the ACT's WHS Regulation limits the recognition of licences under corresponding WHS laws by imposing a pre-condition requiring notification by the individual before they commence work in the ACT (refer sections 488(1A) and 490(1A) of the WHS Regulation).

The Work Health and Safety Amendment Regulation 2022 (No 1) makes a technical amendment to remove the pre-condition to the authorisation of corresponding

licensees for asbestos assessor and removalist licences, however, it retains the requirement to notify the regulator before an authorised licensee carries out work in the ACT.

The licensing requirements, together with other provisions of the WHS Regulation relating to asbestos risk management, provide the regulatory support to workers and PCBU's to minimise the exposure risks of asbestos, and empower the regulator to appropriately monitor and enforce safe asbestos removal within the Territory.

### **Globally Harmonized System of Classification and Labelling of Chemicals**

In 2020, the nationally agreed model WHS laws were amended to implement the Globally Harmonized System of Classification and Labelling of Chemicals Revision 7 (GHS 7) with a transition period applying from 1 January 2021 to 31 December 2022.

The adoption of GHS 7 has been agreed nationally to ensure that Australia keeps pace with international requirements for hazardous chemicals and international trading partners that have moved to GHS 7.

GHS 7 was released by the United Nations in 2017 and represents the contemporary agreed standard to manage hazardous material classification and labelling schemes.

The Work Health and Safety Amendment Regulation 2022 (No 1) amends the ACT's WHS Regulation to mirror the changes to the model WHS laws to transition to GHS 7.

The amendments:

- adopt GHS 7 as the requirement for classifying and labelling hazardous chemicals under the GHS;
- allow GHS 3 compliant chemicals to continue to be manufactured, imported, supplied and used until 31 December 2022;
- from 1 January 2023 require that hazardous chemicals manufactured, imported and supplied be GHS 7 compliant and all new stock being used must be GHS 7 compliant, it also allows for existing GHS 3 compliant stocks manufactured, imported or supplied before 1 January 2023 to be used.

### **Respirable Crystalline Silica**

Crystalline silica is a natural mineral found in construction materials such as concrete, bricks, tiles, mortar, and engineered stone. Dust containing respirable crystalline silica (silica) particles is commonly called silica dust. Activities such as cutting, grinding, sanding, drilling, loading or demolishing products that contain silica can generate respirable particles of crystalline silica dust that may not be visible and are small enough to breathe into the lungs. The dust may be harmful when inhaled into the lungs over a long period of time at low to moderate levels, or short periods at high levels.

There is a growing body of evidence about the significant harm that silica dust exposes to workers, with an increase in the trend of accelerated silicosis having been observed in several Australian jurisdictions. The Australian Commonwealth formed the National Dust Diseases Taskforce in 2020 and released their final report in June 2021. The final report calls on governments to strengthen work health and safety laws to deal with the risks of silica dust exposure, stating that it is no longer acceptable to maintain the status quo.

Section 19 of the WHS Act already imposes an obligation on PCBUs to manage the risks to health and safety of silica dust.

Strengthening work safety laws to address silica dust exposure to protect workers is a national and local priority. In the ACT, Silica dust reforms are part of the legislative reform agenda outlined in the Parliamentary Agreement for the 10<sup>th</sup> Legislative Assembly of the ACT and align with the ACT Government's 2020 election commitment to strengthen workplace relations to protect tradespeople from exposure to silica dust.

The amendments to the WHS Regulation provide a dedicated chapter for Silica and the introduction of general obligations applying to silica containing materials and specific obligations applying to silica dust work.

The purpose of the Work Health and Safety Amendment Regulation 2022 (No 1) is to protect the health and wellbeing of workers in high-risk environments and keep businesses accountable for their actions.

Amendments to the WHS Regulation:

- insert a dedicated new silica dust work chapter in the WHS Regulation;
- introduce a legislated uncontrolled dry-cutting ban in the ACT to;
  - ensure a person conducting a business or undertaking must not allow or direct their workers to undertake uncontrolled dry-cutting or processing of silica containing materials;
  - define uncontrolled dry-cutting or processing to mean the process of cutting, grinding, trimming, sanding, polishing or drilling a silica containing material using a power tool or another form of mechanical plant without effective controls in place;
  - define silica containing material as engineered stone, concrete and masonry, cement and mortar, bricks and natural stone containing crystalline silica;
  - articulate obligations for PCBUs to implement a combination of control measures when using a power tool or another form of mechanical plant.
- introduce a duty on PCBUs to train workers carrying out high risk silica work about silica awareness, including workers who;
  - are engaged by the PCBU and the PCBU reasonably believes will perform or be exposed to high risk silica dust work, or the mechanical process of silica containing materials; or
  - are engaged by the PCBU in a declared occupation.

## **CONSULTATION ON THE PROPOSED APPROACH**

ACT Government directorates and agencies, including WorkSafe ACT and the Justice and Community Safety Directorate have been consulted in the development of this Regulation.

The ACT Government has also consulted with ACT stakeholders, including the WHS Council in the development of the Regulation.

The WHS Council is a Ministerially appointed advisory body established under the *Work Health and Safety Act 2011* comprising stakeholders representing employer and employee interests in relation to work health and safety, injury management, and bullying and harassment matters.

## **CONSISTENCY WITH HUMAN RIGHTS**

All amendment regulations must be compatible with the *Human Rights Act 2004* (HRA). The compatibility of this Amendment Regulation with the HRA was considered during its development.

Section 28(1) of the HRA 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) of the HRA contains a framework that is used to determine the acceptable limitations that may be placed on human rights.

The limitations in this Amendment Regulation on rights protected in the HRA are considered demonstrably justifiable pursuant to section 28 of the HRA.

An assessment of the Amendment Regulation against the rights protected by the HRA is provided below.

### **Rights engaged**

The Amendment Regulation engages and promotes the right to life under section 9 of the HRA.

The Amendment Regulation engages and promotes the right to work under section 27B of the HRA.

The Amendment Regulation also engages and may limit rights in criminal proceedings under section 22 of the HRA.

### ***Rights Promoted***

#### **Asbestos Licensing – Automatic Recognition**

The Amendment Regulation engages and promotes the right to life (section 9), and the right to work (section 27B). The rights to life liberty and security impose duties on the ACT Government to protect life and take reasonable measures to prevent injury in

workplaces, while the right to work guarantees just and favourable conditions of work, including safe and healthy working conditions.

Through the Amendment Regulation, the ACT Government is taking positive steps to satisfy its duty to protect life and prevent injury and ensure healthy working conditions by requiring licensed removalists to notify the regulator before they carry out asbestos removal work in the ACT if they are authorised licensees under automatic recognition.

The Amendment Regulation promotes the right to work by removing administrative conditions on workers licensed under corresponding state/territory laws while also promoting the right to life by ensuring controls on asbestos removal activities undertaken by licensed removalists.

### **Respirable Crystalline Silica – Uncontrolled dry cutting ban and duty to ensure completion of mandatory silica awareness training**

The Amendment Regulation engages and promotes the right to life (section 9) and the right to work (section 27B). The rights to life liberty and security impose duties on the ACT Government to protect life and take reasonable measures to prevent injury in workplaces, while the right to work guarantees just and favourable conditions of work, including safe and healthy working conditions.

Through the Amendment Regulation, the ACT Government is taking positive steps to satisfy its duty to protect life and prevent injury and ensure healthy working conditions by introducing an offence for the uncontrolled dry cutting of silica containing materials at workplaces and an obligation on persons conducting a business or undertaking (PCBUs) to ensure their workers are trained in silica awareness, to prevent future injury.

The offences act as a deterrent to poor work safety practices and encourage PCBUs to dedicate resources and attention to workplace safety.

Introducing a new chapter containing offences for the uncontrolled dry cutting of silica containing materials and duty to ensure workers are trained in silica awareness, to protect the life of workers and people at a workplace and prevent future illness or injury, act as a deterrent to poor work safety practices and encourage employers and businesses to dedicate resources and attention to workplace safety.

### ***Rights Limited – Rights in criminal proceedings – strict liability and the presumption of innocence***

#### ***1. Nature of the right and the limitation (s28(a) and (c))***

Everyone charged with a criminal offence has the right to be presumed innocent until proven guilty according to law. Although through the Amendment Regulation the ACT Government is taking positive steps to protect the health and safety of workers and prevent workplace injuries, the Regulation potentially engages and limits the right to the presumption of innocence through the application of strict liability

provisions as per section 12A of the *Work Health and Safety Act 2011* which apply to elements of the offence provisions in new Chapter 7A Crystalline silica of the WHS Regulation at clause 9 of the Regulation, specifically sections 418C and 418D (uncontrolled dry cutting of material containing silica) and 418E (duty to train workers about crystalline silica awareness).

Strict liability provisions generally engage and limit the right to be presumed innocent as they remove the need for prosecution to prove an accused person's fault (i.e. the mental element of intent or recklessness) in relation to an offence generally or for particular elements of an offence. As a result, this reverses the onus in criminal proceedings and requires an accused to prove a defence for those elements to which strict liability applies, such as a mistake of fact under the *Criminal Code 2002*.

## **2. Legitimate purpose (s28(b))**

The legitimate purpose of the strict liability provision(s) is to support enforcement of the measures in the regulation to restrict/prohibit dry cutting of silica containing materials, which aims to protect the health and safety of workers. The penalty that may be imposed on commission of the offence will act as a deterrent against PCBU's providing unsafe workplaces and work cultures. The WHS Act imposes health and safety duties on all PCBU's in the Territory, as well as duties to their officers and workers. All PCBU's are required to be aware of their health and safety duties under the WHS Act and it is reasonable for the law to assume this is the case in the context of a workplace exposure to silica containing materials.

## **3. Rational connection between the limitation and the purpose (s28(d))**

The offence elements applying strict liability have been considered during the development of the Regulation. The strict liability offences arise in a regulatory context where, for reasons such as public safety, the public interest in ensuring that regulatory schemes are observed, requires the sanction of criminal penalties. The rationale for its use in the Regulation is that people who owe work safety duties such as PCBU's, persons in control of aspects of work and designers and manufacturers of work structures and products, as opposed to members of the general public, can be expected to be aware of their duties and obligations to workers and the wider public. In particular, where an accused can reasonably be expected, because of his or her professional involvement, to know the requirements of the law, the mental (or fault) element can justifiably be excluded. Accordingly, strict liability offences are applied so that every relevant person complies with their obligations at all times and acts appropriately to secure the health and safety of workers and others at the workplace.

## **4. Proportionality (s28 (e))**

Given the serious health implications exposure to silica containing materials may have on workers, the application of strict liability is necessary and proportionate to ensure a culture of safe work practices. It is not considered that there are any less restrictive means reasonably available to achieve the purpose of addressing the risks that arise from uncontrolled dry cutting of silica containing materials, and

encouraging proactive work health and safety compliance is far more difficult to achieve without the use of strict liability offences. Strict liability clearly identifies the essential elements that form part of the regulatory framework that encourage PCBU's to maintain a workplace that is free from harm or injury.

The application of strict liability is reasonable to protect the health and safety of workers. Strict liability is only applied to particular elements of the uncontrolled dry cutting of silica containing materials offence under sections 418C, 418D and 418E of the regulation through sections 276(1) and 276(2) of the WHS Act. It ensures those who hold responsibility for a health or safety duty uphold that responsibility and cannot escape liability by claiming ignorance of the duty or ignorance of the effect of their conduct. The defence of mistake of fact as provided by the *Criminal Code 2002* remains available to any accused for any strict liability provisions. The requirement to which the offences apply are not burdensome or out of alignment with the WHS framework; they relate to ensuring the safety of workers as well as the broader ACT community.

The application of strict liability to uncontrolled dry cutting and to PCBU's who do not take all reasonably practicable measures to address exposure risks associated with silica containing materials; and for failing to ensure workers are trained in silica awareness, complements the existing scheme regulating WHS and is supported by increasing evidence of the substantial risk of inhalation of silica dust.

The application of strict liability and the penalties imposed are in line those applied to asbestos duties under the WHS Regulation. The penalty amount applied is also consistent with penalties applied for breach of duty relating to asbestos under chapter 8 of the WHS regulation. The strict liability offence applied in the silica chapter of the regulation acts as an incentive for duty holders and officers to observe their duties under the regulation.

The Regulation places the least restrictive limitation on the right to presumption of innocence, as it does not apply strict liability to information that is known by an accused, and that may be revealed to prove or disprove the defence.

## **CLAUSE NOTES**

### **Part 1 Preliminary**

#### **Clause 1 Name of regulation**

Clause 1 establishes the name of the Work Health and Safety Amendment Regulation 2022 (No 1).

#### **Clause 2 Commencement**

Clause 2 is the commencement provision, which provides for the Regulation (other than sections 10 and 11 and schedule 1) to come into operation on the fourteenth day after its notification day.

Sections 10 and 11 commence on 1 July 2022.

Schedule 1 commences on 1 July 2023.

#### **Clause 3 Legislation amended**

Clause 3 sets out the legislation amended by the Regulation.

#### **Clause 4 Section 223 (6) and note**

Clause 4 omits reference to the superseded Australian Standard “AS 2397:1993 – Safe use of lasers in the building and construction industry” and replaces it with the current Australian Standard “AS2397:2015 – Safe use of lasers in the building and construction industry” (AS2397:2015), in section 223 (6).

#### **Clause 5 New section 338 (2)**

Clause 5 amends regulation 338, by adding in sub-regulation 338(2). Sub-regulation 338(2) provides that sub-regulation 338(1) does not apply where the hazardous chemical was manufactured or imported before 1 January 2023 and was, at the time it was manufactured or imported, labelled in accordance with GHS 3.

This item enables suppliers to on-sell GHS 3 labelled stock already in the supply chain. Existing labels may be used until stock runs out and end users are able to use existing labelled stock indefinitely.

Note that some jurisdictions have supplier labelling exemptions for chemicals manufactured or imported before 1 January 2017 and labelled in accordance with National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)] (NOHSC: 2012 (1994)).

## **Clause 6 Section 341 (2), except notes**

This clause omits existing sub-regulation 341(2) and replaces it with a new sub-regulation which provides that sub-regulation 341(1) does not apply to a hazardous chemical that was:

- supplied before 1 January 2017 and was labelled in accordance with NOHSC: 2012 (1994)
- supplied before 1 January 2023 and was labelled in accordance with GHS 3, or
- manufactured or imported before 1 January 2023 and was labelled in accordance with GHS 3.

This sub-regulation enables persons conducting a business or undertaking (PCBUs) to use, handle or store a hazardous chemical that was already in the supply chain provided it meets the labelling requirements that applied at the time of supply.

## **Clause 7 Section 342 (1A), except notes**

This clause omits existing sub-regulation 342(1A) and replaces it with a new sub-regulation which provides that sub-regulation 342(1) does not apply to a hazardous chemical that was:

- manufactured at the workplace, or transferred or decanted from its original container at the workplace, before 1 January 2017 and was labelled in accordance with NOHSC: 2012 (1994), or
- manufactured at the workplace before 1 January 2023 and was labelled in accordance with GHS 3, or
- transferred or decanted from its original decanter at the workplace if it was manufactured or imported before 1 January 2023 and was labelled in accordance with GHS 3.

This sub-regulation means that a PCBU does not need to re label a hazardous chemical that was manufactured at the workplace, or transferred or decanted from its original container at the workplace provided that it was correctly labelled in accordance with the labelling requirements that applied at the time of manufacture, transfer or decanting (as applicable).

## **Clause 8 Section 342 (2A), except notes**

This clause omits sub-regulation 342(2A) and replaces it with a new sub-regulation that provides sub-regulation 342(2) does not apply to a container that contains a hazardous chemical if the container was:

- supplied before 1 January 2017 and was labelled in accordance with NOHSC: 2012 (1994),
- supplied before 1 January 2023 and was labelled in accordance with GHS 3, or

- manufactured or imported before 1 January 2023 and was labelled in accordance with GHS 3.

This sub-regulation means that a PCBU does not need to re label a container that contains hazardous chemicals if the container was already in the supply chain provided that the container meets the labelling requirements that applied at the time of supply.

## **Clause 9      New chapter 7A**

Clause 9 amends the WHS Regulation to insert a new chapter 7A on crystalline silica and sets out defined terms for the purpose of the new chapter. The new chapter contains provisions to implement an uncontrolled dry cutting ban on silica containing materials.

### **Uncontrolled dry cutting ban on silica containing materials contains provisions that provide:**

- that a PCBU must not allow or direct their workers to undertake uncontrolled dry-cutting or processing of crystalline silica containing materials (SCMs);
- dry-cutting or processing means the process of cutting, grinding, trimming, sanding, polishing, drilling or crushing a silica containing material using a power tool or another form of mechanical plant without effective controls in place;
- controlled dry-cutting or processing of SCMs requires a combination of controls that eliminate the risk of exposure to airborne crystalline silica (defined to mean any airborne contaminant containing respirable crystalline silica dust), if reasonably practicable, or if not, then minimise the risk;
- crystalline silica containing material is to be defined as engineered stone, concrete and masonry, cement and mortar, bricks and national stone containing crystalline silica;
- ensure a combination of control measures must be implemented when using a power tool or another form of mechanical plant – examples of control measures include, but should not be limited to:
  - integrated water delivery system/water suppression
  - segregation of work areas
  - on tool dust extraction connected to a Dust Class H Vacuum
  - local exhaust ventilation;
  - use of respiratory protective equipment.
- ensure that any controls used are designed, installed, used and maintained so that the controls are effective in reducing exposure to airborne crystalline silica produced as a result of cutting, grinding, trimming, sanding, polishing, drilling or crushing silica containing material.

### **Clause 10 Section 488 (1A)**

Clause 10 amends section 488(1A)

Section 488(1A) allows the recognition of corresponding licences from other jurisdictions on notification by the licensee to the ACT WHS Regulator.

This clause makes a technical amendment to remove any impediment/pre-condition to automatic recognition within the existing framework, while still retaining visibility over who is undertaking asbestos-related work in the Territory.

### **Clause 11 Section 490 (1A)**

Clause 11 amends Section 490(1A)

Section 490(1A) allows the recognition of corresponding licences from other jurisdictions on notification by the licensee to the ACT WHS Regulator.

The amendment removes any impediment/pre-condition to automatic recognition within the existing framework, while still retaining visibility over who is undertaking asbestos-related work in the Territory.

### **Clause 12 Schedule 5, subsection 5.1.1**

This clause omits AS 4343:2005 (pressure equipment – Hazard levels) and substitutes AS 4643:2014 (Pressure equipment – Hazard levels).

### **Clause 13 Schedule 5, subsection 5.1.1, note**

This clause omits AS 4343:2005 (pressure equipment – Hazard levels) and substitutes AS 4643:2014 (Pressure equipment – Hazard levels).

### **Clause 14 Schedule 5, section 5.2 (1) (ab) and notes**

This clause updates references for the exclusion of items of plant listed in this schedule at 5.2(1)(ab) as any pressure equipment (other than a gas cylinder) excluded from the scope of AS/NZS 1200:2015 (Pressure equipment) and includes updates to notes as appropriate.

### **Clause 15 Schedule 5, subsection 5.3.1 and 5.3.2**

This clause omits reference to AS 4343:2005 and substitutes AS 4343:2014.

### **Clause 16 Schedule 5, section 5.4 (1) (a) and notes**

This clause updates references including in notes to items of plants for the purposes of exemptions to any pressure equipment (other than a gas cylinder) excluded from the scope of AS/NZS 1200:2015 (Pressure equipment).

**Clause 17 Schedule 6, table 6.1 note**

This clause substitutes the information at the note to indicate Table 6.1 replaces table 3.4.5 in –

- a) the GHS, p 159; and
- b) GHS 3, p 151.

**Clause 18 Schedule 6, table 6.2 note 2**

This clause substitutes the information at note 2 to indicate Table 6.2 replaces table 3.6.1 in –

- a) the GHS, p 174; and
- b) GHS 3, p 166.

**Clause 19 Schedule 6, table 6.3 note 2**

This clause substitutes the information at note 2 to indicate Table 6.3 replaces table 3.7.1 in –

- a) the GHS, p 187; and
- b) GHS 3, p 180.

**Clause 20 Schedule 6, table 6.4 note 2**

This clause substitutes the information at note 2 to indicate that Table 6.5 replaces table 3.8.2 in –

- a) the GHS, p 197; and
- b) GHS 3, p 192.

**Clause 21 Schedule 6, table 6.5 note 2**

This clause substitutes the information at note 2 to indicate that Table 6.3 replaces table 3.9.3 in –

- a) the GHS, p 207; and
- b) GHS 3, p 203.

**Clause 22 Schedule 7, section 7.1 (2) (a)**

This clause omits 'Product identifier and chemical identify' from Schedule 7, section 7.1(2)(a)

**Clause 23 Schedule 7, section 7.1 (2) (g)**

This clause omits 'including how the chemical may be safely used' from Schedule 6, section 7.1 (2)(g)

**Clause 24 Schedule 8, table 8.2, item 13, column 3**

This clause omits category 2A from Schedule 8, table 8.2, item 13, column 3 and substitutes category 2.

**Clause 25 Schedule 8, table 8.3, item 3, column 2**

This item omits (category 2A) from Schedule 8, table 8.3 item 3, column 2 and substitutes (category 2).

**Clause 26 Schedule 11, table 11.1 and notes**

This clause subsites the entire table at Schedule 11, table 11.1.

**Clause 27 Dictionary, new definitions**

This clause inserts new definitions for class H and class M vacuum cleaner.

**Clause 28 Dictionary, definition of GHS and note 1**

This clause omits 3<sup>rd</sup> from the definition of GHS and note 1 and substitutes 7<sup>th</sup>.

**Clause 29 Dictionary, new definition of GHS 3**

This clause inserts a new definition of GHS 3 as:

GHS 3 means the Globally Harmonized System of Classification and Labelling of Chemicals, 3<sup>rd</sup> revised edition, published by the United Nations, as modified under schedule 6 (Classification of mixtures). including notes.

**Clause 30 Dictionary, definition of hazardous chemical and note**

This clause substitutes the definition of *hazardous chemical*.

**Clause 31 Dictionary, new definitions**

This clause inserts new definitions for local exhaust ventilation system, material containing crystalline silica and respiratory protective equipment.

**Schedule 1 Other amendments**

Schedule 1 [1.1] omits Chapter 7A Part 71.1 Crystalline silica, definitions and substitutes with the provisions of Schedule 1 as provided at:

- section 418A Definitions – ch 7A
- section 418B Definitions – pt 7A.2
- section 418C Uncontrolled dry cutting of material containing *crystalline* silica
- section 418D Effective control measures for cutting material containing crystalline silica
- section 418E Duty to train workers about crystalline silica awareness

This schedule commences on 1 July 2023 to introduce a duty on PCBUs to ensure workers carrying out high risk crystalline silica work are trained in silica awareness, including provisions to:

- In addition to training required by division 3.2.1 (information, training and instruction), a PCBU must ensure that a worker is trained in a course in crystalline silica awareness if they are:
  - a worker engaged by the PCBU who the person reasonably believes will carry out high risk crystalline silica work in the business or undertaking; or
  - a worker engaged by the person in a declared occupation.
- The Minister may declare a VET course, or other course of qualification, in crystalline silica awareness; and an occupation for which training in crystalline silica awareness is required.
- A PCBU must ensure that a record is kept of the training undertaken by the worker while the worker is carrying out work in the business or undertaking and kept for 5 years after the day the worker stops working for the PCBU.