



Australian Capital Territory

# **Work Health and Safety Regulation 2011**

**SL2011-36**

made under the

**Work Health and Safety Act 2011**

**Republication No 1 (RI No 2)**

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Not all provisions are in force: see last endnote

Authorised by the ACT Parliamentary Counsel

## About this republication

### The republished law

This is a republication of the *Work Health and Safety Regulation 2011*, made under the *Work Health and Safety Act 2011* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 1 January 2012. It also includes any commencement, repeal or expiry affecting this republished law.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

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Australian Capital Territory

# Work Health and Safety Regulation 2011

made under the

**Work Health and Safety Act 2011**

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Australian Capital Territory

# Work Health and Safety Regulation 2011

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made under the

**Work Health and Safety Act 2011**

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## Chapter 1 Preliminary

### Part 1.1 Introductory matters

#### 1 Name of regulation

This regulation is the *Work Health and Safety Regulation 2011*.

#### 2 Commencement

- (1) This regulation (other than the provisions mentioned in subsections (2) to (4)) commences on the commencement of the *Work Health and Safety Act 2011*, section 3.

*Note* The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) The following provisions commence on 1 July 2012:

- (a) division 4.7.4;
- (b) sections 168 to 170.

- (3) The following provisions commence on 1 January 2013:

- (a) section 53;
- (b) sections 164 and 165;
- (c) sections 171 to 175;
- (d) divisions 4.8.3 and 4.8.4;
- (e) divisions 5.2.2 and 5.2.3;
- (f) section 235;
- (g) part 5.3;
- (h) sections 309 to 311;
- (i) section 313.

- (4) The following provisions commence on 1 July 2013:
- (a) schedule 3, table 3.1, item 23;
  - (b) schedule 4, table 4.1, item 23.

## 5 Dictionary

The dictionary at the end of this regulation is part of this regulation.

*Note 1* The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition '*VET course*—see the *National Vocational Education and Training Regulator Act 2011* (Cwlth).' means that the term 'VET course' is defined in that Act and the definition applies to this regulation..

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

## 6A Offences are offences of strict liability

Strict liability applies to each physical element of each offence under this regulation unless otherwise stated in the section containing the offence.

## 6B Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

*Note* *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this regulation (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

**7            Meaning of *person conducting a business or undertaking*—persons excluded—Act, s 5 (6)**

- (1) For the purposes of the Act, section 5 (6) (Meaning of *person conducting a business or undertaking*), a strata title body corporate that is responsible for any common areas used only for residential purposes may be taken not to be a person conducting a business or undertaking in relation to those premises.
- (2) Subsection (1) does not apply if the strata title body corporate engages any worker as an employee.
- (3) For the purposes of the Act, section 5 (6), an incorporated association may be taken not to be a person conducting a business or undertaking if the incorporated association consists of a group of volunteers working together for 1 or more community purposes where—
  - (a) the incorporated association, either alone or jointly with any other similar incorporated association, does not employ any person to carry out work for the incorporated association; and
  - (b) none of the volunteers, whether alone or jointly with any other volunteers, employs any person to carry out work for the incorporated association.
- (4) In this section:  

*strata title body corporate* means an owners corporation for a units plan under the *Unit Titles Act 2001*, section 38 (Establishment of owners corporations).



## 8 Meaning of *supply*—Act, s 6 (3) (b)

For the purposes of the Act, section 6 (3) (b) (Meaning of *supply*), a supply of a thing does not include the supply of a thing by a person who does not control the supply and has no authority to make decisions about the supply.

### Examples

- 1 an auctioneer who auctions a thing without having possession of the thing
- 2 a real estate agent acting in his or her capacity as a real estate agent

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

## 9 Provisions linked to health and safety duties in Act— Act, sch 3, s 1.1

If a note at the foot of a provision of this regulation states ‘WHS Act’ followed by a reference to a section number, the regulation provision sets out the way in which a person’s duty or obligation under that section of the Act is to be performed in relation to the matters and to the extent set out in the regulation provision.

*Note 1* A failure to comply with a duty or obligation under a section of the Act mentioned in a ‘WHS Act’ note is an offence to which a penalty applies.

*Note 2* A note at the foot of a provision forms part of this regulation (see Act, s 9).

## 9A Meaning of *corresponding WHS law*—Act, dict

For the Act, dictionary, definition of *corresponding WHS law*, the following laws are prescribed:

- (a) the following laws of the Commonwealth:
  - (i) *Work Health and Safety Act 2011*;

- (ii) regulations made under the *Work Health and Safety Act 2011*;
  - (iii) *Occupational Health and Safety Act 1991*;
  - (iv) an instrument made under the *Occupational Health and Safety Act 1991*;
  - (v) any other law relating to occupational health and safety matters;
- (b) the following laws of NSW:
- (i) *Work Health and Safety Act 2011*;
  - (ii) regulations made under the *Work Health and Safety Act 2011*;
  - (iii) *Occupational Health and Safety Act 2000*;
  - (iv) an instrument made under the *Occupational Health and Safety Act 2000*;
  - (v) any other law relating to occupational health and safety matters;
- (c) the following laws of Victoria:
- (i) *Occupational Health and Safety Act 2004*;
  - (ii) an instrument made under the *Occupational Health and Safety Act 2004*;
  - (iii) *Occupational Health and Safety Act 1985*;
  - (iv) an instrument made under the *Occupational Health and Safety Act 1985*;
  - (v) any other law relating to occupational health and safety matters;
- (d) the following laws of Queensland:
- (i) *Work Health and Safety Act 2011*;

- (ii) regulations made under the *Work Health and Safety Act 2011*;
  - (iii) *Workplace Health and Safety Act 1995*;
  - (iv) an instrument made under the *Workplace Health and Safety Act 1995*;
  - (v) any other law relating to occupational health and safety matters;
- (e) the following laws of Western Australia:
- (i) *Occupational Safety and Health Act 1984*;
  - (ii) an instrument made under the *Occupational Safety and Health Act 1984*;
  - (iii) *Industrial Relations Act 1979*;
  - (iv) an instrument made under the *Industrial Relations Act 1979*;
  - (v) any other law relating to occupational health and safety matters;
- (f) the following laws of South Australia:
- (i) *Occupational Health, Safety and Welfare Act 1986*;
  - (ii) an instrument made under the *Occupational Health, Safety and Welfare Act 1986*;
  - (iii) any other law relating to occupational health and safety matters;
- (g) the following laws of Tasmania:
- (i) *Workplace Health and Safety Act 1995*;
  - (ii) an instrument made under the *Workplace Health and Safety Act 1995*;

- (iii) any other law relating to occupational health and safety matters;
- (h) the following laws of the Northern Territory:
  - (i) *Workplace Health and Safety Act*;
  - (ii) an instrument made under the *Workplace Health and Safety Act*;
  - (iii) any other law relating to occupational health and safety matters.

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

## **Part 1.2 Application**

### **10 Application of the Act to dangerous goods and high risk plant—Act, sch 1, s 5**

The following provisions of the Act are excluded from the operation of the Act, schedule 1 (Application of Act to dangerous goods and high risk plant):

- (a) division 5.2 (Consultation with workers);
- (b) division 5.3 (Health and safety representatives);
- (c) division 5.4 (Health and safety committees);
- (d) division 5.5 (Issue resolution);
- (e) division 5.6 (Right to cease or direct cessation of unsafe work);
- (f) division 5.7 (Provisional improvement notices);
- (g) division 5.8 (Part not to apply to prisoners);
- (h) part 6 (Discriminatory, coercive and misleading conduct);
- (i) part 7 (Workplace entry by WHS entry permit-holders).

### **11 Application of this regulation**

A duty imposed on a person under a provision of this regulation in relation to health and safety does not limit or affect any duty the person has under the Act or, unless otherwise expressly provided, any other provision of this regulation.

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

If this regulation requires an assessment of risks to health and safety associated with a hazard, task, thing or circumstance, an assessment of risks associated with a class of hazards, tasks, things or circumstances may be conducted if—

- (a) all hazards, tasks, things or circumstances in the class are the same; and
- (b) the assessment of risks for the class does not result in any worker or other person being exposed to a greater, additional or different risk to health and safety than if the risk assessment were carried out in relation to each individual hazard, task, thing or circumstance.

## Part 1.3 Incorporated documents

### 13 Documents incorporated as in force when incorporated

A reference to any document applied, adopted or incorporated by, or mentioned in, this regulation is to be read as a reference to that document as in force at the time the document is applied, adopted, incorporated or mentioned unless express provision is made to the contrary.

### 14 Inconsistencies between provisions

If a provision of any document applied, adopted or incorporated by, or mentioned in, this regulation is inconsistent with any provision in this regulation, the provision of this regulation prevails.

### 15 References to standards

The Legislation Act, section 47 (5) and (6) does not apply to an Australian Standard or an Australian/New Zealand Standard under this regulation.

*Note* In an Act or statutory instrument, a reference consisting of the words 'Australian Standard' or 'AS' followed by a number is a reference to the standard so numbered published by or on behalf of Standards Australia. In an Act or statutory instrument, a reference consisting of the words 'Australian/New Zealand Standard' or 'AS/NZS' followed by a number is a reference to the standard so numbered published jointly by or on behalf of Standards Australia and Standards New Zealand (see Legislation Act, s 164).

## Chapter 2 Representation and participation

### Part 2.1 Representation

#### Division 2.1.1 Work groups

##### 16 Negotiations for and determination of work groups

Negotiations for and determination of work groups and variations of work groups must be directed at ensuring that the workers are grouped in a way that—

- (a) most effectively and conveniently enables the interests of the workers, in relation to work health and safety, to be represented; and
- (b) has regard to the need for a health and safety representative for the work group to be readily accessible to each worker in the work group.

*Note* Under the Act, a work group may be determined for workers at more than 1 workplace (see s 51 (3)) or for workers carrying out work for 2 or more persons conducting businesses or undertakings at 1 or more workplaces (see Act, subdiv 5.3.3).

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

For the purposes of the Act, section 52 (6) (Negotiations for agreement for work group) and section 56 (4) (Negotiation of agreement for work groups of multiple businesses), negotiations for and determination of work groups and variation of agreements concerning work groups must take into account all relevant matters including the following:

- (a) the number of workers;



- (b) the views of workers in relation to the determination and variation of work groups;
- (c) the nature of each type of work carried out by the workers;
- (d) the number and grouping of workers who carry out the same or similar types of work;
- (e) the areas or places where each type of work is carried out;
- (f) the extent to which any worker must move from place to place while at work;
- (g) the diversity of workers and their work;
- (h) the nature of any hazards at the workplace or workplaces;
- (i) the nature of any risks to health and safety at the workplace or workplaces;
- (j) the nature of the engagement of each worker;

**Examples**

- 1 employee
- 2 contractor

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (k) the pattern of work carried out by workers;

**Examples**

- 1 full-time
- 2 part-time
- 3 casual
- 4 short-term

- (l) the times at which work is carried out;
- (m) any arrangements at the workplace or workplaces relating to overtime or shift work.

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

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

- (1) This section sets out minimum procedural requirements for the election of a health and safety representative for a work group for the purposes of the Act, section 61 (2) (Procedure for election of health and safety representatives).
- (2) The person conducting the election must take all reasonable steps to ensure that the following procedures are complied with:
  - (a) each person conducting a business or undertaking in which a worker in the work group works is informed of the date on which the election is to be held as soon as practicable after the date is determined;
  - (b) all workers in the work group are given an opportunity to—
    - (i) nominate for the position of health and safety representative; and
    - (ii) vote in the election;
  - (c) all workers in the work group and all relevant persons conducting a business or undertaking are informed of the outcome of the election.

**19 Person conducting business or undertaking must not delay election**

A person conducting a business or undertaking at a workplace must not unreasonably delay the election of a health and safety representative.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

- (1) For the purposes of the Act, section 64 (2) (d) (Term of office of health and safety representative), the majority of the members of a work group may remove a health and safety representative for the work group if the members sign a written declaration that the health and safety representative should no longer represent the work group.
- (2) A member of the work group nominated by the members who signed the declaration must, as soon as practicable—
  - (a) inform the following persons of the removal of the health and safety representative:
    - (i) the health and safety representative who has been removed;
    - (ii) each person conducting a business or undertaking in which a worker in the work group works; and
  - (b) take all reasonable steps to inform all members of the work group of the removal.

- (3) The removal of the health and safety representative takes effect when the persons mentioned in subsection (2) (a) and the majority of members of the work group have been informed of the removal.

**21 Training for health and safety representatives—  
Act, s 72 (1)**

- (1) For the purposes of the Act, section 72 (1) (Obligation to train health and safety representatives), a health and safety representative is entitled to attend the following courses of training in work health and safety:
- (a) an initial course of training of 5 days;
  - (b) 1 day's refresher training each year, with the entitlement to the first refresher training commencing 1 year after the initial training.
- (2) In approving a course of training in work health and safety for the purposes of the Act, section 72 (1) (Obligation to train health and safety representatives), the regulator may have regard to all relevant matters, including—
- (a) the content and quality of the curriculum, including its relevance to the powers and functions of a health and safety representative; and
  - (b) the qualifications, knowledge and experience of the person who is to provide the course.

*Note 1* This section prescribes courses of training to which a health and safety representative is entitled. In addition to these courses, the health and safety representative and the person conducting the business or undertaking may agree that the representative will attend or receive further training.

*Note 2* Under the Legislation Act, s 46, the power to approve a course of training includes a power to amend or repeal the approval.

## Part 2.2 Issue resolution

### 22 Agreed procedure—minimum requirements

- (1) This section sets out minimum requirements for an agreed procedure for issue resolution at a workplace.
- (2) The agreed procedure for issue resolution at a workplace must include the steps set out in section 23.
- (3) A person conducting a business or undertaking at a workplace must ensure that the agreed procedure for issue resolution at the workplace—
  - (a) complies with subsection (2); and
  - (b) is set out in writing; and
  - (c) is communicated to all workers to whom the agreed procedure applies.

#### Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### 23 Default procedure—Act, s 81 (2)

- (1) This section sets out the default procedure for issue resolution for the purposes of the Act, section 81 (2) (Resolution of health and safety issues).
- (2) Any party to the issue may commence the procedure by informing each other party—
  - (a) that there is an issue to be resolved; and
  - (b) the nature and scope of the issue.

- (3) As soon as parties are informed of the issue, all parties must meet or communicate with each other to attempt to resolve the issue.
- (4) The parties must have regard to all relevant matters including the following:
  - (a) the degree and immediacy of risk to workers or other persons affected by the issue;
  - (b) the number and location of workers and other persons affected by the issue;
  - (c) the measures (both temporary and permanent) that must be implemented to resolve the issue;
  - (d) who will be responsible for implementing the resolution measures.
- (5) A party may, in resolving the issue, be assisted or represented by a person nominated by the party.
- (6) If the issue is resolved, details of the issue and its resolution must be set out in a written agreement if any party to the issue requests this.

*Note* Under the Act, *parties* to an issue include not only a person conducting a business or undertaking, a worker and a health and safety representative, but also representatives of these persons (see Act, s 80).
- (7) If a written agreement is prepared all parties to the issue must be satisfied that the agreement reflects the resolution of the issue.
- (8) A copy of the written agreement must be given to—
  - (a) all parties to the issue; and
  - (b) if requested, to the health and safety committee for the workplace.
- (9) To avoid doubt, nothing in this procedure prevents a worker from bringing a work health and safety issue to the attention of the worker's health and safety representative.

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

### **24                      Continuity of engagement of worker—Act, s 88**

For the purposes of the Act, section 88 (Continuity of engagement of worker), the prescribed purposes are the assessment of eligibility for, or the calculation of benefits for, any benefit or entitlement associated with the worker's engagement, including 1 or more of the following:

- (a) remuneration and promotion, as affected by seniority;
- (b) superannuation benefits;
- (c) leave entitlements;
- (d) any entitlement to notice of termination of the engagement.

## Part 2.4 Workplace entry by WHS entry permit-holders

### 25 Training requirements for WHS entry permits—Act, s 131 and s 133

- (1) The prescribed training for the purposes of the Act, section 131 (Application for WHS entry permit) and section 133 (Eligibility criteria), is training, that is provided or approved by the regulator, in relation to the following:
  - (a) the right of entry requirements under the Act, part 7 (Workplace entry by WHS entry permit-holders);
  - (b) the issue resolution requirements under the Act and this regulation;
  - (c) the duties under, and the framework of, the Act and this regulation;
  - (d) the requirements for the management of risks under the Act, section 17 (Management of risks);
  - (e) the meaning of *reasonably practicable* as set out in the Act, section 18 (What is *reasonably practicable* in ensuring health and safety);
  - (f) the relationship between the Act and this regulation and the *Fair Work Act 2009* (Cwlth).
- (2) The training must include providing the participant with information about the availability of any guidance material published by the regulator in relation to the Act and this regulation.
- (3) For the purpose of approving training, the regulator must have regard to all relevant matters including—
  - (a) the content and quality of the curriculum, including its relevance to the powers and functions of a WHS permit-holder; and



- (b) the qualifications, knowledge and experience of the person who is to provide the training.

*Note* Under the Legislation Act, s 46, the power to approve training includes a power to amend or repeal the approval.

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

A WHS entry permit must include the following:

- (a) the section of the Act under which the WHS entry permit is issued;
- (b) the full name of the WHS entry permit-holder;
- (c) the name of the union that the WHS entry permit-holder represents;
- (d) a statement that the WHS entry permit-holder is entitled, while the WHS entry permit is in force, to exercise the rights given to the WHS entry permit-holder under the Act;
- (e) the date of issue of the WHS entry permit;
- (f) the expiry date for the WHS entry permit;
- (g) the signature of the WHS entry permit-holder;
- (h) any conditions on the WHS entry permit.

## **27 Notice of entry—general**

A notice of entry under the Act, part 7 (Workplace entry by WHS entry permit-holders) must—

- (a) be written; and
- (b) include the following:
  - (i) the full name of the WHS entry permit-holder;
  - (ii) the name of the union that the WHS entry permit-holder represents;

- (iii) the section of the Act under which the WHS entry permit-holder is entering or proposing to enter the workplace;
- (iv) the name and address of the workplace entered or proposed to be entered;
- (v) the date of entry or proposed entry;
- (vi) the additional information and other matters required under section 28, section 29 or section 30 (as applicable).

**28 Additional requirements—entry under Act, s 117—Act, s 119**

A notice of entry under the Act, section 119 (Notice of entry) in relation to an entry under the Act, section 117 (Entry to inquire into suspected contraventions) must also include the following:

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

*Note* The Act, s 130 provides that a WHS entry permit-holder is not required to disclose the name of any worker to the person conducting the business or undertaking, and may do so only with the consent of the worker.

**29 Additional requirements—entry under Act, s 120—Act,  
s 120**

A notice of entry under the Act, section 120 (Entry to inspect employee records or information held by another person) in relation to an entry under that section must also include the following:

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

*Note* The Act, s 130 provides that a WHS entry permit-holder is not required to disclose the name of any worker to the person conducting the business or undertaking, and may do so only with the consent of the worker.

**30 Additional requirements—entry under Act, s 121—Act, s 122**

A notice of entry under the Act, section 122 (Notice of entry) in relation to an entry under the Act, section 121 (Entry to consult and advise workers) must also include a declaration stating—

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

*Note* The Act, s 130 provides that a WHS entry permit-holder is not required to disclose the name of any worker to the person conducting the business or undertaking, and may do so only with the consent of the worker.

**31 Register of WHS entry permit-holders—Act, s 151**

For the purposes of the Act, section 151 (Register of WHS entry permit-holders), the regulator must publish on its website—

- (a) an up-to-date register of WHS entry permit-holders; and
- (b) the date on which the register was last updated.

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

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

#### **32            Application—pt 3.1**

This part applies to a person conducting a business or undertaking who has a duty under this regulation to manage risks to health and safety.

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

Any specific requirements under this regulation for the management of risk must be complied with when implementing the requirements of this part.

##### **Examples**

- 1 a requirement not to exceed an exposure standard
- 2 a duty to implement a specific control measure
- 3 a duty to assess risk

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

#### **34            Duty to identify hazards**

A duty holder, in managing risks to health and safety, must identify reasonably foreseeable hazards that could give rise to risks to health and safety.

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

A duty holder, in managing risks to health and safety, must—

- (a) eliminate risks to health and safety so far as is reasonably practicable; and
- (b) if it is not reasonably practicable to eliminate risks to health and safety—minimise those risks so far as is reasonably practicable.

### **36 Hierarchy of control measures**

- (1) This section applies if it is not reasonably practicable for a duty holder to eliminate risks to health and safety.
- (2) A duty holder, in minimising risks to health and safety, must implement risk control measures in accordance with this section.
- (3) The duty holder must minimise risks, so far as is reasonably practicable, by doing 1 or more of the following:
  - (a) substituting (wholly or partly) the hazard giving rise to the risk with something that gives rise to a lesser risk;
  - (b) isolating the hazard from any person exposed to it;
  - (c) implementing engineering controls.
- (4) If a risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by implementing administrative controls.
- (5) If a risk then remains, the duty holder must minimise the remaining risk, so far as is reasonably practicable, by ensuring the provision and use of suitable personal protective equipment.

*Note* A combination of the controls set out in this section may be used to minimise risks, so far as is reasonably practicable, if a single control is not sufficient for the purpose.

### 37 Maintenance of control measures

A duty holder who implements a control measure to eliminate or minimise risks to health and safety must ensure that the control measure is, and is maintained so that it remains, effective, including by ensuring that the control measure is and remains—

- (a) fit for purpose; and
- (b) suitable for the nature and duration of the work; and
- (c) installed, set up and used correctly.

### 38 Review of control measures

- (1) A duty holder must review and, as necessary, revise control measures implemented under this regulation so as to maintain, so far as is reasonably practicable, a work environment that is without risks to health or safety.
- (2) Without limiting subsection (1), the duty holder must review and, as necessary, revise a control measure in the following circumstances:
  - (a) the control measure does not control the risk it was implemented to control so far as is reasonably practicable;

#### Examples

- 1 the results of monitoring show that the control measure does not control the risk
- 2 a notifiable incident occurs because of the risk

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) before a change at the workplace that is likely to give rise to a new or different risk to health or safety that the measure may not effectively control;
- (c) a new relevant hazard or risk is identified;

- (d) the results of consultation by the duty holder under the Act or this regulation indicate that a review is necessary;
  - (e) a health and safety representative requests a review under subsection (4).
- (3) Without limiting subsection (2) (b), a change at the workplace includes—
- (a) a change to the workplace itself or any aspect of the work environment; or
  - (b) a change to a system of work, a process or a procedure.
- (4) A health and safety representative for workers at a workplace may request a review of a control measure if the representative reasonably believes that—
- (a) a circumstance mentioned in subsection (2) (a), (b), (c) or (d) affects or may affect the health and safety of a member of the work group represented by the health and safety representative; and
  - (b) the duty holder has not adequately reviewed the control measure in response to the circumstance.



## **Part 3.2                    General workplace management**

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

#### **39                    Provision of information, training and instruction— Act, s 19**

- (1) This section applies for the purposes of the Act, section 19 (Primary duty of care) to a person conducting a business or undertaking.
- (2) The person must ensure that information, training and instruction provided to a worker is suitable and adequate having regard to—
  - (a) the nature of the work carried out by the worker; and
  - (b) the nature of the risks associated with the work at the time the information, training or instruction is provided; and
  - (c) the control measures implemented.

**Maximum penalty:**

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note*        Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person must ensure, so far as is reasonably practicable, that the information, training and instruction provided under this section is provided in a way that is readily understandable by any person to whom it is provided.

**Maximum penalty:**

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note*        Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **Division 3.2.2 General working environment**

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

A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the following:

- (a) the layout of the workplace allows, and the workplace is maintained so as to allow, for persons to enter and exit and to move about without risk to health and safety, both under normal working conditions and in an emergency;
- (b) work areas have space for work to be carried out without risk to health and safety;
- (c) floors and other surfaces are designed, installed and maintained to allow work to be carried out without risk to health and safety;
- (d) lighting enables—
  - (i) each worker to carry out work without risk to health and safety; and
  - (ii) persons to move within the workplace without risk to health and safety; and
  - (iii) safe evacuation in an emergency;
- (e) ventilation enables workers to carry out work without risk to health and safety;
- (f) workers carrying out work in extremes of heat or cold are able to carry out work without risk to health and safety;

- (g) work in relation to or near essential services does not give rise to a risk to the health and safety of persons at the workplace.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

- (1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, the provision of adequate facilities for workers, including toilets, drinking water, washing facilities and eating facilities.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that the facilities provided under subsection (1) are maintained so as to be—

- (a) in good working order; and  
(b) clean, safe and accessible.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) For the purposes of this section, a person conducting a business or undertaking must have regard to all relevant matters, including the following:
- (a) the nature of the work being carried out at the workplace;
  - (b) the nature of the hazards at the workplace;
  - (c) the size, location and nature of the workplace;
  - (d) the number and composition of the workers at the workplace.

### **Division 3.2.3 First-aid**

#### **42 Duty to provide first-aid**

- (1) A person conducting a business or undertaking at a workplace must ensure—
- (a) the provision of first-aid equipment for the workplace; and
  - (b) that each worker at the workplace has access to the equipment; and
  - (c) access to facilities for the administration of first-aid.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A person conducting a business or undertaking at a workplace must ensure that—
- (a) an adequate number of workers are trained to administer first-aid at the workplace; or

- (b) workers have access to an adequate number of other persons who have been trained to administer first-aid.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) For the purposes of this section, the person conducting the business or undertaking must have regard to all relevant matters, including the following:
  - (a) the nature of the work being carried out at the workplace;
  - (b) the nature of the hazards at the workplace;
  - (c) the size and location of the workplace;
  - (d) the number and composition of the workers and other persons at the workplace.

## **Division 3.2.4      Emergency plans**

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

- (1) A person conducting a business or undertaking at a workplace must ensure that an emergency plan is prepared for the workplace, that provides for the following:
  - (a) emergency procedures, including—
    - (i) an effective response to an emergency; and
    - (ii) evacuation procedures; and
    - (iii) notifying emergency service organisations at the earliest opportunity; and
    - (iv) medical treatment and assistance; and

- (v) effective communication between the person authorised by the person conducting the business or undertaking to coordinate the emergency response and all persons at the workplace;
- (b) testing of the emergency procedures, including the frequency of testing;
- (c) information, training and instruction to relevant workers in relation to implementing the emergency procedures.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A person conducting a business or undertaking at a workplace must maintain the emergency plan for the workplace so that it remains effective.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) For the purposes of subsections (1) and (2), the person conducting the business or undertaking must consider all relevant matters, including the following:
  - (a) the nature of the work being carried out at the workplace;
  - (b) the nature of the hazards at the workplace;
  - (c) the size and location of the workplace;
  - (d) the number and composition of the workers and other persons at the workplace.

- (4) A person conducting a business or undertaking at a workplace must implement the emergency plan for the workplace in the event of an emergency.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **Division 3.2.5 Personal protective equipment**

### **44 Provision to workers and use of personal protective equipment**

- (1) This section applies if personal protective equipment is to be used to minimise a risk to health and safety in relation to work at a workplace in accordance with section 36 (Hierarchy of control measures).
- (2) The person conducting a business or undertaking who directs the carrying out of work must provide the personal protective equipment to workers at the workplace, unless the personal protective equipment has been provided by another person conducting a business or undertaking.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person conducting the business or undertaking who directs the carrying out of work must ensure that personal protective equipment provided under subsection (2) is—
- (a) selected to minimise risk to health and safety, including by ensuring that the equipment is—
    - (i) suitable having regard to the nature of the work and any hazard associated with the work; and
    - (ii) a suitable size and fit and reasonably comfortable for the worker who is to use or wear it; and
  - (b) maintained, repaired or replaced so that it continues to minimise risk to the worker who uses it, including by ensuring that the equipment is—
    - (i) clean and hygienic; and
    - (ii) in good working order; and
  - (c) used or worn by the worker, so far as is reasonably practicable.
- (4) The person conducting a business or undertaking who directs the carrying out of work must provide the worker with information, training and instruction in the—
- (a) proper use and wearing of personal protective equipment; and
  - (b) the storage and maintenance of personal protective equipment.

**Maximum penalty:**

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* A person conducting a business or undertaking must not charge or impose a levy on a worker for the provision of personal protective equipment (see Act, s 273).



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

The person conducting a business or undertaking who directs the carrying out of work must ensure, so far as is reasonably practicable, that—

- (a) personal protective equipment to be used or worn by any person other than a worker at the workplace is capable of minimising risk to the person's health and safety; and
- (b) the person uses or wears the equipment.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **46 Duties of worker**

- (1) This section applies if a person conducting a business or undertaking provides a worker with personal protective equipment.
- (2) The worker must, so far as the worker is reasonably able, use or wear the equipment in accordance with any information, training or reasonable instruction by the person conducting the business or undertaking.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The worker must not intentionally misuse or damage the equipment.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The worker must inform the person conducting the business or undertaking of any damage to, defect in or need to clean or decontaminate any of the equipment of which the worker becomes aware.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

A person other than a worker must wear personal protective equipment at a workplace in accordance with any information, training or reasonable instruction provided by the person conducting the business or undertaking at the workplace.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## Division 3.2.6 Remote or isolated work

### 48 Remote or isolated work—Act, s 19

- (1) A person conducting a business or undertaking must manage risks to the health and safety of a worker associated with remote or isolated work, in accordance with part 3.1 (Managing risks to health and safety).

*Note* WHS Act—s 19 (see s 9).

- (2) In minimising risks to the health and safety of a worker associated with remote or isolated work, a person conducting a business or undertaking must provide a system of work that includes effective communication with the worker.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) In this section:

***assistance*** includes rescue, medical assistance and the attendance of emergency service workers.

***remote or isolated work***, in relation to a worker, means work that is isolated from the assistance of other persons because of location, time or the nature of the work.

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

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

A person conducting a business or undertaking at a workplace must ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the exposure standard for the substance or mixture.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### **50 Monitoring airborne contaminant levels**

- (1) A person conducting a business or undertaking at a workplace must ensure that air monitoring is carried out to determine the airborne concentration of a substance or mixture at the workplace to which an exposure standard applies if—
  - (a) the person is not certain on reasonable grounds whether or not the airborne concentration of the substance or mixture at the workplace exceeds the relevant exposure standard; or
  - (b) monitoring is necessary to determine whether there is a risk to health.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A person conducting a business or undertaking at a workplace must ensure that the results of air monitoring carried out under subsection (1) are recorded, and kept for 30 years after the date the record is made.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) A person conducting a business or undertaking at a workplace must ensure that the results of air monitoring carried out under subsection (1) are readily accessible to persons at the workplace who may be exposed to the substance or mixture.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **Division 3.2.8 Hazardous atmospheres**

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

- (1) A person conducting a business or undertaking at a workplace must manage risks to health and safety associated with a hazardous atmosphere at the workplace, in accordance with part 3.1 (Managing risks to health and safety).

*Note* WHS Act—s 19 (see s 9).

- (2) An atmosphere is a *hazardous atmosphere* if—  
(a) the atmosphere does not have a safe oxygen level; or

- (b) the concentration of oxygen in the atmosphere increases the fire risk; or
- (c) the concentration of flammable gas, vapour, mist or fumes exceeds 5% of the LEL for the gas, vapour, mist or fumes; or
- (d) combustible dust is present in a quantity and form that would result in a hazardous area.

## **52 Ignition sources—Act, s 19**

- (1) A person conducting a business or undertaking at a workplace must manage risks to health and safety associated with an ignition source in a hazardous atmosphere at the workplace, in accordance with part 3.1 (Managing risks to health and safety).

*Note* WHS Act—s 19 (see s 9).

- (2) This section does not apply if the ignition source is part of a deliberate process or activity at the workplace.

## **Division 3.2.9 Storage of flammable or combustible substances**

### **U 53 Flammable and combustible substances not to be accumulated**

- (1) A person conducting a business or undertaking at a workplace must ensure that, if flammable or combustible substances are kept at the workplace, the substances are kept at the lowest practicable quantity for the workplace.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) In this section:

*flammable or combustible substances* include—

- (a) flammable and combustible liquids, including waste liquids, in containers, whether empty or full; and
- (b) gas cylinders, whether empty or full.

### **Division 3.2.10      Falling objects**

#### **54            Management of risk of falling objects—Act, s 19**

A person conducting a business or undertaking at a workplace must manage, in accordance with part 3.1 (Managing risks to health and safety), risks to health and safety associated with an object falling on a person if the falling object is reasonably likely to injure the person.

*Note*      WHS Act—s 19 (see s 9).

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

- (1) This section applies if it is not reasonably practicable to eliminate the risk mentioned in section 54.
- (2) The person conducting the business or undertaking at a workplace must minimise the risk of an object falling on a person by providing adequate protection against the risk in accordance with this section.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person provides adequate protection against the risk if the person provides and maintains a safe system of work, including—
- (a) preventing an object from falling freely, so far as is reasonably practicable; or
  - (b) if it is not reasonably practicable to prevent an object from falling freely—providing, so far as is reasonably practicable, a system to arrest the fall of a falling object.

**Examples**

- 1 providing a secure barrier
- 2 providing a safe means of raising and lowering objects
- 3 providing an exclusion zone persons are prohibited from entering

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).



## Chapter 4 Hazardous work

### Part 4.1 Noise

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

- (1) In this regulation:

*exposure standard for noise*, in relation to a person, means—

- (a)  $L_{Aeq,8h}$  of 85 dB(A); or
- (b)  $L_{C,peak}$  of 140 dB(C).

- (2) In this section:

$L_{Aeq,8h}$  means the eight-hour equivalent continuous A-weighted sound pressure level in decibels (dB(A)) referenced to 20 micropascals, determined in accordance with AS/NZS 1269.1:2005 (Occupational noise management—Measurement and assessment of noise immission and exposure).

*Note* AS/NZS 1269.1:2005 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

$L_{C,peak}$  means the C-weighted peak sound pressure level in decibels (dB(C)) referenced to 20 micropascals, determined in accordance with AS/NZS 1269.1:2005 (Occupational noise management—Measurement and assessment of noise immission and exposure).

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

- (1) A person conducting a business or undertaking at a workplace must manage, in accordance with part 3.1 (Managing risks to health and safety), risks to health and safety relating to hearing loss associated with noise.

*Note* WHS Act—s 19 (see s 9).

- (2) A person conducting a business or undertaking at a workplace must ensure that the noise that a worker is exposed to at the workplace does not exceed the exposure standard for noise.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## 58 Audiometric testing

- (1) This section applies in relation to a worker who is frequently required by the person conducting the business or undertaking to use personal protective equipment to protect the worker from the risk of hearing loss associated with noise that exceeds the exposure standard for noise.
- (2) The person conducting the business or undertaking who provides the personal protective equipment as a control measure must provide audiometric testing for the worker—
- (a) within 3 months of the worker commencing the work; and  
(b) in any event, at least every 2 years.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) In this section:

***audiometric testing*** means the testing and measurement of the hearing threshold levels of each ear of a person by means of pure tone air conduction threshold tests.

**59 Duties of designers, manufacturers, importers and suppliers of plant**

- (1) A designer of plant must ensure that the plant is designed so that its noise emission is as low as is reasonably practicable.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A designer of plant must give to each person who is provided with the design for the purpose of giving effect to it adequate information about—

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

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) A manufacturer of plant must ensure that the plant is manufactured so that its noise emission is as low as is reasonably practicable.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) A manufacturer of plant must give to each person to whom the manufacturer provides the plant adequate information about—
- (a) the noise emission values of the plant; and
  - (b) the operating conditions of the plant when noise emission is to be measured; and
  - (c) the methods the manufacturer has used to measure the noise emission of the plant.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) An importer of plant must take all reasonable steps to—
- (a) obtain information about—
    - (i) the noise emission values of the plant; and
    - (ii) the operating conditions of the plant when noise emission is to be measured; and
    - (iii) the methods the designer or manufacturer has used to measure the noise emission of the plant; and
  - (b) give that information to any person to whom the importer supplies the plant.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (6) A supplier of plant must take all reasonable steps to—
- (a) obtain the information the designer, manufacturer or importer is required to give a supplier under subsection (2), (4) or (5); and
  - (b) give that information to any person to whom the supplier supplies the plant.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## Part 4.2 Hazardous manual tasks

### 60 Managing risks to health and safety—Act, s 19

- (1) A person conducting a business or undertaking must manage risks to health and safety relating to a musculoskeletal disorder associated with a hazardous manual task, in accordance with part 3.1 (Managing risks to health and safety).

*Note* WHS Act—s 19 (see s 9).

- (2) In determining the control measures to implement under subsection (1), the person conducting the business or undertaking must have regard to all relevant matters that may contribute to a musculoskeletal disorder, including—
- (a) postures, movements, forces and vibration relating to the hazardous manual task; and
  - (b) the duration and frequency of the hazardous manual task; and
  - (c) workplace environmental conditions that may affect the hazardous manual task or the worker performing it; and
  - (d) the design of the work area; and
  - (e) the layout of the workplace; and
  - (f) the systems of work used; and
  - (g) the nature, size, weight or number of persons, animals or things involved in carrying out the hazardous manual task.

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

- (1) A designer of plant or a structure must ensure that the plant or structure is designed so as to eliminate the need for any hazardous manual task to be carried out in connection with the plant or structure.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If it is not reasonably practicable to comply with subsection (1), the designer must ensure that the plant or structure is designed so that the need for any hazardous manual task to be carried out in connection with the plant or structure is minimised so far as is reasonably practicable.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The designer must give to each person who is provided with the design for the purpose of giving effect to it adequate information about the features of the plant or structure that eliminate or minimise the need for any hazardous manual task to be carried out in connection with the plant or structure.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or

(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) A manufacturer of plant or a structure must ensure that the plant or structure is manufactured so as to eliminate the need for any hazardous manual task to be carried out in connection with the plant or structure.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) If it is not reasonably practicable to comply with subsection (4), the manufacturer must ensure that the plant or structure is manufactured so that the need for any hazardous manual task to be carried out in connection with the plant or structure is minimised so far as is reasonably practicable.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (6) The manufacturer must give to each person to whom the manufacturer provides the plant or structure adequate information about the features of the plant or structure that eliminate or minimise the need for any hazardous manual task to be carried out in connection with the plant or structure.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or



(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(7) An importer of plant or a structure must take all reasonable steps to—

(a) obtain the information the designer or manufacturer is required to give under subsection (3) or (6); and

(b) give that information to any person to whom the importer supplies the plant.

Maximum penalty:

(a) in the case of an individual—\$6 000; or

(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(8) A supplier of plant or a structure must take all reasonable steps to—

(a) obtain the information the designer, manufacturer or importer is required to give a supplier under subsection (3), (6) or (7); and

(b) give that information to any person to whom the supplier supplies the plant.

Maximum penalty:

(a) in the case of an individual—\$6 000; or

(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## Part 4.3 Confined spaces

### Division 4.3.1 Preliminary

#### 62 Confined spaces to which this part applies

- (1) This part applies to confined spaces that—
  - (a) are entered by any person; or
  - (b) are intended or likely to be entered by any person; or
  - (c) could be entered inadvertently by any person.
- (2) In this part, a reference to a *confined space* in relation to a person conducting a business or undertaking is a reference to a confined space that is under the person's management or control.

#### 63 Application to emergency service workers

Section 67 (Confined space entry permit) and section 68 (Signage) do not apply to the entry into a confined space by an emergency service worker if, at the direction of the emergency service organisation, the worker is—

- (a) rescuing a person from the space; or
- (b) providing first-aid to a person in the space.

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

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

- (1) This section applies in relation to plant or a structure that includes a space that is, or is intended to be, a confined space.
- (2) A designer, manufacturer, importer or supplier of the plant or structure, and a person who installs or constructs the plant or structure, must ensure that—
  - (a) the need for any person to enter the space and the risk of a person inadvertently entering the space are eliminated, so far as is reasonably practicable; or
  - (b) if it is not reasonably practicable to eliminate the need to enter the space or the risk of a person inadvertently entering the space—
    - (i) the need or risk is minimised so far as is reasonably practicable; and
    - (ii) the space is designed with a safe means of entry and exit; and
    - (iii) the risk to the health and safety of any person who enters the space is eliminated so far as is reasonably practicable or, if it is not reasonably practicable to eliminate the risk, the risk is minimised so far as is reasonably practicable.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

#### 65 Entry into confined space must comply with this division

A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that a worker does not enter a confined space before this division has been complied with in relation to that space.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

#### 66 Managing risks to health and safety—Act, s 19

- (1) A person conducting a business or undertaking must manage, in accordance with part 3.1 (Managing risks to health and safety), risks to health and safety associated with a confined space at a workplace including risks associated with entering, working in, on or in the vicinity of the confined space (including a risk of a person inadvertently entering the confined space).

*Note* WHS Act—s 19 (see s 9).

- (2) A person conducting a business or undertaking must ensure that a risk assessment is conducted by a competent person for the purposes of subsection (1).

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person must ensure that a risk assessment conducted under subsection (2) is recorded in writing.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) For the purposes of subsections (1) and (2), the person conducting a business or undertaking must have regard to all relevant matters, including the following:
- (a) whether the work can be carried out without the need to enter the confined space;
- (b) the nature of the confined space;
- (c) if the hazard is associated with the concentration of oxygen or the concentration of airborne contaminants in the confined space—any change that may occur in that concentration;
- (d) the work required to be carried out in the confined space, the range of methods by which the work can be carried out and the proposed method of working;
- (e) the type of emergency procedures, including rescue procedures, required.

- (5) The person conducting a business or undertaking must ensure that a risk assessment under this section is reviewed and as necessary revised by a competent person to reflect any review and revision of control measures under part 3.1 (Managing risks to health and safety).

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **67 Confined space entry permit**

- (1) A person conducting a business or undertaking at a workplace must not direct a worker to enter a confined space to carry out work unless the person has issued a confined space entry permit for the work.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A confined space entry permit must—
- (a) be completed by a competent person; and
- (b) be in writing; and
- (c) state the following:
- (i) the confined space to which the permit relates;
- (ii) the names of persons permitted to enter the space;
- (iii) the period of time during which the work in the space will be carried out;

- (iv) measures to control risk associated with the proposed work in the space; and
  - (d) contain space for an acknowledgement that work in the confined space has been completed and that all persons have left the confined space.
- (3) The control measures stated in a confined space permit must—
- (a) be based on a risk assessment conducted under section 66 (Managing risks to health and safety—Act, s 19); and
  - (b) include—
    - (i) control measures to be implemented for safe entry; and
    - (ii) details of the system of work provided under section 69 (Communication and safety monitoring).
- (4) The person conducting a business or undertaking must ensure that, when the work for which the entry permit was issued is completed—
- (a) all workers leave the confined space; and
  - (b) the acknowledgement mentioned in subsection (2) (d) is completed by the competent person.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **68 Signage**

- (1) A person conducting a business or undertaking must ensure that signs that comply with subsection (2) are erected—
- (a) immediately before work in a confined space commences and while the work is being carried out; and

- (b) while work is being carried out in preparation for, and in the completion of, work in a confined space.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The signs must—
  - (a) identify the confined space; and
  - (b) inform workers that they must not enter the space unless they have a confined space entry permit; and
  - (c) be clear and prominently located next to each entry to the space.

## **69 Communication and safety monitoring**

A person conducting a business or undertaking must ensure that a worker does not enter a confined space to carry out work unless the person provides a system of work that includes—

- (a) continuous communication with the worker from outside the space; and
- (b) monitoring of conditions within the space by a standby person who is in the vicinity of the space and, if practicable, observing the work being carried out.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).



## **70 Specific control—connected plant and services**

- (1) A person conducting a business or undertaking must, so far as is reasonably practicable, eliminate any risk associated with work in a confined space in either of the following circumstances:
- (a) the introduction of any substance or condition into the space from or by any plant or services connected to the space;
  - (b) the activation or energising in any way of any plant or services connected to the space.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If it is not reasonably practicable for the person to eliminate risk under subsection (1), the person must minimise that risk so far as is reasonably practicable.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **71 Specific control—atmosphere**

- (1) A person conducting a business or undertaking must ensure, in relation to work in a confined space, that—
- (a) purging or ventilation of any contaminant in the atmosphere of the space is carried out, so far as is reasonably practicable; and

- (b) pure oxygen or gas mixtures with oxygen in a concentration exceeding 21% by volume are not used for purging or ventilation of any airborne contaminant in the space.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person must ensure that, while work is being carried out in a confined space—

- (a) the atmosphere of the space has a safe oxygen level; or
- (b) if it is not reasonably practicable to comply with paragraph (a) and the atmosphere in the space has an oxygen level less than 19.5% by volume—any worker carrying out work in the space is provided with air-supplied respiratory equipment.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) In this section:

***purging*** means the method used to displace any contaminant from a confined space.

*Note 1* Section 44 applies to the use of personal protective equipment, including the equipment provided under s (2).

*Note 2* Section 50 applies to airborne contaminants.

## **72 Specific control—flammable gases and vapours**

- (1) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that while work is being carried out in a confined space, the concentration of any flammable gas, vapour or mist in the atmosphere of the space is less than 5% of its LEL.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If it is not reasonably practicable to limit the atmospheric concentration of a flammable gas, vapour or mist in a confined space to less than 5% of its LEL and the atmospheric concentration of the flammable gas, vapour or mist in the space is—

- (a) equal to or greater than 5% but less than 10% of its LEL—the person must ensure that any worker is immediately removed from the space unless a suitably calibrated, continuous-monitoring flammable gas detector is used in the space; or  
(b) equal to or greater than 10% of its LEL—the person must ensure that any worker is immediately removed from the space.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### 73 Specific control—fire and explosion

A person conducting a business or undertaking must ensure that an ignition source is not introduced into a confined space (from outside or within the space) if there is a possibility of the ignition source causing a fire or explosion in the space.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### 74 Emergency procedures

- (1) A person conducting a business or undertaking must—
  - (a) establish first-aid procedures and rescue procedures to be followed in the event of an emergency in a confined space; and
  - (b) ensure that the procedures are practised as necessary to ensure that they are efficient and effective.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person must ensure that first-aid and rescue procedures are initiated from outside the confined space as soon as practicable in an emergency.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or

(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person must ensure, in relation to any confined space, that—
- (a) the entry and exit openings of the confined space are large enough to allow emergency access; and
  - (b) the entry and exit openings of the space are not obstructed; and
  - (c) plant, equipment and personal protective equipment provided for first-aid or emergency rescue are maintained in good working order.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* See pt 3.2 for general provisions relating to first-aid, personal protective equipment and emergency plans.

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

- (1) This section applies in relation to a worker who is to enter a confined space in order to carry out first-aid or rescue procedures in an emergency.
- (2) The person conducting the business or undertaking for which the worker is carrying out work must ensure that air-supplied respiratory equipment is available for use by, and is provided to, the worker in an emergency in which—
  - (a) the atmosphere in the confined space does not have a safe oxygen level; or
  - (b) the atmosphere in the space has a harmful concentration of an airborne contaminant; or

- (c) there is a serious risk of the atmosphere in the space becoming affected in the way mentioned in paragraph (a) or (b) while the worker is in the space.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person conducting the business or undertaking for which the worker is carrying out work must ensure that suitable personal protective equipment is available for use by, and is provided to, the worker in an emergency in which—

- (a) an engulfment has occurred inside the confined space; or
- (b) there is a serious risk of an engulfment occurring while the worker is in the space.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* Section 44 applies to the use of personal protective equipment, including the equipment provided under this section.

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

- (1) A person conducting a business or undertaking must ensure that relevant workers are provided with suitable and adequate information, training and instruction in relation to the following:
  - (a) the nature of all hazards relating to a confined space;
  - (b) the need for, and the appropriate use of, control measures to control risks to health and safety associated with those hazards;

- (c) the selection, fit, use, wearing, testing, storage and maintenance of any personal protective equipment;
- (d) the contents of any confined space entry permit that may be issued in relation to work carried out by the worker in a confined space;
- (e) emergency procedures.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person must ensure that a record of all training provided to a worker under this section is kept for 2 years.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) In this section:

***relevant worker*** means—

- (a) a worker who, in carrying out work for the business or undertaking, could—
  - (i) enter or work in a confined space; or
  - (ii) carry out any function in relation to work in a confined space or the emergency procedures established under section 74 (Emergency procedures), but who is not required to enter the space; or
- (b) any person supervising a worker mentioned in paragraph (a).

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

- (1) This section applies if a person conducting a business or undertaking—
  - (a) prepares a risk assessment under section 66 (Managing risks to health and safety—Act, s 19); or
  - (b) issues a confined space entry permit under section 67 (Confined space entry permit).
- (2) Subject to subsection (3), the person must keep—
  - (a) a copy of the risk assessment until at least 28 days after the work to which it relates is completed; and
  - (b) a copy of the confined space entry permit at least until the work to which it relates is completed.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) If a notifiable incident occurs in connection with the work to which the assessment or permit relates, the person must keep the copy of the assessment or permit (as applicable) for at least 2 years after the incident occurs.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).



- (4) The person must ensure that, for the period for which the assessment or permit must be kept under this section, a copy is available for inspection under the Act.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) The person must ensure that, for the period for which the assessment or permit must be kept under this section, a copy is available to any relevant worker on request.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## Part 4.4 Falls

### 78 Management of risk of fall—Act, s 19

- (1) A person conducting a business or undertaking at a workplace must manage, in accordance with part 3.1 (Managing risks to health and safety), risks to health and safety associated with a fall by a person from 1 level to another that is reasonably likely to cause injury to the person or any other person.

*Note* WHS Act—s 19 (see s 9).

- (2) Subsection (1) includes the risk of a fall—
- (a) in or on an elevated workplace from which a person could fall;  
or
  - (b) in the vicinity of an opening through which a person could fall;  
or
  - (c) in the vicinity of an edge over which a person could fall; or
  - (d) on a surface through which a person could fall; or
  - (e) in any other place from which a person could fall.
- (3) A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that any work that involves the risk of a fall to which subsection (1) applies is carried out on the ground or on a solid construction.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) A person conducting a business or undertaking must provide safe means of access to and exit from—
- (a) the workplace; and
  - (b) any area within the workplace mentioned in subsection (2).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) In this section:

***solid construction*** means an area that has—

- (a) a surface that is structurally capable of supporting all persons and things that may be located or placed on it; and
- (b) barriers around its perimeter and any openings to prevent a fall; and
- (c) an even and readily negotiable surface and gradient; and
- (d) a safe means of entry and exit.

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

- (1) This section applies if it is not reasonably practicable for the person conducting a business or undertaking at a workplace to eliminate the risk of a fall to which section 78 applies.

- (2) The person must minimise the risk of a fall by providing adequate protection against the risk in accordance with this section.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person provides adequate protection against the risk if the person provides and maintains a safe system of work, including by—
- (a) providing a fall prevention device if it is reasonably practicable to do so; or
- (b) if it is not reasonably practicable to provide a fall prevention device, providing a work positioning system; or
- (c) if it is not reasonably practicable to comply with either paragraph (a) or (b), providing a fall arrest system, so far as is reasonably practicable.

**Examples**

- 1 providing temporary work platforms
- 2 providing training in relation to the risks involved in working at the workplace
- 3 providing safe work procedures, safe sequencing of work, safe use of ladders, permit systems and appropriate signs

*Note 1* A combination of the controls set out in this subsection may be used to minimise risks so far as is practicable if a single control is not sufficient for the purpose.

*Note 2* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) This section does not apply in relation to the following work:
- (a) the performance of stunt work;

- (b) the performance of acrobatics;
- (c) a theatrical performance;
- (d) a sporting or athletic activity;
- (e) horse riding.

*Note* Section 36 applies to the management of risk in relation to this work.

- (5) In this section:

*fall prevention device* includes—

- (a) a secure fence; and
- (b) edge protection; and
- (c) working platforms; and
- (d) covers.

## **80 Emergency and rescue procedures**

- (1) This section applies if a person conducting a business or undertaking provides a fall arrest system as a control measure.
- (2) Without limiting section 79, the person must establish emergency procedures, including rescue procedures, in relation to the use of the fall arrest system.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person must ensure that the emergency procedures are tested so that they are effective.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or

(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person must provide relevant workers with suitable and adequate information, training and instruction in relation to the emergency procedures.

Maximum penalty:

(a) in the case of an individual—\$6 000; or

(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(5) In this section:

***relevant worker*** means—

(a) a worker who, in carrying out work in the business or undertaking, uses or is to use a fall arrest system; and

(b) a worker who may be involved in initiating or implementing the emergency procedures.

## **Part 4.5 High risk work**

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

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

##### **81 Licence required to carry out high risk work**

A person must not carry out a class of high risk work unless the person holds a high risk work licence for that class of high risk work, except as provided in section 82.

*Note 1* See the Act, s 43 (Requirements for authorisation of work).

*Note 2* Sch 3 (High risk work licences and classes of high risk work) sets out the high risk work licences and classes of high risk work that are within the scope of each licence.  
Sch 4 (High risk work licences—competency requirements) sets out the qualifications required for a high risk work licence.

##### **82 Exceptions**

- (1) A person who carries out high risk work in either of the following circumstances is not required to be licensed:
  - (a) work carried out—
    - (i) in the course of training towards a certification in order to be licensed to carry out the high risk work; and
    - (ii) under the supervision of a person who is licensed to carry out the high risk work;
  - (b) work carried out by a person who, having applied for a licence to carry out the high risk work on the basis of a certification, is awaiting a decision on that application.

- (2) A person who carries out high risk work involving plant is not required to be licensed if—
- (a) the work is carried out at a workplace solely for the purpose of the manufacture, testing, trialling, installation, commissioning, maintenance, servicing, repair, alteration, demolition or disposal of the plant at that workplace or moving the plant within the workplace; and
  - (b) the plant is operated or used without a load except when standard weight loads with predetermined fixing points are used for calibration of the plant.
- (3) For the purposes of subsection (2) (a), moving does not include loading plant onto, or unloading plant from, the vehicle or equipment used to move the plant.
- (4) A person who carries out high risk work with a crane or hoist is not required to be licensed as a crane operator if—
- (a) the work is limited to setting up or dismantling the crane or hoist; and
  - (b) the person carrying out the work holds a licence in relation to rigging, which qualifies the person to carry out the work.
- Note* See sch 3 (High risk work licences and classes of high risk work) for the classes of crane operator licence.
- (5) A person who carries out high risk work with a heritage boiler is not required to be licensed as a boiler operator.

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

- (1) In this subdivision, a reference to a high risk work licence includes a reference to an equivalent licence—
- (a) that was issued under a corresponding WHS law; and



- (b) that is being used in accordance with the terms and conditions under which it was granted.
- (2) Subsection (1) does not apply to a licence that is suspended or cancelled or has expired in the corresponding jurisdiction.

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

- (1) A person conducting a business or undertaking must ensure that a person supervising the work of a person carrying out high risk work as required by section 82 (1) (a) (Exceptions) provides direct supervision of the person except in the circumstances set out in subsection (2).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) Direct supervision of a person is not required if—
  - (a) the nature or circumstances of a particular task make direct supervision impracticable or unnecessary; and
  - (b) the reduced level of supervision will not place the health or safety of the supervised person or any other person at risk.

- (3) In this section:

*direct supervision* of a person means the oversight by the supervising person of the work of that person for the purposes of—

- (a) directing, demonstrating, monitoring and checking the person's work in a way that is appropriate to the person's level of competency; and
- (b) ensuring a capacity to respond in an emergency situation.

## 85 Evidence of licence—duty of person conducting business or undertaking

- (1) A person conducting a business or undertaking at a workplace must not direct or allow a worker to carry out high risk work for which a high risk work licence is required unless the person sees written evidence provided by the worker that the worker has the relevant high risk work licence for that work.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A person conducting a business or undertaking at a workplace must not direct or allow a worker to carry out high risk work mentioned in section 82 (1) (Exceptions) unless the person sees written evidence provided by the worker that the worker—

- (a) is undertaking the course of training mentioned in section 82 (1) (a) (i); or
- (b) has applied for the relevant licence and holds the certification mentioned in section 82 (1) (b).

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) A person conducting a business or undertaking at a workplace must not direct or allow a worker to supervise high risk work as mentioned in section 82 (1) (a) and section 84 (Duty of person conducting business or undertaking to ensure direct supervision)

unless the person sees written evidence that the worker holds the relevant high risk work licence for that high risk work.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) A person conducting a business or undertaking at a workplace must keep the written evidence given to the person—
  - (a) under subsection (1) or (2)—for at least 1 year after the high risk work is carried out;
  - (b) under subsection (3)—for at least 1 year after the last occasion on which the worker performs the supervision work.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### **Subdivision 4.5.1.2 Licensing process**

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

Only a person who holds a qualification set out in schedule 4 (High risk work licences—competency requirements) may apply for a high risk work licence.

#### **87 Application for high risk work licence**

- (1) This section applies to an application for a high risk work licence.
- (2) The application must include the following information:
  - (a) the applicant's name and home address;

- (b) a recent photograph of the applicant;
- (c) evidence of the applicant's age;
- (d) any other evidence of the applicant's identity required by the regulator;
- (e) the class of high risk work licence to which the application relates;
- (f) a copy of a certification—
  - (i) that is held by the applicant in relation to the VET course, or each of the VET courses, set out in schedule 4 (High risk work licences—competency requirements) in relation to the high risk work licence applied for; and
  - (ii) that was issued not more than 60 days before the application is made;
- (g) a declaration that the applicant does not hold an equivalent licence under a corresponding WHS law;
- (h) a declaration as to whether or not the applicant has ever been convicted or found guilty of any offence under the Act or this regulation or under any corresponding WHS law;  
*Note* A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).
- (i) details of any conviction or finding of guilt declared under paragraph (h);
- (j) a declaration as to whether or not the applicant has ever entered into an enforceable undertaking under the Act or under any corresponding WHS law;
- (k) details of any enforceable undertaking declared under paragraph (j);

- (l) if the applicant has previously been refused an equivalent licence under a corresponding WHS law, a declaration giving details of that refusal;
- (m) if the applicant has previously held an equivalent licence under a corresponding WHS law, a declaration—
  - (i) describing any condition imposed on that licence; and
  - (ii) stating whether or not that licence had been suspended or cancelled and, if so, whether or not the applicant had been disqualified from applying for any licence; and
  - (iii) giving details of any suspension, cancellation or disqualification.

*Note 1* A fee may be determined under the Act, s 278 for this provision.

*Note 2* If a form is approved under the Act, s 277 for this provision, the form must be used.

*Note 3* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

## **88 Additional information**

- (1) If an application for a high risk work licence does not contain sufficient information to enable the regulator to make a decision whether or not to grant the licence, the regulator may ask the applicant to provide additional information.
- (2) A request for additional information must—
  - (a) state the date (being not less than 28 days after the request) by which the additional information is to be given; and
  - (b) be confirmed in writing.
- (3) If an applicant does not provide the additional information by the date stated, the application is to be taken to have been withdrawn.

- (4) The regulator may make more than 1 request for additional information under this section.

## **89 Decision on application**

- (1) Subject to subsection (3), the regulator must grant a high risk work licence if satisfied about the matters mentioned in subsection (2).
- (2) The regulator must be satisfied about the following:
- (a) the application has been made in accordance with this regulation;
  - (b) the applicant does not hold an equivalent licence under a corresponding WHS law unless that licence is due for renewal;
  - (c) the applicant—
    - (i) resides in the ACT; or
    - (ii) resides outside the ACT and circumstances exist that justify the grant of the licence;
  - (d) the applicant is at least 18 years of age;
  - (e) the applicant has provided the certification required under section 87 (2) (f) (Application for high risk work licence);
  - (f) the applicant is able to carry out the work to which the licence relates safely and competently.
- (3) The regulator must refuse to grant a high risk work licence if satisfied that—
- (a) the applicant is disqualified under a corresponding WHS law from holding an equivalent licence; or
  - (b) the applicant, in making the application, has—
    - (i) given information that is false or misleading in a material particular; or

- (ii) failed to give any material information that should have been given.
- (4) If the regulator decides to grant the licence, it must notify the applicant within 14 days after making the decision.
- (5) If the regulator does not make a decision within 120 days after receiving the application or the additional information requested under section 88 (Additional information), the regulator is taken to have refused to grant the licence applied for.

*Note* A refusal to grant a high risk work licence (including under s (5)) is a reviewable decision (see s 676).

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

For the purposes of section 89 (2) (f), the regulator must have regard to all relevant matters, including the following:

- (a) any offence under the Act or this regulation or under a corresponding WHS law of which the applicant has been convicted or found guilty;

*Note* A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).

- (b) in relation to any equivalent licence applied for or held by the applicant under the Act or this regulation or under a corresponding WHS law—
  - (i) any refusal to grant the licence; and
  - (ii) any condition imposed on the licence, if granted; and
  - (iii) any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence;
- (c) any enforceable undertaking the applicant has entered into under the Act or a corresponding WHS law;

- (d) the applicant's record in relation to any matters arising under the Act or this regulation or under a corresponding WHS law.

## **91 Refusal to grant high risk work licence—process**

- (1) If the regulator proposes to refuse to grant a licence, the regulator must give a written notice to the applicant—
  - (a) informing the applicant of the reasons for the proposed refusal; and
  - (b) advising the applicant that the applicant may, by a stated date (being not less than 28 days after giving the notice), make a submission to the regulator in relation to the proposed refusal.
- (2) After the date stated in a notice under subsection (1), the regulator must—
  - (a) if the applicant has made a submission in relation to the proposed refusal to grant the licence—consider that submission; and
  - (b) whether or not the applicant has made a submission—decide whether to grant or refuse to grant the licence; and
  - (c) within 14 days after making that decision, give the applicant written notice of the decision, including the reasons for the decision.

*Note* A decision to refuse to grant a licence is a reviewable decision (see s 676).

## **92 Duration of licence**

Subject to this division, a high risk work licence takes effect on the day it is granted and, unless cancelled earlier, expires 5 years after that day.



**93 Licence document**

- (1) If the regulator grants a high risk work licence, the regulator must issue to the applicant a licence document in the form determined by the regulator.
- (2) The licence document must include the following:
  - (a) the name of the licence-holder;
  - (b) a recent photograph of the licence-holder;
  - (c) the date of birth of the licence-holder;
  - (d) a copy of the signature of the licence-holder or provision for the inclusion of a copy signature;
  - (e) the class of high risk work licence and a description of the work within the scope of the licence;
  - (f) the date on which the licence was granted;
  - (g) the expiry date of the licence.
- (3) For the purposes of subsection (2) (e), if the regulator grants more than 1 class of high risk work licence to a person, the licence document must contain a description of each class of licence and the work that is within the scope of each licence.
- (4) If a licence-holder holds more than 1 high risk work licence, the regulator may issue to the licence-holder 1 licence document in relation to some or all those licences.
- (5) Despite section 92 (Duration of licence), if a licence document is issued under subsection (4), the licences to which that licence document related expire on the date that the first of those licences expires.

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

- (1) A licence-holder must keep the licence document available for inspection under the Act.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) Subsection (1) does not apply if the licence document is not in the licence-holder's possession because—
- (a) it has been returned to the regulator under section 97 (Licence-holder to return licence); or
- (b) the licence-holder has applied for, but has not received, a replacement licence document under section 98 (Replacement licence document).

## **95 Reassessment of competency of licence-holder**

The regulator may direct a licence-holder to obtain a reassessment of the competency of the licence-holder to carry out the high risk work covered by the licence if the regulator reasonably believes that the licence-holder may not be competent to carry out that work.

### **Examples**

- 1 the training or competency assessment of the licence-holder did not meet the standard required to hold the licence
- 2 the regulator receives information that the licence-holder has carried out high risk work incompetently

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

#### **96 Notice of change of address**

The licence-holder of a high risk work licence must give written notice to the regulator of a change of home address, within 14 days of the change occurring.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

If a high risk work licence is amended, the licence-holder must return the licence document to the regulator for amendment at the written request of the regulator and within the time stated in the request.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

#### **98 Replacement licence document**

- (1) A licence-holder must give written notice to the regulator as soon as practicable if the licence document is lost, stolen or destroyed.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If a licence document is lost, stolen or destroyed, the licence-holder may apply to the regulator for a replacement document.

*Note* A licence-holder is required to keep the licence document available for inspection (see s 94).

- (4) An application for a replacement licence document must include a declaration describing the circumstances in which the original document was lost, stolen or destroyed.

*Note 1* A fee may be determined under the Act, s 278 for this provision.

*Note 2* If a form is approved under the Act, s 277 for this provision, the form must be used.

*Note 3* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

- (5) The regulator must issue a replacement licence document if satisfied that the original document was lost, stolen or destroyed.

- (6) If the regulator refuses to issue a replacement licence document, it must give the licence-holder written notice of this decision, including the reasons for the decision, within 14 days after making the decision.

*Note* A decision to refuse to replace a licence is a reviewable decision (see s 676).

## **99 Voluntary surrender of licence**

- (1) A licence-holder may voluntarily surrender the licence document to the regulator.
- (2) The licence expires on the surrender of the licence document.

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

#### **100 Regulator may renew licence**

The regulator may renew a high risk work licence on application by the licence-holder.

## **101 Application for renewal**

- (1) This section applies to an application for renewal of a high risk work licence.
- (2) The application must include the following information:
  - (a) the name and home address of the applicant;
  - (b) evidence of the applicant's identity;
  - (c) a recent photograph of the applicant;
  - (d) a declaration by the applicant that he or she has maintained his or her competency to carry out the high risk work, including by obtaining any reassessment directed under section 95 (Reassessment of competency of licence-holder).

*Note 1* A fee may be determined under the Act, s 278 for this provision.

*Note 2* If a form is approved under the Act, s 277 for this provision, the form must be used.

*Note 3* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

- (3) The application must be made before the expiry of the licence.

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

If a licence-holder applies under section 101 for the renewal of a high risk work licence, the licence is taken to continue in force from the day it would, apart from this section, have expired until the licence-holder is given notice of the decision on the application.

## **103 Renewal of expired licence**

A person whose high risk work licence has expired may apply for a renewal of that licence—

- (a) within 12 months after the expiry of the licence; or

- (b) if the person satisfies the regulator that exceptional circumstances exist—within any longer period that the regulator allows.

*Note 1* As the licence has expired, the applicant cannot carry out the work covered by the licence until the licence is renewed. An application made after a period mentioned in par (a) or (b) would be an application for a new licence under s 87.

*Note 2* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

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

- (1) For the purposes of this subdivision—
- (a) section 88 (Additional information) applies as if a reference in that section to an application for a licence were a reference to an application to renew a licence; and
  - (b) section 89 (except subsection (5)) (Decision on application), section 90 (Matters to be taken into account) and section 92 (Duration of licence) apply as if a reference in section 89 to the grant of a licence were a reference to the renewal of a licence; and
  - (c) section 91 (Refusal to grant high risk work licence—process) applies as if a reference in that section to a refusal to grant a licence were a reference to a refusal to renew a licence.
- (2) The regulator may renew a high risk work licence granted to a person under a corresponding WHS law unless that licence is renewed under that law.

*Note* A refusal to renew a high risk work licence is a reviewable decision (see s 676).

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

- (1) This section applies if the regulator gives a licence-holder written notice of its decision to refuse to renew the licence.
- (2) If the licence-holder does not apply for internal review of the decision, the licence continues to have effect until the last of the following events:
  - (a) the expiry of the licence;
  - (b) the end of the period for applying for an internal review.
- (3) If the licence-holder applies for an internal review of the decision, the licence continues to have effect until the earlier of the following events:
  - (a) the licence-holder withdraws the application for review;
  - (b) the regulator makes a decision on the review.
- (4) If the licence-holder does not apply for an external review, the licence continues to have effect until the end of the time for applying for an external review.
- (5) If the licence-holder applies for an external review, the licence continues to have effect until the earlier of the following events:
  - (a) the licence-holder withdraws the application for review;
  - (b) the ACAT makes a decision on the review.
- (6) The licence continues to have effect under this section even if its expiry date passes.

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

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

- (1) The regulator may suspend or cancel a high risk work licence if satisfied about 1 or more of the following:
  - (a) the licence-holder has failed to take reasonable care to carry out the high risk work safely and competently;
  - (b) the licence-holder has failed to obtain a reassessment of competency directed under section 95 (Reassessment of competency of licence-holder);
  - (c) the licence-holder, in the application for the grant or renewal of the licence or on request by the regulator for additional information—
    - (i) gave information that was false or misleading in a material particular; or
    - (ii) failed to give any material information that should have been given in that application or on that request;
  - (d) the licence was granted or renewed on the basis of a certification that was obtained on the basis of the giving of false or misleading information by any person or body.
- (2) If the regulator suspends or cancels a licence, the regulator may disqualify the licence-holder from applying for—
  - (a) a further high risk work licence of the same class; or



- (b) another licence under this regulation to carry out work which requires skills that are the same as or similar to those required for the work authorised by the licence that has been suspended or cancelled.

*Note* A decision to suspend a licence, to cancel a licence or to disqualify the licence-holder from applying for a further licence is a reviewable decision (see s 676).

## **107 Matters taken into account**

- (1) In making a decision under section 106, the regulator must have regard to—
- (a) any submissions made by the licence-holder under section 108; and
  - (b) any advice received from a corresponding regulator.
- (2) For the purposes of section 106 (1) (a), the regulator must have regard to all relevant matters, including the following:
- (a) any offence under the Act or this regulation or under a corresponding WHS law, of which the licence-holder has been convicted or found guilty;
- Note* A conviction does not include a spent conviction (see *Spent Convictions Act 2000*, s 16 (c) (i)).
- (b) in relation to any equivalent licence applied for or held by the licence-holder under the Act or this regulation or under a corresponding WHS law—
    - (i) any refusal to grant the licence; and
    - (ii) any condition imposed on the licence, if granted; and
    - (iii) any suspension or cancellation of the licence, if granted, including any disqualification from applying for any licence;

- (c) any enforceable undertaking the licence-holder has entered into under the Act or a corresponding WHS law;
- (d) the licence-holder's record in relation to any matters arising under the Act or this regulation or under a corresponding WHS law.

### **108 Notice to and submissions by licence-holder**

Before suspending or cancelling a high risk work licence, the regulator must give the licence-holder a written notice of the proposed suspension or cancellation and any proposed disqualification—

- (a) outlining all relevant allegations, facts and circumstances known to the regulator; and
- (b) advising the licence-holder that the licence-holder may, by a stated date (being not less than 28 days after giving the notice), make a submission in relation to the proposed suspension or cancellation and any proposed disqualification.

### **109 Notice of decision**

- (1) The regulator must give the licence-holder written notice of a decision under section 106 (Suspension or cancellation of licence) to suspend or cancel a high risk work licence within 14 days after making the decision.
- (2) The notice must—
  - (a) state that the licence is to be suspended or cancelled; and
  - (b) if the licence is to be suspended, state—
    - (i) when the suspension begins and ends; and
    - (ii) the reasons for the suspension; and

- (iii) whether the licence-holder is required to undergo retraining or reassessment or take any other action before the suspension ends; and
  - (iv) whether or not the licence-holder is disqualified from applying for a further licence during the suspension; and
- (c) if the licence is to be cancelled, state—
  - (i) when the cancellation takes effect; and
  - (ii) the reasons for the cancellation; and
  - (iii) whether or not the licence-holder is disqualified from applying for a further licence; and
- (d) if the licence-holder is to be disqualified from applying for a further licence, state—
  - (i) when the disqualification begins and ends; and
  - (ii) the reasons for the disqualification; and
  - (iii) whether or not the licence-holder is required to undergo retraining or reassessment or take any other action before the disqualification ends; and
  - (iv) any other class of high risk work licence or other licence under this regulation the licence-holder is disqualified from applying for during the period of suspension or disqualification; and
- (e) state when the licence document must be returned to the regulator.

## **110 Immediate suspension**

- (1) The regulator may suspend a high risk work licence on a ground mentioned in section 106 (Suspension or cancellation of licence) without giving notice under section 108 (Notice to and submissions by licence-holder) if satisfied that—
  - (a) work carried out under the high risk work licence should cease because the work may involve an imminent serious risk to the health or safety of any person; or
  - (b) a corresponding regulator has suspended an equivalent licence held by the licence-holder under this section as applying in the corresponding jurisdiction.
- (2) If the regulator decides to suspend a licence under this section—
  - (a) the regulator must give the licence-holder written notice of the suspension and the reasons for the suspension; and
  - (b) the suspension of the licence takes effect on the giving of the notice.
- (3) The regulator must then—
  - (a) give notice under section 108 within 14 days after giving the notice under subsection (2); and
  - (b) make its decision under section 106.
- (4) If the regulator does not give notice under subsection (3), the suspension ends at the end of the 14-day period.
- (5) If the regulator gives notice under subsection (3), the licence remains suspended until the decision is made under section 106.

**111 Licence-holder to return licence document**

A licence-holder, on receiving a notice under section 109 (Notice of decision), must return the licence document to the regulator in accordance with the notice.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**112 Regulator to return licence document after suspension**

When the period of suspension of a licence ends, the regulator must return the licence document to the licence-holder within 14 days after the licence suspension ends.

## Part 4.6 Demolition work

### 142 Notice of demolition work

- (1) Subject to subsection (4), a person conducting a business or undertaking who proposes to carry out any of the following demolition work must ensure that written notice is given to the regulator in accordance with this section at least 5 days before the work commences:
  - (a) demolition of a structure, or a part of a structure that is load-bearing or otherwise related to the physical integrity of the structure, that is at least 6m in height;
  - (b) demolition work involving load shifting machinery on a suspended floor;
  - (c) demolition work involving explosives.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* If a form is approved under the Act, s 277 for the notice, the form must be used.

*Note 3* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

- (2) Subsection (4) applies to an emergency service organisation in relation to demolition work carried out or proposed to be carried out by an emergency service worker at the direction of the emergency service organisation in responding to an emergency.

- (3) An emergency service organisation must give notice under subsection (1) as soon as practicable (whether before or after the work is carried out).
- (4) In this section, a reference to the height of a structure is a reference to the height of the structure measured from the lowest level of the ground immediately adjacent to the base of the structure at the point at which the height is to be measured to its highest point.

## Part 4.7 General electrical safety in workplaces and energised electrical work

### Division 4.7.1 Preliminary

#### 144 Meaning of *electrical equipment*—pt 4.7

(1) In this part:

*electrical equipment*—

- (a) means any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that—
  - (i) is used for controlling, generating, supplying, transforming or transmitting electricity at a voltage greater than extra-low voltage; or
  - (ii) is operated by electricity at a voltage greater than extra-low voltage; or
  - (iii) is part of an electrical installation located in an area in which the atmosphere presents a risk to health and safety from fire or explosion; or



- (iv) is, or is part of, an active impressed current cathodic protection system within the meaning of AS 2832.1:2004 (Cathodic protection of metals—Pipes and cables); but

*Note* AS 2832.1:2004 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

- (b) does not include any apparatus, appliance, cable, conductor, fitting, insulator, material, meter or wire that is part of a vehicle that is a car or motorcycle if—
- (i) the equipment is part of a unit of the vehicle that provides propulsion for the vehicle; or
- (ii) the electricity source for the equipment is a unit of the vehicle that provides propulsion for the vehicle.

- (2) In this section:

*car*—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

*motorbike*—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

*motorcycle* means a motorbike or motortrike.

*motortrike*—see the *Road Transport (Vehicle Registration) Regulation 2000*, dictionary.

## **145 Meaning of *electrical installation*—pt 4.7**

- (1) In this part:

*electrical installation* means a group of items of electrical equipment that—

- (a) are permanently electrically connected together; and

- (b) can be supplied with electricity from the works of an electricity supply authority or from a generating source.
- (2) An item of electrical equipment may be part of more than 1 electrical installation.
- (3) In subsection (1) (a)—
  - (a) an item of electrical equipment connected to electricity by a plug and socket outlet is not *permanently electrically connected*; and
  - (b) connection achieved through using works of an electricity supply authority is not a consideration in determining whether or not electrical equipment is *electrically connected*.

#### 146 Meaning of *electrical work*—pt 4.7

In this part:

*electrical work*—

- (a) means—
  - (i) connecting electricity supply wiring to electrical equipment or disconnecting electricity supply wiring from electrical equipment; or
  - (ii) installing, removing, adding, testing, replacing, repairing, altering or maintaining electrical equipment or an electrical installation; but
- (b) does not include the following:
  - (i) work that involves connecting electrical equipment to an electricity supply by means of a flexible cord plug and socket outlet;

- (ii) work on a non-electrical component of electrical equipment, if the person carrying out the work is not exposed to an electrical risk;

**Example**

painting electrical equipment covers and repairing hydraulic components of an electrical motor

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (iii) replacing electrical equipment or a component of electrical equipment if that task can be safely performed by a person who does not have expertise in carrying out electrical work;

**Example**

replacing a fuse or a light bulb

- (iv) assembling, making, modifying or repairing electrical equipment as part of a manufacturing process;
- (v) building or repairing ducts, conduits or troughs, where electrical wiring is or will be installed if—
  - (A) the ducts, conduits or troughs are not intended to be earthed; and
  - (B) the wiring is not energised; and
  - (C) the work is supervised by a licensed electrical worker;
- (vi) locating or mounting electrical equipment, or fixing electrical equipment in place, if this task is not performed in relation to the connection of electrical equipment to an electricity supply;

- (vii) assisting a licensed electrical worker to carry out electrical work if—
  - (A) the assistant is directly supervised by the licensed electrical worker; and
  - (B) the assistance does not involve physical contact with any energised electrical equipment;
- (viii) carrying out electrical work, other than work on energised electrical equipment, in order to meet eligibility requirements in relation to becoming a licensed electrical worker.

## **Division 4.7.2 General risk management**

### **147 Risk management—Act, s 19**

A person conducting a business or undertaking at a workplace must manage risks to health and safety associated with electrical risks at the workplace, in accordance with part 3.1 (Managing risks to health and safety).

#### **Example**

electrical risks associated with the design, construction, installation, protection, maintenance and testing of electrical equipment and electrical installations at a workplace

*Note 1* WHS Act—s 19 (see s 9).

*Note 2* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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

### **148      Electrical equipment and electrical installations—div 4.7.3**

In this division, a reference to *electrical equipment* or an *electrical installation* in relation to a person conducting a business or undertaking is a reference to electrical equipment or an electrical installation that is under the person's management or control.

### **149      Unsafe electrical equipment**

- (1) A person conducting a business or undertaking at a workplace must ensure that any unsafe electrical equipment at the workplace—
- (a) is disconnected (or isolated) from its electricity supply; and
  - (b) once disconnected (or isolated)—
    - (i) is not reconnected until it is repaired or tested and found to be safe; or
    - (ii) is replaced or permanently removed from use.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) For the purposes of this section, electrical equipment or a component of electrical equipment is *unsafe* if there are reasonable grounds for believing it to be unsafe.

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

- (1) A person conducting a business or undertaking at a workplace must ensure that electrical equipment is regularly inspected and tested by a competent person if the electrical equipment is—
- (a) supplied with electricity through an electrical socket outlet; and
  - (b) used in an environment in which the normal use of electrical equipment exposes the equipment to operating conditions that are likely to result in damage to the equipment or a reduction in its expected life span, including conditions that involve exposure to moisture, heat, vibration, mechanical damage, corrosive chemicals or dust.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) In the case of electrical equipment that is new and unused at the workplace, the person conducting the business or undertaking—
- (a) is not required to comply with subsection (1); and
  - (b) must ensure that the equipment is inspected for obvious damage before being used.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* However, electrical equipment that is unsafe must not be used (see s 149).

- (3) The person must ensure that a record of any testing carried out under subsection (1) is kept until the electrical equipment is—
- (a) next tested; or
  - (b) permanently removed from the workplace or disposed of.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The record of testing—
- (a) must state the following:
    - (i) the name of the person who carried out the testing;
    - (ii) the date of the testing;
    - (iii) the outcome of the testing;
    - (iv) the date on which the next testing must be carried out; and
  - (b) may be in the form of a tag attached to the electrical equipment tested.

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

A person conducting a business or undertaking must ensure, so far as is reasonably practicable, that electrical equipment is not used if the equipment—

- (a) is required to be tested under section 150; or

(b) has not been tested.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U** **Division 4.7.4 Electrical work on energised electrical equipment**

**U** **152 Application—div 4.7.4**

This division does not apply to work carried out by or on behalf of an electricity supply authority on the electrical equipment, including electric line-associated equipment, controlled or operated by the authority to generate, transform, transmit or supply electricity.

**U** **153 Persons conducting a business or undertaking—div 4.7.4**

In this division (except section 156 (De-energised equipment must not be inadvertently re-energised), section 159 (Unauthorised access to equipment being worked on) and section 160 (Contact with equipment being worked on)), a reference to a *person conducting a business or undertaking* in relation to electrical work is a reference to the person conducting the business or undertaking who is carrying out the electrical work.



**U 154**      **Electrical work on energised electrical equipment—  
prohibited**

Subject to this division, a person conducting a business or undertaking must ensure that electrical work is not carried out on electrical equipment while the equipment is energised.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 155**      **Duty to determine whether equipment is energised**

- (1) A person conducting a business or undertaking must ensure that, before electrical work is carried out on electrical equipment, the equipment is tested by a competent person to determine whether or not it is energised.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note 1*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2*      Section 157 allows electrical testing to be carried out on electrical equipment for the purposes of this section. Section 161 sets out how the testing is to be carried out.

- (2) The person conducting a business or undertaking must ensure that—
  - (a) each exposed part is treated as energised until it is isolated and determined not to be energised; and

- (b) each high-voltage exposed part is earthed after being de-energised.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U** 156

**De-energised equipment must not be inadvertently re-energised**

A person conducting a business or undertaking must ensure that electrical equipment that has been de-energised to allow electrical work to be carried out on it is not inadvertently re-energised while the work is being carried out.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 157 Electrical work on energised electrical equipment—when permitted**

- (1) A person conducting a business or undertaking must ensure that electrical work on energised electrical equipment is not carried out unless—
- (a) it is necessary in the interests of health and safety that the electrical work is carried out on the equipment while the equipment is energised; or

**Example**

It may be necessary that life-saving equipment remain energised and operating while electrical work is carried out on the equipment.

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) it is necessary that the electrical equipment to be worked on is energised in order for the work to be carried out properly; or
- (c) it is necessary for the purposes of testing required under section 155 (Duty to determine whether equipment is energised); or
- (d) there is no reasonable alternative means of carrying out the work.

**Maximum penalty:**

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The electrical work that may be carried out under subsection (1) (a), (b) and (d) may include testing of the energised electrical equipment.

**U 158 Preliminary steps**

- (1) A person conducting a business or undertaking must ensure the following before electrical work on energised electrical equipment commences:
- (a) a risk assessment is conducted in relation to the proposed electrical work;
  - (b) the area where the electrical work is to be carried out is clear of obstructions so as to allow for easy access and exit;
  - (c) the point at which the electrical equipment can be disconnected or isolated from its electricity supply is—
    - (i) clearly marked or labelled; and
    - (ii) clear of obstructions so as to allow for easy access and exit by the worker who is to carry out the electrical work or any other competent person; and
    - (iii) capable of being operated quickly;
  - (d) the person authorises the electrical work after consulting with the person with management or control of the workplace.

**Maximum penalty:**

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) For the purposes of subsection (1) (a), the risk assessment must be—
- (a) conducted by a competent person; and
  - (b) recorded.

*Note* Section 12 permits risk assessments to be conducted, in certain circumstances, to a class of hazards, tasks, things or circumstances.

- (3) Subsection (1) (c) does not apply to electrical work on electrical equipment if—
- (a) the work is to be carried out on the supply side of the main switch on the main switchboard for the equipment; and
  - (b) the point at which the equipment can be disconnected from its electricity supply is not reasonably accessible from the work location.

**U 159**      **Unauthorised access to equipment being worked on**

A person conducting a business or undertaking must ensure that only persons authorised by the person conducting the business or undertaking enter the immediate area in which electrical work on energised electrical equipment is being carried out.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 160**      **Contact with equipment being worked on**

A person conducting a business or undertaking must ensure that, while electrical work is being carried out on energised electrical equipment, all persons are prevented from creating an electrical risk by inadvertently making contact with an exposed energised component of the equipment.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 161**      **How the work is to be carried out**

- (1) A person conducting a business or undertaking must ensure that electrical work on energised electrical equipment is carried out—
- (a) by a competent person who has tools, testing equipment and personal protective equipment that—
    - (i) are suitable for the work; and
    - (ii) have been properly tested; and
    - (iii) are maintained in good working order; and
  - (b) in accordance with a safe work method statement prepared for the work; and
  - (c) subject to subsection (5), with a safety observer present who has the competence and qualifications stated in subsection (4).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person conducting a business or undertaking must ensure, so far as is reasonably practicable, that the person who carries out the electrical work uses the tools, testing equipment and personal protective equipment properly.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) For the purposes of subsection (1) (b), the safe work method statement must—
  - (a) identify the electrical work; and
  - (b) state hazards associated with that electrical work and risks associated with those hazards; and
  - (c) describe the measures to be implemented to control the risks; and
  - (d) describe how the risk control measures are to be implemented, monitored and reviewed.
- (4) For the purposes of subsection (1) (c)—
  - (a) the safety observer must be competent—
    - (i) to implement control measures in an emergency; and
    - (ii) to rescue the worker who is carrying out the work, if necessary; and
  - (b) the safety observer must have been assessed in the previous 12 months as competent to rescue and resuscitate a person.
- (5) A safety observer is not required if—
  - (a) the work consists only of testing; and
  - (b) the person conducting the business or undertaking has conducted a risk assessment under section 158 (1) (a) (Preliminary steps) that shows that there is no serious risk associated with the proposed work.

**U 162 Record keeping**

- (1) This section applies if a person conducting a business or undertaking prepares—
  - (a) a risk assessment under section 158 (Preliminary steps); or
  - (b) a safe work method statement under section 161.

- (2) Subject to subsection (3), the person must keep—
- (a) a copy of the risk assessment until at least 28 days after the work to which it relates is completed; and
  - (b) a copy of the safe work method statement until the work to which it relates is completed.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) If a notifiable incident occurs in connection with the work to which the assessment or statement relates, the person must keep the assessment or statement (as applicable) for at least 2 years after the incident occurs.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The person must ensure that, for the period for which the assessment or statement must be kept under this section, a copy is readily accessible to any worker engaged by the person to carry out electrical work to which the assessment or statement relates.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).



- (5) The person must ensure that, for the period for which the assessment or statement must be kept under this section, a copy is available for inspection under the Act.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

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

- (1) A person conducting a business or undertaking that includes the carrying out of construction work must comply with AS/NZS 3012:2010 (Electrical installations—Construction and demolition sites).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* AS/NZS 3012:2010 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and the Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

- (2) For the purposes of subsection (1), AS/NZS 3012:2010 (Electrical installations—Construction and demolition sites) applies as if any term that is defined in that Standard and that is also defined in the Act or this regulation has the same meaning as it has in the Act or this regulation.
- (3) If any requirement in AS/NZS 3012:2010 (Electrical installations—Construction and demolition sites) deals with the same matter as a requirement under this part, it is sufficient that the person conducting the business or undertaking complies with the requirement in AS/NZS 3012:2010 as modified by subsection (2).

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

#### **U 164 Use of socket outlets in hostile operating environment**

- (1) This section applies in the following circumstances:
  - (a) electrical equipment is used in an environment in which the normal use of electrical equipment exposes the equipment to operating conditions that are likely to result in damage to the equipment or a reduction in its expected life span, including conditions that involve exposure to moisture, heat, vibration, mechanical damage, corrosive chemicals or dust;
  - (b) electrical equipment is moved between different locations in circumstances where damage to the equipment or to a flexible electricity supply cord is reasonably likely;
  - (c) electrical equipment is frequently moved during its normal use;
  - (d) electrical equipment forms part of, or is used in connection with, an amusement device.

- (2) In a circumstance set out in subsection (1), a person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that any electrical risk associated with the supply of electricity to the electrical equipment through a socket outlet is minimised by the use of an appropriate residual current device.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) Without limiting subsection (2), the residual current device must have a tripping current that does not exceed 30mA if electricity is supplied to the equipment through a socket outlet not exceeding 20A.
- (4) Subsection (2) does not apply if the supply of electricity to the electrical equipment—
- (a) does not exceed 50V AC; or  
(b) is DC; or  
(c) is provided through an isolating transformer that provides at least an equivalent level of protection; or  
(d) is provided from a non-earthed socket outlet supplied by an isolated winding portable generator that provides at least an equivalent level of protection.

*Note* The *Electricity Safety Act 1971* and the *Building Act 2004* also deal with residual current devices.

**U 165 Testing of residual current devices**

- (1) A person with management or control of a workplace must take all reasonable steps to ensure that residual current devices used at the workplace are tested regularly by a competent person to ensure that the devices are operating effectively.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person must keep a record of all testing of a residual current device (other than any testing conducted daily) until the earlier of the following occurs:

- (a) the device is next tested;  
(b) the device is permanently removed from use.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

### **166      Duty of person conducting a business or undertaking**

- (1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that no person, plant or thing at the workplace comes within an unsafe distance of an overhead or underground electric line.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If it is not reasonably practicable to ensure the safe distance of a person, plant or thing from an overhead or underground electric line, the person conducting the business or undertaking at the workplace must ensure that—
- (a) a risk assessment is conducted in relation to the proposed work; and
- (b) control measures implemented are consistent with—
- (i) the risk assessment; and

- (ii) if an electricity supply authority is responsible for the electric line—any requirements for the authority under the *Electricity Safety Act 1971* and the *Utilities Act 2000*.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* The *Electricity Safety Act 1971* and the *Utilities Act 2000* will also apply to the person conducting the business or undertaking.

- (3) An electricity supply authority is taken to have complied with this section if the authority has complied with the requirements of the *Electricity Safety Act 1971* and the *Utilities Act 2000* relating to the work of an electricity supply authority.

## **Part 4.8                    Diving work**

### **Division 4.8.1            Preliminary**

#### **167            Purpose—pt 4.8**

The purpose of this part is to impose duties on a person carrying out a business or undertaking at a workplace to ensure—

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

### **Division 4.8.2            General diving work—fitness and competence of worker**

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

- (1) A person conducting a business or undertaking at a workplace must not direct or allow a worker to carry out general diving work or undergo training for general diving work unless the worker holds a current certificate of medical fitness.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note*        Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person must not direct or allow a worker to carry out general diving work or undergo training for diving work unless the work or training complies with any conditions on the current certificate of medical fitness of the worker.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U** 169 **Certificate of medical fitness**

A certificate of medical fitness must—

- (a) be issued by a registered medical practitioner with appropriate training in underwater medicine; and  
(b) state the following:
- (i) the name of the person to whom it is issued;
  - (ii) its date of issue and its expiry date;
  - (iii) whether or not the person to whom it is issued is, in accordance with the fitness criteria, medically fit to carry out diving work;
  - (iv) any conditions in relation to the type of diving work the person to whom it is issued is fit to carry out, or the circumstances in which the person is fit to carry out general diving work, including, in the case of a person who is under 18 years of age, any particular conditions applicable to the age of the person.



**U 170**      **Duty to keep certificate of medical fitness**

A person conducting a business or undertaking at a workplace must keep the certificate of medical fitness of a worker who carries out general diving work for 1 year after the work is carried out.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 171**      **Competence of worker—general diving work—Act, s 44**

A person must not carry out general diving work (other than incidental diving work and limited scientific diving work) unless—

- (a) the person has 1 or more of the following qualifications:
  - (i) a statement of attainment for a specified VET course for general diving work that includes the type of general diving work to be carried out by the person;
  - (ii) a certificate for general diving work, issued by a training organisation, that mentions the subject areas covered in AS/NZS 4005.2:2000 (Training and certification of recreational divers—Recreational SCUBA dive supervisor); and

*Note*      AS/NZS 4005.2:2000 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

- (b) the person has, through training, qualification or experience, acquired sound knowledge and skill in relation to the following:
  - (i) the application of diving physics;

- (ii) the use, inspection and maintenance of diving equipment (including emergency equipment) and air supply of the type to be used in the proposed general diving work;
- (iii) the use of decompression tables or dive computers;
- (iv) dive planning;
- (v) ways of communicating with another diver and with persons at the surface during general diving work;
- (vi) how to safely carry out general diving work of the type proposed to be carried out;
- (vii) diving physiology and first-aid.

*Note* See the Act, s 44.

**U 172 Competence of worker—incidental diving work—Act, s 44**

- (1) A person must not carry out incidental diving work unless the person has—
- (a) the training, qualification or experience mentioned in section 171 (b); and
  - (b) relevant diving experience.

*Note* See the Act, s 44.

- (2) In this section, a person has *relevant diving experience* if the person has logged at least 15 hours of diving, of which at least 8 hours and 20 minutes were spent diving between 10m above and any depth below the maximum depth at which the diving work is to be carried out.

**U 173 Competence of worker—limited scientific diving work—  
Act, s 44**

- (1) A person who is not permanently resident in Australia must not carry out limited scientific diving work unless the person has—
  - (a) the training, qualification or experience mentioned in section 171 (b) (Competence of worker—general diving work—Act, s 44); and
  - (b) relevant diving experience, including relevant diving experience obtained outside Australia.

*Note* See the Act, s 44.

- (2) In this section, a person has *relevant diving experience* if the person has logged at least 60 hours diving of which at least 8 hours and 20 minutes were spent diving between 10m above and any depth below the maximum depth at which the limited scientific diving work is to be carried out.

**U 174 Competence of competent person supervising general  
diving work—Act, s 44**

A person appointed under section 177 (Appointment of competent person to supervise diving work) must not perform any function associated with that appointment unless the person has—

- (a) the qualification stated in section 171 (a); and
- (b) experience in the type of diving work to be supervised.

*Note* See the Act, s 44.

**U 175 Evidence of competence—duty of person conducting business or undertaking**

- (1) A person conducting a business or undertaking at a workplace must not direct or allow a worker to carry out general diving work unless the person sees written evidence provided by the worker that the worker has the relevant competence required under this division.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A person conducting a business or undertaking at a workplace must not direct or allow a person appointed under section 177 (Appointment of competent person to supervise diving work) to perform any of the functions associated with that appointment unless the person conducting the business or undertaking sees written evidence provided by the person appointed that the person appointed has the competence required under section 174.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) A person conducting a business or undertaking must keep the written evidence given to the person—  
(a) under subsection (1)—for at least 1 year after the diving work is carried out; and

- (b) under subsection (2)—for at least 1 year after the last occasion on which the person performs a function associated with the appointment.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### **U** Division 4.8.3 Managing risks—general diving work

#### **U** 176 Management of risks to health and safety—Act, s 19

- (1) A person conducting a business or undertaking at a workplace must manage risks to health and safety associated with general diving work, in accordance with part 3.1 (Managing risks to health and safety).

*Note* WHS Act—s 19 (see s 9).

- (2) A person conducting a business or undertaking must ensure that a risk assessment is conducted by a competent person for the purposes of subsection (1).

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person must ensure that a risk assessment conducted under subsection (2) is recorded in writing.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or

(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 177 Appointment of competent person to supervise diving work**

A person conducting a business or undertaking at a workplace must appoint 1 or more competent persons to—

- (a) supervise general diving work carried out in the business or undertaking; and
- (b) perform other functions under this division.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* See s 174 for the qualifications of the competent person.

**U 178 Additional control—dive plan**

- (1) A person conducting a business or undertaking at a workplace must not direct or allow general diving work to be carried out unless a dive plan for the dive—
  - (a) is prepared by a competent person appointed under section 177; or

- (b) has been prepared by a competent person appointed under section 177 on an earlier occasion for a similar dive.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A dive plan must state the following:
  - (a) the method of carrying out the diving work to which it relates;
  - (b) the tasks and duties of each person involved in the dive;
  - (c) the diving equipment, breathing gases and procedures to be used in the dive;
  - (d) as applicable, dive times, bottom times and decompression profiles;
  - (e) hazards relating to the dive and measures to be implemented in the control of risks associated with those hazards;
  - (f) emergency procedures.

**U 179 Dive plan must be complied with**

- (1) A person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that general diving work is carried out in accordance with the dive plan prepared for it.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A person conducting a business or undertaking must ensure that a competent person appointed by the person under section 177 gives workers instruction in relation to the dive plan before commencing the diving work to which the plan relates.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 180 Additional control—dive safety log to be kept**

A person conducting a business or undertaking at a workplace where general diving work is carried out must keep a dive safety log that contains the following information about each dive carried out by a worker:

- (a) the name of the worker who carries out the dive;  
(b) the name of any other person with whom the dive is carried out;  
(c) the name of the competent person appointed under section 177 to supervise the diving work;  
(d) the date and location of the dive;  
(e) the time each diver enters and leaves the water;  
(f) the maximum depth of the dive;  
(g) any incident, difficulty, discomfort or injury that occurs or is experienced during the dive;  
(h) if the dive was carried out using a dive computer—the dive time;



- (i) if the dive was carried out using dive tables—the repetitive dive group, if available, and either the bottom time or the dive time;
- (j) if the repetitive group and surface interval result in a repetitive factor—the surface interval and the repetitive factor;
- (k) if the dive is carried out using EANx—
  - (i) the oxygen content of the EANx; and
  - (ii) the maximum operating depth of the EANx;
- (l) if the dive is carried out using mixed gas—
  - (i) the oxygen content and the nitrogen content (if any) of the gas; and
  - (ii) the maximum operating depth of the mixed gas; and
  - (iii) the minimum operating depth of the bottom mix.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **U** 181 **Use of dive safety log**

- (1) This section applies to a person conducting a business or undertaking at a workplace where general diving work is carried out.
- (2) The person conducting the business or undertaking must ensure that, after each dive carried out in connection with the general diving work is completed, the return of each diver is verified in the dive safety log, as soon as practicable after the return, by—
  - (a) the diver; and

- (b) a competent person appointed under section 177 to supervise the diving work.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) If workers are carrying out general diving work from a vessel, the person conducting the business or undertaking must ensure that a competent person appointed under section 177 to supervise the diving work makes and verifies entries in the dive safety log of the number of workers and other persons on board the vessel—

- (a) before the diving work commences; and  
(b) before the vessel leaves the location after the diving work is completed.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The person conducting the business or undertaking must ensure that the dive safety log is kept for at least 1 year after the last entry is made.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) In this section, an event is *verified* in the dive safety log—
- (a) by signing; or
  - (b) if the log is electronic, by entering the verifier's unique identifier.

**U 182 Record keeping**

- (1) This section applies if a person conducting a business or undertaking prepares—
- (a) a risk assessment under section 176 (Management of risks to health and safety—Act, s 19); or
  - (b) a dive plan under section 178 (Additional control—dive plan).
- (2) Subject to subsection (3), the person must keep—
- (a) a copy of the risk assessment until at least 28 days after the work to which it relates is completed; and
  - (b) a copy of the dive plan until the work to which it relates is completed.

**Maximum penalty:**

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) If a notifiable incident occurs in connection with the work to which the assessment or dive plan relates, the person must keep the assessment or dive plan (as applicable) for at least 2 years after the incident occurs.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The person must ensure that, for the period for which the assessment or dive plan must be kept under this section, a copy is readily accessible to any worker engaged by the person to carry out the work to which the assessment or dive plan relates.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) The person must ensure that, for the period for which the assessment or dive plan must be kept under this section, a copy is available for inspection under the Act.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U** **Division 4.8.4 High risk diving work**

**U** **183 Duties of person conducting business or undertaking—Act, s 44**

A person conducting a business or undertaking at a workplace where high risk diving work is carried out must ensure that the following are in accordance with AS/NZS 2299.1:2007 (Occupational diving operations—Standard operational practice):

- (a) the fitness of persons carrying out the work;
- (b) the competence of persons carrying out the work;

*Note* See the Act, s 44.

- (c) the carrying out of the work.

*Note* AS/NZS 2299.1:2007 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U** **184 Duty of worker—competence—Act, s 44**

A person must not carry out high risk diving work unless the person has the qualifications, knowledge, skills and experience required by AS/NZS 2299.1:2007 (Occupational diving operations—Standard operational practice) for work of the kind to be carried out by the person.

*Note 1* AS/NZS 2299.1:2007 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

*Note 2* See the Act, s 44.

## **Chapter 5 Plant and structures**

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

*Note* This part extends to plant outside the workplace as provided for in the Act, sch 1 (Application of Act to dangerous goods and high risk plant).

#### **Division 5.1.1 Preliminary**

##### **185 Application—pt 5.1 to plant**

- (1) Subject to this section, this part applies to all plant.
- (2) Subject to subsection (3), this part does not apply to plant that—
  - (a) relies exclusively on manual power for its operation; and
  - (b) is designed to be primarily supported by hand.
- (3) This part applies to explosive power tools that are designed to be supported by hand.

##### **186 Application—pt 5.1 to structures**

This part applies to structures as provided in this part.

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

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

A designer of plant must ensure, when the design of the plant is made available to the manufacturer of the plant, that the manufacturer is provided with—

- (a) information to enable the plant to be manufactured in accordance with the design specifications; and

- (b) if applicable, information about—
- (i) the installation, commissioning, decommissioning, use, handling, storage and, if the plant is capable of being dismantled, dismantling of the plant; and
  - (ii) the hazards and risks associated with the use of the plant that the designer has identified; and
  - (iii) testing or inspections to be carried out on the plant; and
  - (iv) the systems of work and competency of operators that are necessary for the safe use of the plant; and
  - (v) the emergency procedures (if any) that are required to be implemented if there is a malfunction of the plant.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* A designer also has duties under the Act, s 22 (Duties of persons conducting businesses or undertakings that design plant, substances or structures).

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

If a manufacturer of plant informs the designer of the plant that there is a hazard in the design of plant for which the designer has not provided a control measure, the designer must—

- (a) revise the information originally supplied to the manufacturer to ensure that—
  - (i) the risk is eliminated so far as is reasonably practicable; or
  - (ii) if it is not reasonably practicable to eliminate the risk, the risk is minimised so far as is reasonably practicable; or

- (b) notify the manufacturer, in writing, that the designer is of the opinion that it is not necessary to revise the information originally supplied to the manufacturer to ensure compliance with this part.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* A designer also has duties under the Act, s 22 (Duties of persons conducting businesses or undertakings that design plant, substances or structures).

## **189 Guarding**

- (1) This section applies if a designer of plant uses guarding as a control measure.
- (2) The designer must ensure, so far as is reasonably practicable, that the guarding designed for that purpose will prevent access to the danger point or danger area of the plant.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The designer must ensure that—
- (a) if access to the area of the plant requiring guarding is not necessary during operation, maintenance or cleaning of the plant—the guarding is a permanently fixed physical barrier; or



- (b) if access to the area of the plant requiring guarding is necessary during operation, maintenance or cleaning of the plant—the guarding is an interlocked physical barrier that allows access to the area being guarded at times when that area does not present a risk and prevents access to that area at any other time; or
- (c) if it is not reasonably practicable to use guarding mentioned in paragraph (a) or (b)—the guarding used is a physical barrier that can only be altered or removed by the use of tools; or
- (d) if it is not reasonably practicable to use guarding mentioned in paragraph (a), (b) or (c)—the design includes a presence-sensing safeguarding system that eliminates any risk arising from the area of the plant requiring guarding while a person or any part of a person is in the area being guarded.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The designer must ensure that the guarding is designed—
  - (a) to be of solid construction and securely mounted so as to resist impact or shock; and
  - (b) to make bypassing or disabling of the guarding, whether deliberately or by accident, as difficult as is reasonably practicable; and
  - (c) so as not to cause a risk in itself.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) If the plant to be guarded contains moving parts and those parts may break or cause workpieces to be ejected from the plant, the designer must ensure, so far as is reasonably practicable, that the guarding will control any risk from those broken or ejected parts and workpieces.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (6) Despite anything to the contrary in this section, the designer must ensure—
- (a) that the guarding is of a kind that can be removed to allow maintenance and cleaning of the plant at any time that the plant is not in normal operation; and
- (b) if the guarding is removed, that, so far as is reasonably practicable, the plant cannot be restarted unless the guarding is replaced.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **190 Operational controls**

- (1) A designer of plant must ensure that the design provides for any operator's controls for the plant to be—
- (a) identified on the plant so as to indicate their nature and function and direction of operation; and

- (b) located so as to be readily and conveniently operated by each person using the plant; and
- (c) located or guarded to prevent unintentional activation; and
- (d) able to be locked into the 'off' position to enable the disconnection of all motive power.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If the need for plant to be operated during maintenance or cleaning cannot be eliminated, the designer of the plant must ensure that the design provides for operator's controls that—
  - (a) permit operation of the plant while a person is undertaking the maintenance or cleaning of the plant; and
  - (b) while the plant is being maintained or cleaned, cannot be operated by any person other than the person who is carrying out the maintenance or cleaning of the plant; and
  - (c) will allow operation of the plant in such a way that any risk associated with the activities in relation to any person who is carrying out the maintenance or cleaning—
    - (i) is eliminated so far as is reasonably practicable; or
    - (ii) if it is not reasonably practicable to eliminate the risk, is minimised so far as is reasonably practicable.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **191 Emergency stop controls**

- (1) If plant is designed to be operated or attended by more than 1 person and more than 1 emergency stop control is fitted, the designer of the plant must ensure that the design provides for the multiple emergency stop controls to be of the ‘stop and lock-off’ type so that the plant cannot be restarted after an emergency stop control has been used unless that emergency stop control is reset.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If the design of the plant includes an emergency stop control for the plant, the designer of the plant must ensure that the design provides—
- (a) for the stop control to be prominent, clearly and durably marked and immediately accessible to each operator of the plant; and
- (b) for any handle, bar or push button associated with the stop control to be coloured red; and
- (c) that the stop control cannot be adversely affected by electrical or electronic circuit malfunction.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **192 Warning devices**

- (1) This section applies if the design of plant includes an emergency warning device or it is necessary to include an emergency warning device to minimise risk.
- (2) The designer of the plant must ensure that the design provides for the device to be positioned on the plant to ensure the device will work to best effect.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

### **193 Control of risk—Act, s 23**

- (1) A manufacturer of plant must ensure the following:
  - (a) that the plant is manufactured and inspected having regard to the information provided to the manufacturer by the designer of the plant under the Act and this regulation;
  - (b) if the information provided to the manufacturer by the designer of the plant under the Act and this regulation requires the plant to be tested—that the plant is tested in accordance with that information;

- (c) if, during the manufacturing process, any hazard is identified in the design of the plant for which the designer has not provided a control measure—
  - (i) that the hazard is not incorporated into the manufacture of the plant; and
  - (ii) that the designer of the plant is given written notice of the hazard as soon as practicable; and
  - (iii) that all reasonable steps are taken to consult with the designer of the plant in relation to the alteration of the design to rectify the hazard.

**Maximum penalty:**

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A manufacturer of plant must ensure that, if it is not possible to inform the designer about the hazard in accordance with subsection (1)—
  - (a) the risk is eliminated, so far as is reasonably practicable; or
  - (b) if it is not reasonably practicable to eliminate the risk, the risk is minimised so far as is reasonably practicable.

*Note* WHS Act—s 23 (see s 9).

- (3) A manufacturer to whom subsection (1) (c) applies must not manufacture the plant until—
  - (a) the designer gives the manufacturer the revised information or written instruction under section 188 (Hazard identified in design during manufacture); or

- (b) the manufacturer eliminates or minimises the risk under subsection (2).

*Note* WHS Act—s 23 (see s 9).

- (4) If the designer notifies a manufacturer of plant under section 188, the manufacturer may proceed in accordance with the designer's original information.

## **194 Guarding**

- (1) A manufacturer of plant must ensure that guarding used as a control measure is of solid construction and securely mounted so as to resist impact or shock.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A manufacturer of plant must ensure—
- (a) that any guarding used as a control measure in relation to plant is of a kind that can be removed to allow maintenance and cleaning of the plant at any time that the plant is not in normal operation; and
- (b) if the guarding is removed—that, so far as is reasonably practicable, the plant cannot be restarted unless the guarding is replaced.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

A manufacturer of plant must—

- (a) take all reasonable steps to obtain the information required to be provided to the manufacturer by the designer of the plant under—
  - (i) the Act, section 22 (4) (a) and (c) (Duties of persons conducting businesses or undertakings that design plant, substances or structures); and
  - (ii) section 187 (Provision of information to manufacturer); and
  - (iii) section 188 (Hazard identified in design during manufacture); and
- (b) ensure that a person to whom the manufacturer supplies the plant is, at the time of supply, provided with the information provided to the manufacturer by the designer under the Act, section 22 (4) (a) and (c) and section 187; and
- (c) if the manufacturer acts in accordance with section 193 (1) (c) (Control of risk—Act, s 23)—ensure that a person to whom the manufacturer supplies the plant is provided with the information, applicable to the plant, that is required to be provided by the designer under the Act, section 22 (4) (a) and (c) and section 188.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).



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

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

An importer of plant must—

- (a) take all reasonable steps to obtain—
  - (i) the information that would be required to be provided by a manufacturer under the Act, section 23 (4) (a) and (c) (Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures); and
  - (ii) the information that would be required to be provided by the designer of the plant to the manufacturer under section 187 (Provision of information to manufacturer) and section 188 (Hazard identified in design during manufacture); and
- (b) give that information to any person to whom the importer supplies the plant.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### **197 Control of risk**

An importer of plant must—

- (a) ensure that the plant is inspected having regard to the information provided by the manufacturer; and

- (b) if the information provided by the manufacturer requires the plant to be tested—ensure that the plant is tested in accordance with that information; and
- (c) if any hazards are identified—
  - (i) ensure that the plant is not supplied until the risks have been eliminated so far as is reasonably practicable; and
  - (ii) if it is not reasonably practicable to eliminate the risks, inform the person to whom the plant is supplied about the risks; and
- (d) take all reasonable steps to ensure that the designer and manufacturer of the plant are consulted in relation to any alteration made to the plant to control the risk.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

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

A supplier of plant must—

- (a) take all reasonable steps to obtain the information required to be provided by the manufacturer under the Act, section 23 (4) (a) and (c) (Duties of persons conducting businesses or undertakings that manufacture plant, substances or structures) and this regulation; and

- (b) ensure that, when the plant is supplied, the person to whom the plant is supplied is given the information obtained by the supplier under paragraph (a).

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### **199 Supply of second-hand plant—duties of supplier**

- (1) A supplier of second-hand plant must ensure, so far as is reasonably practicable, that any faults in the plant are identified.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A supplier of second-hand plant must ensure that the person to whom the plant is supplied is, before the plant is supplied, given written notice—

- (a) of the condition of the plant; and
- (b) of any faults identified under subsection (1); and
- (c) if appropriate, that the plant should not be used until the faults are rectified.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) This section does not apply to plant to be used for scrap or spare parts.

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

A supplier of plant to be used for scrap or spare parts must, before the plant is supplied, inform the person to whom the plant is supplied, either in writing or by marking the plant, that the plant is being supplied for scrap or spare parts and that the plant in its current form is not to be used as plant.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

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

- (1) This section applies to a person who conducts a business or undertaking that installs, constructs or commissions plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace.
- (2) The person must ensure that the plant is installed, constructed or commissioned having regard to—
- (a) the information provided by the designer, manufacturer, importer or supplier of the plant under the Act and this regulation; or

- (b) the instructions provided by a competent person to the extent that those instructions relate to health and safety.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

- (1) This section applies to a person who conducts a business or undertaking that installs, constructs or commissions a structure that is to be used, or could reasonably be expected to be used, as or at, a workplace.
- (2) The person must ensure that the structure is installed, constructed or commissioned having regard to—
  - (a) the information provided by the designer, manufacturer, importer or supplier of the structure under the Act and this regulation; or
  - (b) the instructions provided by a competent person to the extent that those instructions relate to health and safety.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

*Note*      A person with management or control of plant at a workplace is the person conducting a business or undertaking at the workplace to the extent that the business or undertaking involves the management or control of plant in whole or in part at the workplace. See the dictionary, definition of *person with management or control of plant at a workplace* and the Act, s 21.

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

#### **203      Management of risks to health and safety—Act, s 21**

A person with management or control of plant at a workplace must manage risks to health and safety associated with plant, in accordance with part 3.1 (Managing risks to health and safety).

*Note*      WHS Act—s 21 (see s 9).

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

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

- (1) A person with management or control of plant at a workplace must not commission the plant unless the person has established that the plant is, so far as is reasonably practicable, without risks to the health and safety of any person.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A person with management or control of plant at a workplace must not decommission or dismantle the plant unless the decommissioning or dismantling can be carried out, so far as is reasonably practicable, without risks to the health and safety of any person.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) A person with management or control of plant at a workplace must ensure that a person who installs, assembles, constructs, commissions or decommissions or dismantles the plant is a competent person.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) A person with management or control of plant at a workplace must ensure that a person who installs, assembles, constructs, commissions or decommissions or dismantles the plant is provided with the available information for eliminating or minimising risks to health or safety.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) A person with management or control of plant at a workplace must ensure that the processes for the installation, construction, commissioning, decommissioning and dismantling of plant include inspections that ensure, so far as is reasonably practicable, that risks associated with these activities are monitored.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

The person with management or control of plant at a workplace must, so far as is reasonably practicable, prevent alterations to or interference with the plant that are not authorised by the person.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).



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

- (1) The person with management or control of plant at a workplace must take all reasonable steps to ensure that plant is used only for the purpose for which it was designed, unless the person has determined that the proposed use does not increase the risk to health or safety.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) In determining whether or not a proposed use of plant increases the risk to health or safety, the person with management or control of the plant must ensure that the risk associated with the proposed use is assessed by a competent person.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person with management or control of plant at a workplace must take all reasonable steps to ensure that all health and safety features and warning devices (including guarding, operational controls, emergency stops and warning devices) are used in accordance with the instructions and information provided by that person under section 39 (Provision of information, training and instruction—Act, s 19).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **207 Plant not in use**

The person with management or control of plant at a workplace must ensure, so far as is reasonably practicable, that plant that is not in use is left in a state that does not create a risk to the health or safety of any person.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **208 Guarding**

- (1) This section applies if guarding is used as a control measure in relation to plant at a workplace.
- (2) The person with management or control of the plant must ensure that—

- (a) if access to the area of the plant requiring guarding is not necessary during operation, maintenance or cleaning of the plant, the guarding is a permanently fixed physical barrier; or
- (b) if access to the area of the plant requiring guarding is necessary during operation, maintenance or cleaning of the plant, the guarding is an interlocked physical barrier that allows access to the area being guarded at times when that area does not present a risk and prevents access to that area at any other time; or
- (c) if it is not reasonably practicable to use guarding mentioned in paragraph (a) or (b), the guarding used is a physical barrier that can only be altered or removed by the use of tools; or
- (d) if it is not reasonably practicable to use guarding mentioned in paragraph (a), (b) or (c), the guarding includes a presence-sensing safeguarding system that eliminates any risk arising from the area of the plant requiring guarding while a person or any part of a person is in the area being guarded.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person with management or control of the plant must ensure that the guarding—
  - (a) is of solid construction and securely mounted so as to resist impact or shock; and
  - (b) makes bypassing or disabling of the guarding, whether deliberately or by accident, as difficult as is reasonably practicable; and
  - (c) does not create a risk in itself; and

(d) is properly maintained.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) If the plant to be guarded contains moving parts that may break or cause workpieces to be ejected from the plant, the person with management or control of the plant must ensure, so far as is reasonably practicable, that the guarding will control any risk from those broken or ejected parts and workpieces.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) Despite anything to the contrary in this section, the person with management or control of the plant must ensure—
- (a) that the guarding is of a kind that can be removed to allow maintenance and cleaning of the plant at any time that the plant is not in normal operation; and
  - (b) if guarding is removed, that, so far as is reasonably practicable, the plant cannot be restarted unless the guarding is replaced.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

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

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **210 Operational controls**

- (1) The person with management or control of plant at a workplace must ensure that any operator's controls are—
  - (a) identified on the plant so as to indicate their nature and function and direction of operation; and
  - (b) located so as to be readily and conveniently operated by each person using the plant; and
  - (c) located or guarded to prevent unintentional activation; and
  - (d) able to be locked into the 'off' position to enable the disconnection of all motive power.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If the need for plant to be operated during maintenance or cleaning cannot be eliminated, the person with management or control of the plant at a workplace must ensure that the operator's controls—
- (a) permit operation of the plant while a person is undertaking the maintenance or cleaning of the plant; and
  - (b) while the plant is being maintained or cleaned, either—
    - (i) cannot be operated by any person other than the person who is carrying out the maintenance or cleaning of the plant; or
    - (ii) if subparagraph (i) cannot be complied with because the plant must be operated by a person other than the person who is carrying out the maintenance or cleaning of the plant—cannot be operated except by a person authorised by the person with management or control of the plant for that purpose; and
  - (c) will allow operation of the plant in such a way that any risk associated with the activities in relation to any person who is carrying out the maintenance or cleaning—
    - (i) is eliminated so far as is reasonably practicable; or
    - (ii) if it is not reasonably practicable to eliminate the risk, is minimised so far as is reasonably practicable.

**Maximum penalty:**

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **211 Emergency stops**

- (1) If plant at a workplace is designed to be operated or attended by more than 1 person and more than 1 emergency stop control is fitted, the person with management or control of plant at the workplace must ensure that the multiple emergency stop controls are of the 'stop and lock-off' type so that the plant cannot be restarted after an emergency stop control has been used unless that emergency stop control is reset.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If the design of plant at a workplace includes an emergency stop control, the person with management or control of the plant at the workplace must ensure that—
- (a) the stop control is prominent, clearly and durably marked and immediately accessible to each operator of the plant; and
  - (b) any handle, bar or push button associated with the stop control is coloured red; and
  - (c) the stop control cannot be adversely affected by electrical or electronic circuit malfunction.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **212 Warning devices**

- (1) This section applies if the design of plant includes an emergency warning device or it is necessary to include an emergency warning device to minimise risk.
- (2) The person with management or control of the plant must ensure that the device is positioned on the plant to ensure that the device will work to best effect.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

- (1) The person with management or control of plant at a workplace must ensure that the maintenance, inspection and, if necessary, testing of the plant is carried out by a competent person.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The maintenance, inspection and testing must be carried out—
  - (a) in accordance with the manufacturer's recommendations, if any; or
  - (b) if there are no manufacturer's recommendations, in accordance with the recommendations of a competent person; or
  - (c) in relation to inspection, if it is not reasonably practicable to comply with paragraph (a) or (b), annually.



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

*Note* The person with management or control of plant at a workplace is the person conducting a business or undertaking at a workplace to the extent that the business or undertaking involves the management or control of plant in whole or in part at the workplace. See the dictionary, definition of *person with management or control of plant at a workplace* and the Act, s 21.

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

The person with management or control of powered mobile plant at a workplace must in accordance with part 3.1 (Managing risks to health and safety), manage risks to health and safety associated with the following:

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

*Note* WHS Act—s 21 (see s 9).

#### **215 Powered mobile plant—specific control measures**

- (1) This section applies to a person conducting a business or undertaking with management or control of powered mobile plant at a workplace.

- (2) The person must ensure, so far as is reasonably practicable, that a suitable combination of operator protective devices for the plant is provided, maintained and used.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person must ensure, so far as is reasonably practicable, that no person other than the operator rides on the plant unless the person is provided with a level of protection that is equivalent to that provided to the operator.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The person must ensure that the plant does not collide with pedestrians or other powered mobile plant.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) Without limiting subsection (4), if there is a possibility of the plant colliding with pedestrians or other powered mobile plant, the person must ensure that the plant has a warning device that will warn persons who may be at risk from the movement of the plant.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

- (1) The person with management or control of a tractor at a workplace must ensure that the tractor is not used unless it is securely fitted with a roll-over protective structure.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If a tractor is used in a place that is too low for the tractor to work while it is fitted with a roll-over protective structure, the structure may be lowered or removed for the period during which the tractor is used in such a situation (but only if other measures to minimise the risk of roll-over are in place).
- (3) This section does not apply if the tractor is—
- (a) installed in a fixed position, and in a manner which would no longer permit it to be used as powered mobile plant; or
- (b) a tractor with a mass of less than 560kg or a mass of 15 000kg or more; or
- (c) being used for a historical purpose or activity.

(4) In this section:

***historical purpose or activity***, in relation to the use of a tractor, includes an activity ancillary to a historical activity.

**Examples**

- 1 *Historical activity*—a historical display, parade, demonstration or re-enactment.
- 2 *Activity ancillary to a historical activity*—restoring, maintaining, modifying or housing a tractor used, or to be used, for a historical activity.

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***roll-over protective structure*** means a structure designed to protect a tractor operator from injury if the tractor rolls over in any direction.

*Note* Section 214 and s 215 also apply to a tractor.

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

(1) The person with management or control of earthmoving machinery at a workplace must ensure that the machinery is not used unless it is securely fitted with a protective structure.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(2) This section does not apply to earthmoving machinery that has a weight of less than 1 500kg (not including attachments to the machinery) and is not designed to have a seated operator.

- (3) In this section:

*protective structure* means a structure designed to protect the operator from injury if the machinery rolls over and from falling objects.

*Note* Section 214 and s 215 also apply to earthmoving machinery.

## **218 Industrial lift trucks**

- (1) The person with management or control of an industrial lift truck at a workplace must ensure that the truck is—
- (a) equipped with lifting attachments that are suitable for the load to be lifted or moved by the truck; and
  - (b) operated in a manner that ensures that the risks to the operator of the truck and other persons at or near the workplace that arise from systems of work and the environment in which the truck is used—
    - (i) are eliminated so far as is reasonably practicable; or
    - (ii) if it is not reasonably practicable to eliminate the risks— are minimised so far as is reasonably practicable.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person with management or control of an industrial lift truck at a workplace must ensure that the truck is not used to carry a passenger unless—
- (a) the truck is designed to carry a seated passenger; and
  - (b) the passenger seat is—
    - (i) fitted with suitable seat restraints; and

- (ii) located within the zone of protection that is provided by the operator protective device required to be fitted to the industrial lift truck.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person with management or control of an industrial lift truck at a workplace must take all reasonable steps to ensure that a passenger in an industrial lift truck is seated in a seat that complies with subsection (2) (b).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* Section 214 and s 215 also apply to an industrial lift truck.

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

- (1) This section applies in relation to plant that is used to lift or suspend persons or things.
- (2) The person with management or control of plant at a workplace must ensure, so far as is reasonably practicable, that the plant used is specifically designed to lift or suspend the load.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) If it is not reasonably practicable to use plant that is specifically designed to lift or suspend the load, the person must ensure that—
- (a) the plant does not cause a greater risk to health and safety than if specifically designed plant were used; and
  - (b) if the plant is lifting or suspending persons, the use of the plant complies with section 220.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The person must ensure that the lifting and suspending is carried out—
- (a) with lifting attachments that are suitable for the load being lifted or suspended; and
  - (b) within the safe working limits of the plant.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) The person must ensure, so far as is reasonably practicable, that no loads are suspended or travel over a person unless the plant is specifically designed for that purpose.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (6) The person must ensure, so far as is reasonably practicable, that loads are lifted or suspended in a way that ensures that the load remains under control during the activity.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (7) The person must ensure, so far as is reasonably practicable, that no load is lifted simultaneously by more than 1 item of plant unless the method of lifting ensures that the load placed on each item of plant does not exceed the design capacity of the plant.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **220 Exception—plant not specifically designed to lift or suspend a person**

- (1) For the purposes of section 219 (3) (b), the person with management or control of the plant at a workplace must ensure that—
- (a) the persons are lifted or suspended in a work box that is securely attached to the plant; and
- (b) the persons in the work box remain substantially within the work box while they are being lifted or suspended; and
- (c) if there is a risk of a person falling from a height, a safety harness is provided and worn by the person in order to prevent, so far as is reasonably practicable, injury to the person as a result of the fall; and



- (d) means are provided by which the persons being lifted or suspended can safely exit from the plant in the event of a failure in its normal operation.
- (2) This section does not apply to plant used in connection with—
  - (a) the performance of stunt work; or
  - (b) the performance of acrobatics; or
  - (c) theatrical performances.

*Note* Pt 4.4 (except s 79) applies to the matters in s (2).

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

- (1) Section 220 (1) (a) and (b) do not apply in connection with tree lopping if—
  - (a) a risk assessment shows that lifting or suspending a person in a harness with a crane to place the person in a tree to carry out tree lopping does not create a greater risk to health or safety than using plant specifically designed to lift a person or climb a tree; and
  - (b) the tree lopping is carried out by a person who is a competent person in the use of the harness mentioned in paragraph (a); and
  - (c) a crane is used to put the competent person in the tree to lop it; and
  - (d) the crane has safety mechanisms that would prevent the competent person from inadvertently falling; and
  - (e) while attached to the crane, the competent person is in visual, audio or radio communication with the crane operator.

- (2) In this section:

***harness*** means a work positioning harness that is designed and certified, in accordance with AS/NZS 1891.1:2007 (Industrial fall-arrest systems and devices—Harnesses and ancillary equipment), for the purpose of lifting and suspending a person.

*Note* AS/NZS 1891.1:2007 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

## **222 Industrial robots**

- (1) This section applies to a person with management or control of an industrial robot or other remotely or automatically energised plant at a workplace.
- (2) The person must not direct or allow a worker to work in the immediate vicinity of the plant if it could start without warning and cause a hazard, unless suitable control measures are in place to control the risks to health and safety.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) If the remote or automatic energising of the plant could lead to risks to health and safety, the person must ensure that access to the area in the immediate vicinity of the plant is controlled at all times—
- (a) by isolating the area; or  
(b) by—
- (i) providing interlocked guards; or  
(ii) if a risk remains, providing presence-sensing devices; or

(iii) if a risk then remains, providing permit to work systems.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **223 Lasers**

- (1) This section applies to the person with management or control, at a workplace, of laser equipment that may create a risk to health and safety.
- (2) The person must ensure that laser equipment intended for use on plant is designed, constructed and installed so as to prevent accidental irradiation of any person.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person must ensure that laser equipment on plant is protected so that any operator of the plant or other person is not exposed to direct radiation, radiation produced by reflection or diffusion or secondary radiation.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The person must ensure that the visual equipment used for the observation or adjustment of laser equipment on plant does not create a risk to health or safety from laser rays.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) The person must ensure that the workers operating the laser equipment are trained in the proper operation of the equipment.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (6) The person must ensure that Class 3B and Class 4 lasers (within the meaning of AS 2397:1993—Safe use of lasers in the building and construction industry) are not used in construction work.

*Note* AS 2397:1993 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **224 Pressure equipment**

- (1) The person with management or control of pressure equipment at a workplace must ensure that—
- (a) the equipment is inspected on a regular basis by a competent person; and
  - (b) any gas cylinder that is inspected is marked with a current inspection mark showing the date of the most recent inspection.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person with management or control of gas cylinders at a workplace that is a gas cylinder filling station must ensure that—
- (a) a gas cylinder is not filled with gas unless it bears a current inspection mark; and
  - (b) a gas cylinder is only filled with gas for which that cylinder is designed.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **225 Scaffolds**

- (1) This section applies in relation to—
- (a) a suspended scaffold; and
  - (b) a cantilevered scaffold; and

- (c) a spur scaffold; and
- (d) a hung scaffold; and
- (e) any other scaffold from which a person or thing could fall more than 4m.

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

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person with management or control of a scaffold at a workplace must ensure that the scaffold and its supporting structure are inspected by a competent person—

- (a) before use of the scaffold is resumed after an incident occurs that may reasonably be expected to affect the stability of the scaffold; and
- (b) before use of the scaffold is resumed after repairs; and
- (c) at least every 30 days.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) If an inspection indicates that a scaffold at a workplace or its supporting structure creates a risk to health or safety, the person with management or control of the scaffold must ensure that—
- (a) any necessary repairs, alterations and additions are made or carried out; and
  - (b) the scaffold and its supporting structure are inspected again by a competent person before use of the scaffold is resumed.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) The person with management or control of a scaffold at a workplace must ensure that unauthorised access to the scaffold is prevented while the scaffold is incomplete or unattended.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**226 Plant with presence-sensing safeguarding system—records**

- (1) The person with management or control of plant with a presence-sensing safeguarding system at a workplace must keep a record of safety integrity tests, inspections, maintenance, commissioning, decommissioning, dismantling and alterations of the plant for the period set out in subsection (2).

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The record must be kept for—
- (a) 5 years unless paragraph (b) applies; or  
(b) the life of the plant or until the person relinquishes control of the plant if the plant is registered plant or has been altered.
- (3) The person must keep the record available for inspection under the Act.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).



- (4) The person must make the record available to any person to whom the person relinquishes control of the plant.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

*Note 1* The person with management or control of plant at a workplace is the person conducting a business or undertaking at a workplace to the extent that the business or undertaking involves the management or control of plant in whole or in part at the workplace. See the dictionary, definition of *person with management or control of plant at a workplace* and the Act, s 21.

*Note 2* This part applies in addition to pt 5.1.

*Note 3* In this part, *plant* includes a structure (see dict).

### Division 5.2.1 Application—pt 5.2

#### 227 Application—pt 5.2

This part applies to—

- (a) plant that is required to be registered under part 5.3 (Registration of plant designs and items of plant); or
- (b) plant the design of which is required to be registered under part 5.3.

**U** **Division 5.2.2**      **Duty of person conducting a business  
or undertaking who designs plant to  
record plant design**

**U** **228**      **Records and information**

If the design of plant is required to be registered under part 5.3 (Registration of plant designs and items of plant), the designer of that plant must make a record that contains—

- (a) the method used to determine the control measures for the plant and the control measures that result from that determination; and
- (b) a copy of the information provided to a manufacturer under the Act, section 22 (Duties of persons conducting businesses or undertakings that design plant, substances or structures) in relation to that plant; and
- (c) a copy of the information provided to a manufacturer under section 187 (Provision of information to manufacturer) in relation to that plant; and
- (d) if applicable, a copy of the information provided to a manufacturer under section 188 (Hazard identified in design during manufacture) in relation to that plant.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 229 Record of standards or engineering principles used**

- (1) If the design of plant is required to be registered under part 5.3 (Registration of plant designs and items of plant), the designer of the plant must record any published technical standard, including any part of a published technical standard, that was used to design the plant.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If the designer of the plant has not used published technical standards to design the plant, the designer must record any engineering principles used to design the plant.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 230 Records to be available for inspection**

- (1) A designer of plant must ensure that the records made under section 228 and section 229 are kept available for inspection under the Act.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A designer of plant must ensure that the records made under section 228 and section 229 are made available for inspection by the design verifier of the plant design.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) A designer of plant must keep the records made under section 228 and section 229 for the design life of the plant.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **U** **Division 5.2.3** **Duties of a person conducting a business or undertaking**

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

A manufacturer must not supply plant stated in schedule 5, part 5.1 (Plant requiring registration of design), unless the design of that plant is registered under part 5.3 (Registration of plant designs and items of plant).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 232** **Duty of persons conducting businesses or undertakings that import plant**

An importer must not supply plant stated in schedule 5, part 5.1 (Plant requiring registration of design), unless the design of that plant is registered under part 5.3 (Registration of plant designs and items of plant).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 233** **Duty of persons conducting businesses or undertakings that supply plant**

A supplier must not supply plant stated in schedule 5, part 5.1 (Plant requiring registration of design), unless the design of that plant is registered under part 5.3 (Registration of plant designs and items of plant).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 234** **Duty of persons conducting businesses or undertakings that commission plant**

- (1) This section applies to a person who conducts a business or undertaking that commissions plant.

- (2) The person must not commission an item of plant that is stated in schedule 5, part 5.2 (Items of plant requiring registration) for use in a workplace unless that item of plant is registered under part 5.3 (Registration of plant designs and items of plant).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) Nothing in subsection (2) prevents a person from performing any necessary adjustments, tests or inspections as part of the commissioning process before the plant is commissioned at a workplace.

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

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

#### **U 235 Major inspection of registered mobile cranes and tower cranes**

- (1) This section applies to the person with management or control of a registered mobile crane or tower crane at a workplace.
- (2) The person must ensure that the maintenance, inspection and, if necessary, testing of the crane is carried out by a competent person.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person must ensure that the crane is inspected—
- (a) at the end of the design life recommended by the manufacturer for the crane; or
  - (b) if there are no manufacturer's recommendations—in accordance with the recommendations of a competent person; or
  - (c) if it is not reasonably practicable to comply with paragraph (a) or (b)—every 10 years from the date that the crane was first commissioned or first registered, whichever occurred first.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) In this section:
- competent person*** means a person who—
- (a) either—
    - (i) has the skills, qualifications, competence and experience to inspect the plant; and
    - (ii) is registered under a law that provides for the registration of professional engineers; or
  - (b) is determined by the regulator to be a competent person.
- (5) The regulator may, on the application of a person, make a determination in relation to the person for the purposes of subsection (4) (b) if the regulator considers that exceptional circumstances exist.



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**236 Lifts**

- (1) The person with management or control of a lift at a workplace (including a person with management or control of maintenance of a lift) must ensure that—
- (a) if there is a risk of a person falling down a lift well—
    - (i) secure barriers are provided to prevent access to openings into the lift well by someone other than a person who is performing work in the lift well; and
    - (ii) secure working platforms or equivalent arrangements are provided for a person who is working in the lift well to prevent a fall from height; and
  - (b) if there is a risk to a person working in a lift well from objects falling onto that person—a secure barrier is provided to prevent, so far as is reasonably practicable, falling objects from striking the person or otherwise causing a risk.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person must ensure that there is a safe means of entry to and exit from the base of the lift well.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person must ensure that there is fixed, in a prominent place in the lift, a sign that states the safe working load stated in the design of the lift.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### **237 Records of plant**

- (1) This section applies in relation to plant that is required to be registered under part 5.3 (Registration of plant designs and items of plant).
- (2) The person with management or control of the plant at a workplace must keep a record of all tests, inspections, maintenance, commissioning, decommissioning, dismantling and alterations of the plant for the period set out in subsection (3).

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The record must be kept for the period that the plant is used or until the person relinquishes control of the plant.

- (4) The person must keep the record available for inspection under the Act.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) The person must make the record available to any person to whom the person relinquishes control of the plant.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

#### **238 Operation of amusement devices**

- (1) The person with management or control of an amusement device at a workplace must ensure that the amusement device is operated only by a person who has been provided with instruction and training in the proper operation of the device.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person with management or control of an amusement device at a workplace must ensure that—
- (a) the amusement device is checked before it is operated on each day on which it is to be operated; and
  - (b) the amusement device is operated without passengers before it is operated with passengers on each day on which the amusement device is to be operated; and
  - (c) the daily checks and operation of the amusement device without passengers are properly and accurately recorded in a log book for the amusement device.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **239 Storage of amusement devices**

- (1) The person with management or control of an amusement device at a workplace must ensure that the device is stored so as to be without risk to health and safety.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person with management or control of an amusement device at a workplace must ensure that a person who stores the device is a competent person or is under the supervision of a competent person.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

- (1) The person with management or control of an amusement device at a workplace must ensure that the maintenance, inspection and, if necessary, testing of the amusement device is carried out—
- (a) by a competent person; and  
(b) in accordance with—
- (i) the recommendations of the designer or manufacturer or designer and manufacturer; or  
(ii) if a maintenance manual for the amusement device has been prepared by a competent person—the requirements of the maintenance manual.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

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

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

- (1) The person with management or control of an amusement device at a workplace must ensure that a detailed inspection of the device is carried out at least once every 12 months by a competent person.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) An inspection must include the following:
- (a) a check of information about the operational history of the amusement device since the last detailed inspection;
  - (b) a check of the log book for the amusement device;
  - (c) a check that maintenance and inspections have been undertaken under section 240;
  - (d) a check that any required tests have been carried out, and that appropriate records have been maintained;
  - (e) a detailed inspection of the amusement device to ensure compliance with the Act and this regulation (including a specific inspection of the critical components of the amusement device).
- (3) The regulator may extend the date for an inspection by up to 35 days if an inspection is scheduled to coincide with the same event each year.
- (4) If the date is extended under subsection (3), the new date is the date from which future annual inspections of the amusement device are determined.

(5) In this section:

***competent person*** means a person who—

(a) either—

(i) has the skills, qualifications, competence and experience to inspect the plant; and

(ii) is registered under a law that provides for the registration of professional engineers; or

(b) is determined by the regulator to be a competent person.

(6) The regulator may, on the application of a person, make a determination in relation to the person for the purposes of subsection (5) (b) if the regulator considers that exceptional circumstances exist.

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

(1) The person with management or control of an amusement device at a workplace, in addition to complying with the record-keeping requirements of section 237 (Records of plant), must ensure that—

(a) details of the erection or storage of the amusement device (including the date of erection) are recorded in the log book for the amusement device on each occasion on which it is erected or stored; and

(b) the log book and operating and maintenance manuals for the amusement device are kept with the amusement device.

Maximum penalty:

(a) in the case of an individual—\$1 250; or

(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person with management or control of an amusement device at a workplace must ensure that persons involved in the commissioning, installation, use, storage and testing, and the decommissioning, dismantling and disposal, of an amusement device are given—
- (a) the log book for the amusement device in which details concerning erection, storage, operation and maintenance of the amusement device are recorded; and
  - (b) the operating and maintenance manuals for the amusement device.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* Section 237 (5) requires the person with management or control of the amusement device to give the log book and maintenance records to the person being supplied with the plant.



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

*Note* In this part, *plant* includes a structure (see dict).

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

#### **U** 243 Plant design to be registered—Act, s 42

The design of an item of plant stated in schedule 5, part 5.1 (Plant requiring registration of design) must be registered under this part.

*Note* See the Act, s 42.

#### **U** 244 Altered plant designs to be registered—Act, s 42

- (1) If the design of an item of plant stated in schedule 5, part 5.1 (Plant requiring registration of design) that is registered under this part is altered, the altered design must be registered under this part.

*Note* See the Act, s 42.

- (2) In this section, a reference to the alteration of a design is a reference to an alteration that may affect health or safety.

#### **U** 245 Recognition of designs registered by corresponding regulator

- (1) A design of an item of plant is not required to be registered under this part if the design is registered under a corresponding WHS law.
- (2) A design mentioned in subsection (1) that is altered is not required to be registered under this part if the altered design is registered by the corresponding regulator that registered the original design.

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

### **U** 246 Items of plant to be registered—Act, s 42

- (1) An item of plant stated in schedule 5, part 5.2 (Items of plant requiring registration) must be registered under this part.

*Note* See the Act, s 42.

- (2) The purpose of registering an item of plant is to ensure that it is inspected by a competent person and is safe to operate.

### **U** 247 Recognition of plant registered by corresponding regulator

An item of plant is not required to be registered under this part if the plant is registered under a corresponding WHS law.

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

### **U** 248 Application—div 5.3.3

This division applies to the registration of a design of an item of plant stated in schedule 5, part 5.1 (Plant requiring registration of design).

### **U** 249 Who can apply to register a plant design

- (1) A person conducting a business or undertaking that designs an item of plant may apply to the regulator for the registration of the design of that item of plant.
- (2) A person with management or control of an item of plant may apply to the regulator for the registration of the design of that item of plant.

**U 250 Application for registration**

- (1) This section applies to an application for registration of the design of an item of plant.
- (2) The application must include the following information:
  - (a) the applicant's name;
  - (b) whether or not the applicant is a body corporate;
  - (c) if the applicant conducts the business or undertaking under a business name—that business name and a certificate or other written evidence of the registration of the business name;
  - (d) any other evidence of the applicant's identity required by the regulator;
  - (e) a statement signed by the designer of the item of plant—
    - (i) stating that the designer has complied with the designer's obligations under the Act, section 22 (Duties of persons conducting businesses or undertakings that design plant, substances or structures) in relation to the design; and
    - (ii) stating the published technical standards and engineering principles used in the design;
  - (f) a design verification statement that accords with section 251;
  - (g) representational drawings of the design;
  - (h) a declaration that the applicant does not hold an equivalent registration under a corresponding WHS law.

*Note 1* A fee may be determined under the Act, s 278 for this provision.

*Note 2* If a form is approved under the Act, s 277 for this provision, the form must be used.

*Note 3* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

- (3) Any drawings or other documents provided with the application must be capable of being kept in an electronic form.

**U 251 Design verification statement**

The design verification statement must—

- (a) be written and signed by a person who is eligible to be a design verifier for the design; and
- (b) state that the design was produced in accordance with published technical standards or engineering principles stated in the statement; and
- (c) include—
  - (i) the name, business address and qualifications (if applicable) of the design verifier; and
  - (ii) if applicable, the name and business address of the organisation for which the design verifier works.

**U 252 Who can be the design verifier**

- (1) A person is eligible to be a design verifier for the design of an item of plant if the person is a competent person.
- (2) Despite subsection (1), a person is not eligible to be a design verifier for the design of an item of plant if—
  - (a) the person was involved in the production of the design; or
  - (b) at the time the design was produced, the person was engaged by the person conducting the business or undertaking that produced the design.
- (3) Subsection (2) (b) does not apply if the person conducting the business or undertaking uses a quality system to undertake the design of plant that has been certified by a body accredited or approved by the Joint Accreditation System of Australia and New Zealand.

**U 253**      **Duty of design verifier**

A design verifier of the design of an item of plant stated in schedule 5, part 5.1 (Plant requiring registration of design) must document the design verification process carried out by that person and the results of that process.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 254**      **Design verification statements not to be made in certain circumstances**

A person must not make a design verification statement for the design of an item of plant stated in schedule 5, part 5.1 (Plant requiring registration of design) if the person—

- (a) is not eligible to be a design verifier for that design; or
- (b) has not carried out a verification of the design.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 255**      **Additional information**

- (1) If an application for registration of a design of an item of plant does not contain enough information to enable the regulator to make a decision whether or not to grant the registration, the regulator may ask the applicant to provide additional information.

- (2) A request for additional information must—
  - (a) state the date (being not less than 28 days after the request) by which the additional information is to be given; and
  - (b) be confirmed in writing.
- (3) If an applicant does not provide the additional information by the date stated, the application is taken to have been withdrawn.
- (4) The regulator may make more than 1 request for additional information under this section.

**U** **256** **Decision on application**

- (1) Subject to subsection (3), the regulator must grant the registration if satisfied about the matters mentioned in subsection (2).
- (2) The regulator must be satisfied about the following:
  - (a) the application has been made in accordance with this division;
  - (b) the design is not registered under a corresponding WHS law;
  - (c) if the applicant is an individual, the applicant—
    - (i) resides in the ACT; or
    - (ii) resides outside the ACT and circumstances exist that justify the grant of the registration;
  - (d) if the applicant is a body corporate, the applicant's registered office—
    - (i) is located in the ACT; or
    - (ii) is located outside the ACT and circumstances exist that justify the grant of the registration;
  - (e) the applicant is able to ensure compliance with any conditions that will apply to the registration.

- (3) The regulator must refuse to grant a registration if satisfied that, in making the application, the applicant has—
  - (a) given information that is false or misleading in a material particular; or
  - (b) failed to give any material information that should have been given.
- (4) If the regulator decides to grant the registration, it must notify the applicant within 14 days after making the decision.
- (5) If the regulator does not make a decision within 120 days after receiving the application or the additional information requested under section 255, the regulator is taken to have refused to grant the registration applied for.

*Note* A refusal to grant a registration (including under s (5)) is a reviewable decision (see s 676).

## **U** 257 **Refusal of registration—process**

- (1) If the regulator proposes to refuse to grant a registration, the regulator must give the applicant a written notice—
  - (a) informing the applicant of the reasons for the proposed refusal; and
  - (b) advising the applicant that the applicant may, by a stated date (being not less than 28 days after giving the notice), make a submission to the regulator in relation to the proposed refusal.
- (2) After the date stated in a notice under subsection (1), the regulator must—
  - (a) if the applicant has made a submission in relation to the proposed refusal to grant the registration—consider that submission; and
  - (b) whether or not the applicant has made a submission—decide whether to grant or refuse to grant the registration; and

- (c) within 14 days after making that decision, give the applicant written notice of the decision, including the reasons for the decision.

*Note* A refusal to grant a registration is a reviewable decision (see s 676).

**U 258**      **Conditions of registration**

- (1) The regulator may impose any conditions it considers appropriate on the registration of a plant design.
- (2) Without limiting subsection (1), the regulator may impose conditions in relation to 1 or more of the following:
- (a) the use and maintenance of plant manufactured to the design;
  - (b) the recording or keeping of information;
  - (c) the provision of information to the regulator.

*Note 1* A person must comply with the conditions of registration (see Act, s 45).

*Note 2* A decision to impose a condition on a registration is a reviewable decision (see s 676).

**U 259**      **Duration of registration of plant design**

A registration of a plant design takes effect on the day it is granted and is granted for an unlimited duration.

**U 260**      **Plant design registration number**

- (1) This section applies if the regulator registers a design of an item of plant.
- (2) The regulator must issue a plant design registration number for the design to the applicant.



- (3) The person to whom the plant design registration number is issued must give the registration number to the manufacturer, importer or supplier of plant manufactured to that design.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The manufacturer, supplier or importer of plant to whom a plant design registration number is given under this section must give that number to the person with management or control of the plant—

- (a) manufactured to that design; or  
(b) supplied to that person by the manufacturer, supplier or importer.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) The person with management or control of plant at a workplace for which a plant design is registered must ensure that the design registration number is kept readily accessible in the vicinity of the plant at all times.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 261 Registration document**

- (1) If the regulator registers a design of an item of plant, the regulator must issue to the applicant a registration document in the form determined by the regulator.
- (2) The registration document must include the following:
  - (a) the name of the registration holder;
  - (b) if the registration holder conducts the business or undertaking under a business name, that business name;
  - (c) the registration number of the plant design;
  - (d) any conditions imposed on the registration by the regulator;
  - (e) the date on which the registration was granted.

**U 262 Registration document to be available**

- (1) A registration holder must keep the registration document available for inspection under the Act.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) Subsection (1) does not apply if the registration document is not in the registration holder's possession because—
  - (a) it has been returned to the regulator under section 287 (Registration holder to return registration document); or
  - (b) the registration holder has applied for, but has not received, a replacement registration document under section 288 (Replacement registration document).

**U 263 Disclosure of design information**

- (1) Subject to this section, the regulator must not disclose to any person any confidential information provided by an applicant for registration of a design of an item of plant.
- (2) The regulator may disclose information about a plant design in either of the following circumstances:
  - (a) to a corresponding regulator or an authorised officer of a corresponding regulator, at the request of the corresponding regulator;
  - (b) to any person authorised by the applicant for the registration of the design.
- (3) The regulator may give a copy of the design verification statement to—
  - (a) workers engaged by the person with management or control at a workplace of plant manufactured to the design; or
  - (b) a health and safety representative of those workers.
- (4) The regulator may provide the person with management or control of plant with the minimum information about the plant design that is necessary for the safe operation of the plant if the registration holder for the design of the plant cannot be located or no longer exists.

**U Division 5.3.4 Registration process for an item of plant**

**U 264 Application—div 5.3.4**

This division applies in relation to the registration of an item of plant stated in schedule 5, part 5.2 (Items of plant requiring registration) as requiring registration.

**U 265 Who can apply to register an item of plant**

A person with management or control of an item of plant may apply to the regulator for the registration of that item of plant.

**U 266 Application for registration**

- (1) This section applies to an application for registration of an item of plant.
- (2) The application must include the following information:
  - (a) the applicant's name;
  - (b) whether or not the applicant is a body corporate;
  - (c) if the applicant conducts the business or undertaking under a business name—that business name and a certificate or other written evidence of the registration of the business name;
  - (d) any other evidence of the applicant's identity required by the regulator;
  - (e) sufficient information to clearly identify the item of plant;
  - (f) the date on which the plant was first commissioned or first registered, if known;
  - (g) if the design of the item of plant was also required to be registered under this part, details of—
    - (i) the plant design registration number; and
    - (ii) the regulator or corresponding regulator that registered the design;
  - (h) a statement that the item of plant has been inspected by a competent person and assessed by that person as being safe to operate;
  - (i) the date that the plant was first commissioned or was first registered, whichever occurred first;

- (j) a declaration that the applicant does not hold an equivalent registration under a corresponding WHS law.

*Note 1* A fee may be determined under the Act, s 278 for this provision.

*Note 2* If a form is approved under the Act, s 277 for this provision, the form must be used.

*Note 3* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

**U 267**      **When is a person competent to inspect plant**

A person is a competent person to inspect an item of plant for registration if the person has—

- (a) educational or vocational qualifications in an engineering discipline relevant to the plant to be inspected; or
- (b) knowledge of the technical standards relevant to the plant to be inspected.

**U 268**      **Additional information**

- (1) If an application for registration of an item of plant does not contain enough information to enable the regulator to make a decision whether or not to grant the registration, the regulator may ask the applicant to provide additional information.
- (2) A request for additional information must—
  - (a) state the date (being not less than 28 days after the request) by which the additional information is to be given; and
  - (b) be confirmed in writing.
- (3) If an applicant does not provide the additional information by the date stated, the application is taken to have been withdrawn.
- (4) The regulator may make more than 1 request for additional information under this section.

**U** 269 **Decision on application**

- (1) Subject to subsection (3), the regulator must grant the registration if satisfied about the matters mentioned in subsection (2).
- (2) The regulator must be satisfied about the following:
  - (a) the application has been made in accordance with this division;
  - (b) the plant is not registered under a corresponding WHS law;
  - (c) the plant is—
    - (i) located in the ACT; or
    - (ii) located outside the ACT and circumstances exist that justify the grant of the registration;
  - (d) if the applicant is an individual, the applicant—
    - (i) resides in the ACT; or
    - (ii) resides outside the ACT and circumstances exist that justify the grant of the registration;
  - (e) if the applicant is a body corporate, the applicant's registered office—
    - (i) is located in the ACT; or
    - (ii) is located outside the ACT and circumstances exist that justify the grant of the registration;
  - (f) the applicant is able to ensure compliance with any conditions that will apply to the registration.
- (3) The regulator must refuse to grant a registration if satisfied that, in making the application, the applicant has—
  - (a) given information that is false or misleading in a material particular; or
  - (b) failed to give any material information that should have been given.

- (4) If the regulator decides to grant the registration, it must notify the applicant within 14 days after making the decision.
- (5) If the regulator does not make a decision within 120 days after receiving the application or additional information requested under section 268, the regulator is taken to have refused to grant the registration applied for.

*Note* A refusal to grant a registration (including under s (5)) is a reviewable decision (see s 676).

## **U** 270 **Refusal of registration—process**

- (1) If the regulator proposes to refuse to grant a registration, the regulator must give the applicant a written notice—
  - (a) informing the applicant of the reasons for the proposed refusal; and
  - (b) advising the applicant that the applicant may, by a stated date, (being not less than 28 days after giving the notice) make a submission to the regulator in relation to the proposed refusal.
- (2) After the date stated in a notice under subsection (1), the regulator must—
  - (a) if the applicant has made a submission in relation to the proposed refusal to grant the registration—consider that submission; and
  - (b) whether or not the applicant has made a submission—decide whether to grant or refuse to grant the registration; and
  - (c) within 14 days after making that decision, give the applicant written notice of the decision, including the reasons for the decision.

*Note* A refusal to grant a registration is a reviewable decision (see s 676).

**U 271**      **Conditions of registration**

- (1) The regulator may impose any conditions it considers appropriate on the registration of an item of plant.
- (2) Without limiting subsection (1), the regulator may impose conditions in relation to 1 or more of the following:
  - (a) the use and maintenance of the item of plant;
  - (b) the recording or keeping of information;
  - (c) the provision of information to the regulator.

*Note 1* A person must comply with the conditions of registration (see Act, s 45).

*Note 2* A decision to impose a condition on a registration is a reviewable decision (see s 676).

**U 272**      **Duration of registration**

A registration of an item of plant takes effect on the day it is granted and expires 5 years after that day.

**U 273**      **Plant registration number**

- (1) This section applies if the regulator registers an item of plant.
- (2) The regulator must issue a plant registration number for the plant to the registration holder within 14 days after that registration.
- (3) The registration holder must give the plant registration number to the person with management or control of the plant at a workplace as soon as practicable after being issued with the number under subsection (2).

Maximum penalty:

- (a) in the case of an individual—\$1 250; or



(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

(4) The person with management or control of the plant at a workplace must ensure that the plant registration number is marked on the item of plant.

Maximum penalty:

(a) in the case of an individual—\$1 250; or

(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## **U** 274 **Registration document**

(1) If the regulator registers an item of plant, the regulator must issue to the applicant within 14 days a registration document in the form determined by the regulator.

(2) The registration document must include the following:

(a) the name of the registration holder;

(b) if the registration holder conducts the business or undertaking under a business name, that business name;

(c) the registration number for the item of plant;

(d) any conditions imposed on the registration by the regulator;

(e) the date on which the plant was first commissioned or first registered, whichever occurred first;

(f) the date on which the registration was granted;

(g) the expiry date of the registration.

**U 275 Registration document to be available**

- (1) The holder of the registration of an item of plant must keep the registration document available for inspection under the Act.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) Subsection (1) does not apply if the registration document is not in the registration holder's possession because—
- (a) it has been returned to the regulator under section 287 (Registration holder to return registration document); or  
(b) the registration holder has applied for, but has not received, a replacement registration document under section 288 (Replacement registration document).

**U 276 Regulator may renew registration**

The regulator may, on application, renew the registration of an item of plant.

**U 277 Application for renewal**

- (1) This section applies to an application for renewal of a registration of an item of plant.
- (2) The application must include the following information:
- (a) the applicant's name;  
(b) any evidence of identity required by the regulator;  
(c) if the applicant conducts the business or undertaking under a business name, that business name and a certificate or other written evidence of the registration of the business name;

- (d) the registration number of the item of plant;
- (e) a declaration that the item of plant has been maintained, inspected and tested in accordance with section 213 (Maintenance and inspection of plant).

*Note 1* A fee may be determined under the Act, s 278 for this provision.

*Note 2* If a form is approved under the Act, s 277 for this provision, the form must be used.

*Note 3* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

- (3) The application must be made before the expiry of the registration.

**U 278**      **Registration continues in force until application is decided**

If a registration holder applies under section 277 for the renewal of a registration, the registration is taken to continue in force from the day it would, apart from this section, have ended until the registration holder is given notice of the decision on the application.

**U 279**      **Decision on application**

- (1) The regulator must renew the registration of an item of plant if the regulator is satisfied that—
  - (a) the application for renewal has been made in accordance with this division; and
  - (b) the plant has been maintained, inspected and tested in accordance with section 213 (Maintenance and inspection of plant).
- (2) For the purposes of this division—
  - (a) section 268 (Additional information) applies as if a reference in that section to an application for registration were a reference to an application to renew registration; and

- (b) section 269 (except subsection (5)) (Decision on application), section 271 (Conditions of registration) and section 272 (Duration of registration) apply as if a reference in those sections to the grant of a registration were a reference to the renewal of a registration; and
- (c) section 270 (Refusal of registration—process) applies as if a reference in that section to a refusal to grant a registration were a reference to a refusal to renew a registration.

*Note* A refusal to renew a registration is a reviewable decision (see s 676).

**U 280 Status of registration during review**

- (1) If the regulator gives the registration holder written notice of a decision to refuse to renew the registration, the registration continues to have effect in accordance with this section.
- (2) If the registration holder does not apply for internal review, the registration continues to have effect until the last of the following events:
  - (a) the expiry of the registration;
  - (b) the end of the period for applying for an internal review.
- (3) If the registration holder applies for an internal review, the registration continues to have effect until the earlier of the following events:
  - (a) the registration holder withdraws the application for review;
  - (b) the regulator makes a decision on the review.
- (4) If the registration holder does not apply for an external review, the registration continues to have effect until the end of the time for applying for an external review.

- (5) If the registration holder applies for an external review, the registration continues to have effect until the earlier of the following events:
- (a) the registration holder withdraws the application for review;
  - (b) the ACAT makes a decision on the review.
- (6) The registration continues to have effect under this section even if its expiry date passes.

**U** **Division 5.3.5**      **Changes to registration and registration documents**

**U** **281**      **Application—div 5.3.5**

This division applies to—

- (a) the registration of a design of an item of plant; and
- (b) the registration of an item of plant.

**U** **282**      **Changes to information**

- (1) A registration holder must give the regulator written notice of any change to—
- (a) the registration holder's name; or
  - (b) any of the information mentioned in section 250 (Application for registration), section 255 (1) (Additional information), section 266 (Application for registration) or section 268 (1) (Additional information) within 14 days after the registration holder becomes aware of the change.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or

(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) Subsection (1) applies whether the information was given in the application for grant of the registration or in any other circumstance.
- (3) Without limiting subsection (1), a registration holder for an item of plant must give written notice to the regulator if—
- (a) the item of plant is altered to an extent or in a way that requires the plant to be subject to new control measures; or
  - (b) the item of plant is usually fixed and is relocated; or
  - (c) the registration holder no longer has management or control of the item of plant.

**U 283 Amendment of registration imposed by regulator**

- (1) The regulator may, on its own initiative, amend a registration, including by amending the registration to—
- (a) vary or delete a condition of the registration; or
  - (b) impose a new condition on the registration.
- (2) Before amending a registration, the regulator must give the registration holder written notice—
- (a) setting out the proposed amendment and the reasons for it; and
  - (b) advising the registration holder that the registration holder may make a submission to the regulator in relation to the proposed amendment within a stated period (being not less than 28 days from the date of the notice).
- (3) After the date stated in a notice under subsection (2), the regulator must—
- (a) if the registration holder has made a submission in relation to the proposed amendment—consider that submission; and

- (b) whether or not the registration holder has made a submission—  
decide—
  - (i) to make the proposed amendment; or
  - (ii) not to make any amendment; or
  - (iii) to make a different amendment that results from consideration of any submission made by the registration holder; and
- (c) within 14 days after making that decision, give the registration holder written notice that—
  - (i) sets out the amendment, if any, or states that no amendment is to be made; and
  - (ii) if a submission was made in relation to the proposed amendment—sets out the regulator’s reasons for making the amendment; and
  - (iii) states the date (being not less than the 28 days after the registration holder is given the notice) on which the amendment, if any, takes effect.

*Note* A decision to amend a registration is a reviewable decision (see s 676).

**U 284 Amendment on application by registration holder**

- (1) The regulator, on application by the registration holder, may amend a registration, including by amending the registration to vary or delete a condition of the registration.
- (2) If the regulator proposes to refuse to amend the registration, the regulator must give the registration holder a written notice—
  - (a) informing the registration holder of the proposed refusal to amend the registration and the reasons for the proposed refusal; and

- (b) advising the registration holder that the registration holder may, by a stated date (being not less than 28 days after giving the notice), make a submission to the regulator in relation to the proposed refusal.
- (3) After the date stated in a notice under subsection (2), the regulator must—
  - (a) if the registration holder has made a submission in relation to the proposed refusal—consider that submission; and
  - (b) whether or not the registration holder has made a submission—decide;
    - (i) to make the amendment applied for; or
    - (ii) not to make any amendment; or
    - (iii) to make a different amendment that results from consideration of any submission made by the registration holder; and
  - (c) within 14 days after making that decision, give the registration holder written notice of the decision in accordance with this section.
- (4) If the regulator makes the amendment applied for, the notice under subsection (3) (c) must state the date (being not less than 28 days after the registration holder is given the notice) on which the amendment takes effect.
- (5) If the regulator refuses to make the amendment or makes a different amendment, the notice under subsection (3) (c) must—
  - (a) if a submission was made in relation to the proposed refusal of the amendment applied for—set out the reasons for the regulator’s decision; and
  - (b) if the regulator makes a different amendment—
    - (i) set out the amendment; and



- (ii) state the date (being not less than 28 days after the licence-holder is given the notice) on which the amendment takes effect.

*Note* A refusal to make the amendment applied for, or a decision to make a different amendment, is a reviewable decision (see s 676).

**U 285**      **Minor corrections to registration**

The regulator may make minor amendments to a registration, including an amendment—

- (a) to correct an obvious error; or
- (b) to change an address; or
- (c) that does not impose a significant burden on the registration holder.

**U 286**      **Regulator to give amended registration document**

If the regulator amends a registration and considers that the registration document requires amendment, the regulator must give the registration holder an amended registration document within 14 days after making the decision to amend the registration.

**U 287**      **Registration holder to return registration document**

A registration holder must return the registration document to the regulator for amendment at the written request of the regulator within the time stated in the request.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U 288 Replacement registration document**

- (1) A registration holder must give written notice to the regulator as soon as practicable if the registration document is lost, stolen or destroyed.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If a registration document is lost, stolen or destroyed, the registration holder may apply to the regulator for a replacement document.

*Note* A registration holder is required to keep a registration document available for inspection (see s 275).

- (4) An application for a replacement registration document must include a declaration describing the circumstances in which the original document was lost, stolen or destroyed.

*Note 1* A fee may be determined under the Act, s 278 for this provision.

*Note 2* If a form is approved under the Act, s 277 for this provision, the form must be used.

*Note 3* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

- (5) The regulator must issue a replacement registration document if satisfied that the original document was lost, stolen or destroyed.

- (6) If the regulator refuses to issue a replacement registration document, it must give the registration holder written notice of this decision, including the reasons for the decision within 14 days of making the decision.

*Note* A refusal to issue a replacement registration document is a reviewable decision (see s 676).

## Chapter 6 Construction work

### Part 6.1 Preliminary

#### 289 Meaning of *construction work*—ch 6

In this chapter:

*construction work*—

- (a) means any work carried out in connection with the construction, alteration, conversion, fitting-out, commissioning, renovation, repair, maintenance, refurbishment, demolition, decommissioning or dismantling of a structure; and
- (b) includes the following:
  - (i) any installation or testing carried out in connection with an activity mentioned in paragraph (a);
  - (ii) the removal from the workplace of any product or waste resulting from demolition;
  - (iii) the prefabrication or testing of elements, at a place specifically established for the construction work, for use in construction work;
  - (iv) the assembly of prefabricated elements to form a structure, or the disassembly of prefabricated elements forming part of a structure;
  - (v) the installation, testing or maintenance of an essential service in relation to a structure;
  - (vi) any work connected with an excavation;

- (vii) any work connected with any preparatory work or site preparation (including landscaping as part of site preparation) carried out in connection with an activity mentioned in paragraph (a);
  - (viii) an activity mentioned in paragraph (a), that is carried out on, under or near water, including work on buoys and obstructions to navigation; but
- (c) does not include any of the following:
- (i) the manufacture of plant;
  - (ii) the prefabrication of elements, other than at a place specifically established for the construction work, for use in construction work;
  - (iii) the construction or assembly of a structure that once constructed or assembled is intended to be transported to another place;
  - (iv) testing, maintenance or repair work of a minor nature carried out in connection with a structure;
  - (v) mining or the exploration for or extraction of minerals.

## 290 Meaning of *structure*—ch 6

- (1) In this chapter, *structure* has the same meaning as it has in the Act.

### Examples

- 1 a roadway or pathway
- 2 a ship or submarine
- 3 foundations, earth retention works and other earthworks, including river works and sea defence works
- 4 formwork, falsework or any other structure designed or used to provide support, access or containment during construction work
- 5 an airfield
- 6 a dock, harbour, channel, bridge, viaduct, lagoon or dam

7 a sewer or sewerage or drainage works

*Note 1* Terms used in this regulation have the same meaning that they have in the *Work Health and Safety Act 2011* (see Legislation Act, s 148). See also the dictionary, note 3.

*Note 2* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) This chapter does not apply to plant unless—
- (a) the plant is—
    - (i) a ship or submarine; or
    - (ii) a pipe or pipeline; or
    - (iii) an underground tank; or
    - (iv) designed or used to provide support, access or containment during work in connection with construction work; or
  - (b) work on the plant relates to work that is carried out in connection with construction work; or
  - (c) the plant is fixed plant on which outage work or overhaul work that involves or may involve work being carried out by 5 or more persons conducting businesses or undertakings at any point in time.

*Note* This chapter does not apply to the manufacture of plant (see s 289 (c) (i)).

## 291 Meaning of *high risk construction work*—ch 6

- (1) In this chapter:
- high risk construction work* means construction work that—
- (a) involves a risk of a person falling more than 2m; or
  - (b) is carried out on a telecommunication tower; or

- (c) involves demolition of an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure; or
- (d) involves, or is likely to involve, the disturbance of asbestos; or
- (e) involves structural alterations or repairs that require temporary support to prevent collapse; or
- (f) is carried out in or near a confined space; or
- (g) is carried out in or near—
  - (i) a shaft or trench with an excavated depth greater than 1.5m; or
  - (ii) a tunnel; or
- (h) involves the use of explosives; or
- (i) is carried out on or near pressurised gas distribution mains or piping; or
- (j) is carried out on or near chemical, fuel or refrigerant lines; or
- (k) is carried out on or near energised electrical installations or services; or
- (l) is carried out in an area that may have a contaminated or flammable atmosphere; or
- (m) involves tilt-up or precast concrete; or
- (n) is carried out on, in or adjacent to a road, railway, shipping lane or other traffic corridor that is in use by traffic other than pedestrians; or
- (o) is carried out in an area at a workplace in which there is any movement of powered mobile plant; or
- (p) is carried out in an area in which there are artificial extremes of temperature; or

- (q) is carried out in or near water or other liquid that involves a risk of drowning; or
  - (r) involves diving work.
- (2) In this section:
- asbestos***—
- (a) means the asbestiform varieties of mineral silicates belonging to the serpentine or amphibole groups of rock forming minerals; and
  - (b) includes the following:
    - (i) actinolite asbestos;
    - (ii) grunerite (or amosite) asbestos (brown);
    - (iii) anthophyllite asbestos;
    - (iv) chrysotile asbestos (white);
    - (v) crocidolite asbestos (blue);
    - (vi) tremolite asbestos;
    - (vii) a mixture that contains 1 or more of the minerals referred to in paragraphs (i) to (vi).

## 292 **Meaning of *construction project*—ch 6**

In this chapter:

***construction project*** means a project—

- (a) that involves construction work; and
- (b) where the cost of the construction work is \$250 000 or more.

## 293 Meaning of *principal contractor*—ch 6

- (1) In this chapter, a person conducting a business or undertaking that commissions a construction project is, subject to this section, the *principal contractor* for the project.
- (2) If the person mentioned in subsection (1) engages another person conducting a business or undertaking as principal contractor for the construction project and authorises the person to have management or control of the workplace and to discharge the duties of a principal contractor under this chapter, the person so engaged is the *principal contractor* for the project.
- (3) If the owner of residential premises is an individual who directly or indirectly engages a person conducting a business or undertaking to undertake a construction project in relation to the premises, the person so engaged is the *principal contractor* for the project if the person has management or control of the workplace.
- (4) A construction project has only 1 principal contractor at any specific time.

*Note* A person with management or control of a workplace must comply with the Act, s 20.



## Part 6.2 Duties of designer of structure and person who commissions construction work

### 294 Person who commissions work must consult with designer

- (1) A person conducting a business or undertaking that commissions construction work in relation to a structure must, so far as is reasonably practicable, consult with the designer of the whole or any part of the structure about how to ensure that risks to health and safety arising from the design during the construction work are—
  - (a) eliminated, so far as is reasonably practicable; or
  - (b) if it is not reasonably practicable to eliminate the risks, minimised so far as is reasonably practicable.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) Consultation must include giving the designer any information that the person who commissions the construction work has in relation to the hazards and risks at the workplace where the construction work is to be carried out.

## 295 Designer must give safety report to person who commissions design

- (1) The designer of a structure or any part of a structure that is to be constructed must give the person conducting a business or undertaking who commissioned the design a written report that states the hazards relating to the design of the structure that, so far as the designer is reasonably aware—
- (a) create a risk to the health or safety of persons who are to carry out any construction work on the structure or part; and
  - (b) are associated only with the particular design and not with other designs of the same type of structure.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If the person conducting a business or undertaking who commissions a construction project did not commission the design of the construction project, the person must take all reasonable steps to obtain a copy of the written report mentioned in subsection (1) in relation to that design.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**296 Person who commissions project must give information to principal contractor**

If a person conducting a business or undertaking that commissions a construction project engages a principal contractor for the project, the person must give the principal contractor any information the person has in relation to hazards and risks at or in the vicinity of the workplace where the construction work is to be carried out.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## Part 6.3 Duties of person conducting business or undertaking

*Note* As a principal contractor is a person conducting a business or undertaking, this part also applies to a principal contractor.

### Division 6.3.1 General

#### 297 Management of risks to health and safety—Act, s 19

A person conducting a business or undertaking must manage risks associated with the carrying out of construction work in accordance with part 3.1 (Managing risks to health and safety).

*Note* WHS Act—s 19 (see s 9).

#### 298 Security of workplace

- (1) A person with management or control of a workplace at which construction work is carried out must ensure, so far as is reasonably practicable, that the workplace is secured from unauthorised access.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) In complying with subsection (1), the person must have regard to all relevant matters, including—
  - (a) risks to health and safety arising from unauthorised access to the workplace; and

- (b) the likelihood of unauthorised access occurring; and

**Example**

the proximity of the workplace to places frequented by children, including schools, parks and shopping precincts

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (c) to the extent that unauthorised access to the workplace cannot be prevented—how to isolate hazards within the workplace.

## **Division 6.3.2 High risk construction work—safe work method statements**

### **299 Safe work method statement required for high risk construction work**

- (1) A person conducting a business or undertaking that includes the carrying out of high risk construction work must, before high risk construction work commences, ensure that a safe work method statement for the proposed work—
- (a) is prepared; or
  - (b) has already been prepared by another person.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A safe work method statement must—
- (a) identify the work that is high risk construction work; and
  - (b) state hazards relating to the high risk construction work and risks to health and safety associated with those hazards; and

- (c) describe the measures to be implemented to control the risks; and
  - (d) describe how the control measures are to be implemented, monitored and reviewed.
- (3) A safe work method statement must—
- (a) be prepared taking into account all relevant matters, including—
    - (i) circumstances at the workplace that may affect the way in which the high risk construction work is carried out; and
    - (ii) if the high risk construction work is carried out in connection with a construction project—the WHS management plan that has been prepared for the workplace; and
  - (b) be set out and expressed in a way that is readily accessible and understandable to persons who use it.

### **300 Compliance with safe work method statement**

- (1) A person conducting a business or undertaking that includes the carrying out of high risk construction work must put in place arrangements for ensuring that high risk construction work is carried out in accordance with the safe work method statement for the work.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If high risk construction work is not carried out in accordance with the safe work method statement for the work, the person must ensure that the work—
- (a) is stopped immediately or as soon as it is safe to do so; and

(b) resumed only in accordance with the statement.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### **301 Safe work method statement—copy to be given to principal contractor**

A person conducting a business or undertaking that includes carrying out high risk construction work in connection with a construction project must, before the high risk construction work commences, ensure that a copy of the safe work method statement for the work is given to the principal contractor.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### **302 Review of safe work method statement**

A person conducting a business or undertaking must ensure that a safe work method statement is reviewed and as necessary revised if relevant control measures are revised under section 38 (Review of control measures).

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### **303 Safe work method statement must be kept**

- (1) Subject to subsection (2), a person conducting a business or undertaking must keep a copy of the safe work method statement until the high risk construction work to which it relates is completed.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If a notifiable incident occurs in connection with the high risk construction work to which the statement relates, the person must keep the statement for at least 2 years after the incident occurs.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person must ensure that for the period for which the statement must be kept under this section, a copy is readily accessible to any worker engaged by the person to carry out the high risk construction work.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).



- (4) The person must ensure that for the period for which the statement must be kept under this section, a copy is available for inspection under the Act.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### **Division 6.3.3 Excavation Work**

#### **304 Excavation work—underground essential services information**

- (1) This section applies in relation to a part of a workplace where excavation work is being carried out and any adjacent areas.
- (2) A person with management or control of the workplace must take all reasonable steps to obtain current underground essential services information about the areas mentioned in subsection (1) before directing or allowing the excavation work to commence.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person with management or control of the workplace must provide the information obtained under subsection (2) to any person engaged by the person to carry out the excavation work.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or

- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The person with management or control of the workplace and any person conducting a business or undertaking who is given information under subsection (3) must have regard to the information mentioned in subsection (2) in carrying out or directing or allowing the carrying out of the excavation work.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note* Legislation relating to the essential services may also impose duties on the person conducting the business or undertaking and the persons carrying out the work.

- (5) The person with control or management of the workplace must ensure that the information mentioned in subsection (2) is available for inspection under the Act for the period stated in subsection (6).

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (6) The information must be available—
- (a) if a notifiable incident occurs in connection with the excavation work to which the information relates—for at least 2 years after the incident occurs; and
- (b) in every other case—until the excavation work is completed.

(7) In this section:

*underground essential services* means essential services that use pipes, cables or other associated plant located underground.

*underground essential services information*, in relation to proposed excavation work, means the following information about underground essential services that may be affected by the excavation:

- (a) the essential services that may be affected;
- (b) the location, including the depth, of any pipes, cables or other plant associated with the affected essential services;
- (c) any conditions on the proposed excavation work.

**305 Management of risks to health and safety associated with excavation work—Act, s 19**

(1) A person conducting a business or undertaking must manage risks to health and safety associated with excavation work, in accordance with part 3.1 (Managing risks to health and safety).

*Note* WHS Act—s 19 (see s 9).

(2) The risks this section applies to include the following:

- (a) a person falling into an excavation;
- (b) a person being trapped by the collapse of an excavation;
- (c) a person working in an excavation being struck by a falling thing;
- (d) a person working in an excavation being exposed to an airborne contaminant.

(3) In complying with subsection (1), the person must have regard to all relevant matters, including the following:

- (a) the nature of the excavation;

- (b) the nature of the excavation work, including the range of possible methods of carrying out the work;
- (c) the means of entry into and exit from the excavation, if applicable.

### **306 Additional controls—trenches**

- (1) A person conducting a business or undertaking, who proposes to excavate a trench at least 1.5m deep must ensure, so far as is reasonably practicable, that the work area is secured from unauthorised access (including inadvertent entry).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or
- (b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) In complying with subsection (1), the person must have regard to all relevant matters, including—
  - (a) risks to health and safety arising from unauthorised access to the work area; and
  - (b) the likelihood of unauthorised access occurring.
- (3) In addition, the person must minimise the risk to any person arising from the collapse of the trench by ensuring that all sides of the trench are adequately supported by doing 1 or more of the following:
  - (a) shoring by shielding or other comparable means;
  - (b) benching;
  - (c) battering.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or

(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) Subsection (3) does not apply if the person receives written advice from a geotechnical engineer that all sides of the trench are safe from collapse.
- (5) An advice under subsection (4)—
- (a) may be subject to a condition that stated natural occurrences may create a risk of collapse; and
  - (b) must state the period of time to which the advice applies.

## Part 6.4 Additional duties of principal contractor

### 307 Application—pt 6.4

This part—

- (a) applies in relation to a construction project; and
- (b) imposes duties on the principal contractor for the project that are additional to the duties imposed under part 6.3 (Duties of person conducting business or undertaking).

*Note* As a principal contractor has management or control of a workplace, the principal contractor is also subject to duties imposed by the Act and this regulation on a person with management or control of a workplace.

### 308 Specific control measure—signage identifying principal contractor

The principal contractor for a construction project must ensure that signs are installed, that—

- (a) show the principal contractor's name and telephone contact numbers (including an after hours telephone number); and
- (b) show the location of the site office for the project, if any; and
- (c) are clearly visible from outside the workplace, or the work area of the workplace, where the construction project is being undertaken.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U** 309 **WHS management plan—preparation**

- (1) The principal contractor for a construction project must prepare a written WHS management plan for the workplace before work on the project commences.

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A WHS management plan must include the following:
- (a) the names, positions and health and safety responsibilities of all persons at the workplace whose positions or roles involve specific health and safety responsibilities in connection with the project;
  - (b) the arrangements in place, between any persons conducting a business or undertaking at the workplace where the construction project is being undertaken, for consultation, co-operation and the co-ordination of activities in relation to compliance with their duties under the Act and this regulation;
  - (c) the arrangements in place for managing any work health and safety incidents that occur;
  - (d) any site-specific health and safety rules, and the arrangements for ensuring that all persons at the workplace are informed of these rules;
  - (e) the arrangements for the collection and any assessment, monitoring and review of safe work method statements at the workplace.

**U** 310 **WHS management plan—duty to inform**

The principal contractor for a construction project must ensure, so far as is reasonably practicable, that each person who is to carry out construction work in connection with the project is, before commencing work, made aware of—

- (a) the content of the WHS management plan for the workplace; and
- (b) the person's right to inspect the WHS management plan under section 313 (Copy of WHS management plan must be kept).

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

**U** 311 **WHS management plan—review**

- (1) The principal contractor for a construction project must review and as necessary revise the WHS management plan to ensure that it remains up-to-date.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).



- (2) The principal contractor for a construction project must ensure, so far as is reasonably practicable, that each person carrying out construction work in connection with the project is made aware of any revision to the WHS management plan.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

### **312 High risk construction work—safe work method statements**

The principal contractor for a construction project must take all reasonable steps to obtain a copy of the safe work method statement relating to high risk construction work before the high risk construction work commences.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note* The WHS management plan contains arrangements for co-operation between persons conducting a business or undertaking at the construction project workplace, including in relation to the preparation of safe work method statements (see s 309 (2) (b) and (e)).

**U** 313 **Copy of WHS management plan must be kept**

- (1) Subject to subsection (2), the principal contractor for a construction project must ensure that a copy of the WHS management plan for the project is kept until the project to which it relates is completed.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) If a notifiable incident occurs in connection with the construction project to which the statement relates, the person must keep the WHS management plan for at least 2 years after the incident occurs.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) The person must ensure that, for the period for which the WHS management plan must be kept under this section, a copy is readily accessible to any person who is to carry out construction work in connection with the construction project.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or  
(b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (4) The person must ensure that for the period for which the WHS management plan must be kept under this section, a copy is available for inspection under the Act.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or  
(b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (5) In this section:

***WHS management plan*** means the initial plan and all revised versions of the plan.

### **314 Further health and safety duties—specific regulations**

The principal contractor for a construction project must put in place arrangements for ensuring compliance at the workplace with the following:

- (a) division 3.2.2 (General working environment);  
(b) division 3.2.3 (First-aid);  
(c) division 3.2.4 (Emergency plans);  
(d) division 3.2.5 (Personal protective equipment);  
(e) division 3.2.7 (Managing risks from airborne contaminants);  
(f) division 3.2.8 (Hazardous atmospheres);  
(g) division 3.2.9 (Storage of flammable or combustible substances);  
(h) division 3.2.10 (Falling objects);

- (i) part 4.4 (Falls).

Maximum penalty:

- (a) in the case of an individual—\$6 000; or  
(b) in the case of a body corporate—\$30 000.

*Note 1* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

*Note 2* All persons conducting a business or undertaking at the construction project workplace have these same duties (see pt 3.2 and Act, s 19). The Act, s 16 provides for situations in which more than 1 person has the same duty.

### **315 Further health and safety duties—specific risks— Act, s 20**

The principal contractor for a construction project must in accordance with part 3.1 (Managing risks to health and safety) manage risks to health and safety associated with the following:

- (a) the storage, movement and disposal of construction materials and waste at the workplace;
- (b) the storage at the workplace of plant that is not in use;
- (c) traffic in the vicinity of the workplace that may be affected by construction work carried out in connection with the construction project;
- (d) essential services at the workplace.

*Note* WHS Act—s 20 (see s 9).

## **Part 6.5                      General construction induction training**

### **Division 6.5.1              General construction induction training requirements**

#### **316                      Duty to provide general construction induction training**

A person conducting a business or undertaking must ensure that general construction induction training is provided to a worker engaged by the person who is to carry out construction work, if the worker—

- (a) has not successfully completed general construction induction training; or
- (b) successfully completed general construction induction training more than 2 years previously and has not carried out construction work in the preceding 2 years.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note*      Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

#### **317                      Duty to ensure worker has been trained**

- (1) A person conducting a business or undertaking must not direct or allow a worker to carry out construction work unless—
  - (a) the worker has successfully completed general construction induction training; and

- (b) if the worker completed the training more than 2 years previously—the worker has carried out construction work in the preceding 2 years.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) The person conducting the business or undertaking must ensure that—
  - (a) the worker holds a general construction induction training card; or
  - (b) if the worker has applied for but not yet been issued with a general construction induction training card, the worker holds a general construction induction training certification, issued within the preceding 60 days.

### **318 Recognition of general construction induction training cards issued in other jurisdictions**

- (1) In this division, a reference to a general construction induction card includes a reference to a similar card—
  - (a) issued under a corresponding WHS law; and
  - (b) that is being used in accordance with the terms and conditions under which it was issued.
- (2) Subsection (1) does not apply to a card that is suspended or cancelled or has expired in the corresponding jurisdiction.

## **Division 6.5.2      General construction induction training cards**

### **319      Issue of card**

- (1) A person who has successfully completed general construction induction training in the ACT may apply to the regulator for a general construction induction training card.
- (3) The application must include the following information:
  - (a) the applicant's name and any other evidence of the applicant's identity required by the regulator;
  - (b) either—
    - (i) a general construction induction training certification issued to the applicant; or
    - (ii) a written declaration by the person who provided the general construction induction training on behalf of the relevant RTO that the applicant has successfully completed general construction induction training.

*Note 1* A fee may be determined under the Act, s 278 for this provision.

*Note 2* If a form is approved under the Act, s 277 for this provision, the form must be used.

*Note 3* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

- (4) The application must be made—
  - (a) within 60 days after the issue of the general construction induction training certification; or
  - (b) if the application is accompanied by a declaration mentioned in subsection (2) (b) (ii), at any time after completion of the general construction induction training.

- (5) The regulator must issue a general construction induction training card to the applicant if—
  - (a) the application has been made in accordance with this section; and
  - (b) the regulator is satisfied that the applicant has successfully completed general construction induction training.
- (6) The regulator must make a decision on the application as soon as practicable.
- (7) If the regulator has not decided on the application within 60 days, the applicant is taken to hold a general construction induction training card until a decision is made.

### **320 Content of card**

A general construction induction training card must—

- (a) state the following:
  - (i) that the card-holder has completed general construction induction training;
  - (ii) the name of the card-holder;
  - (iii) the date on which the card was issued;
  - (iv) a unique identifying number;
  - (v) that the card was issued in the ACT; and
- (b) contain the card-holder's signature.

### **321 Replacement card**

- (1) If a general construction induction training card issued by the regulator is lost, stolen or destroyed, the card-holder may apply to the regulator for a replacement card.

*Note* A card-holder is required to keep the card available for inspection under s 326.



- (3) An application for a replacement general construction induction training card must include a declaration about the circumstances in which the card was lost, stolen or destroyed.

*Note 1* A fee may be determined under the Act, s 278 for this provision.

*Note 2* If a form is approved under the Act, s 277 for this provision, the form must be used.

*Note 3* It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

- (4) The regulator may issue a replacement card if satisfied that the original general construction induction training card has been lost, stolen or destroyed.

### **322 Refusal to issue or replace card**

The regulator may refuse to issue a general construction induction training card or a replacement general construction induction training card if satisfied that the applicant—

- (a) gave information that was false or misleading in a material particular; or
- (b) failed to give information that should have been given; or
- (c) produced a general construction induction training certification that had been obtained on the basis of the giving of false or misleading information by any person or body.

*Note* A decision to refuse to issue or replace a general construction induction training card is a reviewable decision (see s 676).

### **323 Cancellation of card—grounds**

The regulator may cancel a general construction induction training card issued by the regulator if satisfied that the card-holder, when applying for the card—

- (a) gave information that was false or misleading in a material particular; or
- (b) failed to give information that should have been given; or
- (c) produced a general construction induction training certification that had been obtained on the basis of the giving of false or misleading information by any person or body.

*Note* A decision to cancel a general construction induction training card is a reviewable decision (see s 676).

### **324 Cancellation of card—process**

- (1) The regulator must, before cancelling a general construction induction training card, give the card-holder—
  - (a) written notice of the proposed cancellation that outlines all relevant allegations, facts and circumstances known to the regulator; and
  - (b) a reasonable opportunity to make submissions to the regulator in relation to the proposed cancellation.
- (2) On cancelling a general induction card, the regulator must give the card-holder a written notice of its decision, stating—
  - (a) when the cancellation takes effect; and
  - (b) the reasons for the cancellation; and
  - (c) when the card must be returned to the regulator.

## Division 6.5.3 Duties of workers

### 326 Duties of workers

- (1) A worker carrying out construction work must keep available for inspection under the Act—
- (a) his or her general construction induction training card; or
  - (b) in the circumstances set out in section 319 (5) (Issue of card), a general induction training certification held by the worker, until a decision is made on the application for the general construction induction training card.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (2) A card-holder, on receiving a cancellation notice under section 324 (2) (Cancellation of card—process), must return the card in accordance with the notice.

Maximum penalty:

- (a) in the case of an individual—\$1 250; or
- (b) in the case of a body corporate—\$6 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

- (3) Subsection (1) (a) does not apply if the card is not in the possession of the worker (***card-holder***) because—
- (a) it has been lost, stolen or destroyed; and
  - (b) the card-holder has applied for, but has not received, a replacement card under section 321 (Replacement card).

**327 Alteration of general construction induction training card**

A person who holds a general construction induction training card must not intentionally or recklessly alter the card.

Maximum penalty:

- (a) in the case of an individual—\$3 600; or
- (b) in the case of a body corporate—\$18 000.

*Note* Strict liability applies to each physical element of each offence under this regulation, unless otherwise stated (see s 6A).

## Chapter 11      General

### Part 11.1      Review of decisions under this regulation

#### Division 11.1.1      Reviewable decisions

##### 676      Which decisions under this regulation are reviewable

- (1) The following table sets out—
- (a) decisions made under this regulation that are reviewable under this part (*reviewable decisions*); and
  - (b) who is eligible to apply for review of a reviewable decision (the *eligible person*).

column 1 item	column 2 section under which reviewable decision is made	column 3 eligible person in relation to reviewable decision
<b>High risk work licences</b>		
1	89—refusal to grant licence	applicant
2	91—refusal to grant licence	applicant
3	98—refusal to issue replacement licence document	applicant
4	104—refusal to renew licence	applicant
5	106—suspension of licence	licence-holder
6	106—cancellation of licence	licence-holder
7	106—disqualification of licence-holder from applying for another licence	licence-holder
<b>Registration of Plant Designs</b>		
8	256—refusal to register plant design	applicant
9	257—refusal to register plant design	applicant

<b>column 1 item</b>	<b>column 2 section under which reviewable decision is made</b>	<b>column 3 eligible person in relation to reviewable decision</b>
10	258—imposition of a condition when granting registration of plant design	applicant
<b>Registration of Plant</b>		
11	269—refusal to register item of plant	<ul style="list-style-type: none"> <li>• applicant</li> <li>• the person with management or control of the item of plant</li> </ul>
12	270—refusal to register item of plant	<ul style="list-style-type: none"> <li>• applicant</li> <li>• the person with management or control of the item of plant</li> </ul>
13	271—imposition of a condition when granting registration of item of plant	<ul style="list-style-type: none"> <li>• applicant</li> <li>• the person with management or control of the item of plant</li> </ul>
14	271—imposition of a condition when renewing registration of item of plant	<ul style="list-style-type: none"> <li>• registration holder</li> <li>• the person with management or control of the item of plant</li> </ul>
15	279—refusal to renew registration of item of plant	<ul style="list-style-type: none"> <li>• registration holder</li> <li>• the person with management or control of the item of plant</li> </ul>

<b>column 1 item</b>	<b>column 2 section under which reviewable decision is made</b>	<b>column 3 eligible person in relation to reviewable decision</b>
16	283—amendment of registration, on regulator’s initiative	<ul style="list-style-type: none"> <li>• registration holder</li> <li>• the person with management or control of the item of plant</li> </ul>
17	284—refusal to amend registration on application (or a decision to make a different amendment)	<ul style="list-style-type: none"> <li>• registration holder</li> <li>• the person with management or control of the item of plant</li> </ul>
18	288—refusal to issue replacement registration document	<ul style="list-style-type: none"> <li>• registration holder</li> <li>• the person with management or control of the item of plant</li> </ul>
<b>General Construction Induction Training</b>		
19	322—refusal to issue general construction induction training card	applicant
20	322—refusal to issue replacement general construction induction training card	card-holder
21	323—cancellation of general construction induction training card	card-holder
<b>Exemptions</b>		
22	684—refusal to exempt person (or a class of persons) from compliance with any provision of this Regulation	applicant
23	686—refusal to exempt person from requirement to hold a high risk work licence	applicant
24	691—imposing condition on an exemption granted on application under pt 11.2	applicant
25	696—refusal to grant exemption	applicant

<b>column 1 item</b>	<b>column 2 section under which reviewable decision is made</b>	<b>column 3 eligible person in relation to reviewable decision</b>
26	697—amendment of an exemption granted on application under pt 11.2	applicant
27	697—cancellation of an exemption granted on application under pt 11.2	applicant

- (2) Unless the contrary intention appears, a reference in this part to a decision includes a reference to—
- (a) making, suspending, revoking or refusing to make an order, determination or decision; or
  - (b) giving, suspending, revoking or refusing to give a direction, approval, consent or permission; or
  - (c) granting, issuing, amending, renewing, suspending, cancelling, revoking or refusing to grant issue, amend or renew an authorisation; or
  - (d) imposing or varying a condition; or
  - (e) making a declaration, demand or requirement; or
  - (f) retaining, or refusing to deliver up, a thing; or
  - (g) doing or refusing to do any other act or thing; or
  - (h) being taken to refuse or do any act or thing.



## **Division 11.1.2 Internal review**

### **677 Application**

This division does not apply to a reviewable decision made under part 11.2 (Exemptions).

### **678 Application for internal review**

- (1) Subject to subsection (2), an eligible person in relation to a reviewable decision may apply to the regulator for review (an *internal review*) of the decision within—
  - (a) 28 days after the day on which the decision first came to the eligible person's notice; or
  - (b) any longer time the regulator allows.
- (2) An eligible person in relation to a reviewable decision under section 89 (5) (Decision on application), section 256 (5) (Decision on application) or section 269 (5) (Decision on application) may apply to the regulator for review (an *internal review*) of the decision within—
  - (a) 28 days after the day on which the 120-day period mentioned in that provision; or
  - (b) any longer time the regulator allows.

*Note* If a form is approved under the Act, s 277 for this provision, the form must be used.

### **679 Internal reviewer**

- (1) The regulator may appoint a person or body to review decisions on applications under this division.
- (2) The person who made the reviewable decision cannot be an internal reviewer in relation to that decision.

**680      Decision of internal reviewer**

- (1) The internal reviewer must review the reviewable decision and make a decision as soon as practicable and within 14 days after the application for internal review, or the additional information requested under subsection (3), is received.
- (2) The decision may be—
  - (a) to confirm or vary the reviewable decision; or
  - (b) to set aside the reviewable decision and substitute another decision that the internal reviewer considers appropriate.
- (3) The internal reviewer may ask the applicant to provide additional information in support of the application for review.
- (4) The applicant must provide the additional information within the time (being not less than 7 days) stated by the internal reviewer in the request for information.
- (5) If the applicant does not provide the additional information within the required time, the reviewable decision is taken to have been confirmed by the internal reviewer at the end of that time.
- (6) If the reviewable decision is not varied or set aside within the 14-day period mentioned in subsection (1), the reviewable decision is taken to have been confirmed by the internal reviewer.

**681      Decision on internal review**

Within 14 days of making the decision on the internal review, the internal reviewer must give the applicant written notice of—

- (a) the decision on the internal review; and
- (b) the reasons for the decision.

**682 Internal review—reviewable decision continues**

Subject to any provision to the contrary in relation to a particular decision, an application for an internal review does not affect the operation of the reviewable decision or prevent the taking of any lawful action to implement or enforce the decision.

**Division 11.1.3 External review**

**683 Application for external review**

- (1) An eligible person may apply to the ACAT for review (an *external review*) of—
  - (a) a reviewable decision made by the regulator under part 11.2 (Exemptions); or
  - (b) a decision made, or taken to have been made, on an internal review.
- (2) The application must be made within—
  - (a) 28 days after the day on which the decision first came to the eligible person's notice; or
  - (b) any longer time the ACAT allows.

## Part 11.2                      Exemptions

### Division 11.2.1              General

#### 684              General power to grant exemptions

- (1) The regulator may exempt a person or class of persons from compliance with any of this regulation.

*Note*      A decision to refuse to grant an exemption is a reviewable decision (see s 676).

- (2) The exemption may be granted on the regulator's own initiative or on the written application of 1 or more persons.

*Note 1*      If a form is approved under the Act, s 277 for this provision, the form must be used.

*Note 2*      It is an offence to make a false or misleading statement, give false or misleading information or produce a false or misleading document (see Criminal Code, pt 3.4).

- (3) This section is subject to the limitations set out in this part.
- (4) This section does not apply to an exemption from a provision requiring a person to hold a high risk work licence.

#### 685              Matters to be considered in granting exemptions

In deciding whether or not to grant an exemption under section 684 the regulator must have regard to all relevant matters, including the following:

- (a) whether the granting of the exemption will result in a standard of health and safety at the relevant workplace, or in relation to the relevant undertaking, that is at least equivalent to the standard that would be achieved by compliance with the relevant provision or provisions;

- (b) whether the requirements of paragraph (a) will be met if the regulator imposes certain conditions in granting the exemption and those conditions are complied with;
- (c) whether exceptional circumstances justify the grant of the exemption;
- (d) if the proposed exemption relates to a particular thing—whether the regulator is satisfied that the risk associated with the thing is not significant if the exemption is granted;
- (e) whether the applicant has carried out consultation in relation to the proposed exemption in accordance with the Act, division 5.1 (Consultation, cooperation and coordination between duty-holders) and division 5.2 (Consultation with workers).

## **Division 11.2.2 High risk work licences**

### **686 High risk work licence—exemption**

- (1) The regulator may exempt a person or class of persons from compliance with a provision of this regulation requiring the person or class of persons to hold a high risk work licence.
- (2) The exemption may be granted on the written application of any person concerned.

*Note* A decision to refuse to grant an exemption is a reviewable decision (see s 676).

### **687 High risk work licence—regulator to be satisfied about certain matters**

- (1) The regulator must not grant an exemption under section 686 unless satisfied that granting the exemption will result in a standard of health and safety that is at least equivalent to the standard that would have been achieved without that exemption.

- (2) For the purposes of subsection (1), the regulator must have regard to all relevant matters, including whether or not—
- (a) the obtaining of the high risk work licence would be impractical; and
  - (b) the competencies of the person to be exempted exceed those required for a high risk work licence; and
  - (c) any plant used by the person can be modified in a way that reduces the risk associated with using that plant.

## **Division 11.2.4      Exemption process**

### **691      Conditions of exemption**

- (1) The regulator may impose any conditions it considers appropriate on an exemption granted under this part.
- (2) Without limiting subsection (1), conditions may require the applicant to do 1 or more of the following:
- (a) monitor risks;
  - (b) monitor the health of persons at the workplace who may be affected by the exemption;
  - (c) keep certain records;
  - (d) use a stated system of work;
  - (e) report certain matters to the regulator;
  - (f) give notice of the exemption to persons who may be affected by the exemption.

*Note*      A decision to impose a condition is a reviewable decision (see s 676).

**692 Form of exemption document**

The regulator must prepare an exemption document that states the following:

- (a) the name of the applicant for the exemption (if any);
- (b) the person or class of persons to whom the exemption will apply;
- (c) the work or thing to which the exemption relates, if applicable;
- (d) the circumstances in which the exemption will apply;
- (e) the provisions of this regulation to which the exemption applies;
- (f) any conditions on the exemption;
- (g) the date on which the exemption takes effect;
- (h) the duration of the exemption.

**693 Compliance with conditions of exemption**

A person to whom the exemption is granted must—

- (a) comply with the conditions of the exemption; and
- (b) ensure that any person under the management or control of that person complies with the conditions of the exemption.

**694 Notice of decision in relation to exemption**

The regulator must give a copy of the exemption document mentioned in section 692 (Form of exemption document), within 14 days after making the decision to grant the exemption, to—

- (a) if a person applied for the exemption—the applicant; or
- (b) if the regulator granted the exemption on its own initiative—each person (other than persons to whom section 695 applies) to whom the exemption will apply.

**695      Publication of notice of exemption**

- (1) This section applies to an exemption that relates to a class of persons.
- (2) The exemption is a notifiable instrument.

*Note*      A notifiable instrument must be notified under the Legislation Act.

**696      Notice of refusal of exemption**

- (1) If the regulator refuses to grant an exemption, the regulator must give the applicant for the exemption written notice of the refusal within 14 days after making that decision.
- (2) The notice must state the regulator's reasons for the refusal.

*Note*      A refusal to grant an exemption is a reviewable decision (see s 676).

**697      Amendment or cancellation of exemption**

The regulator may at any time amend or cancel an exemption.

*Note*      A decision to amend or cancel an exemption is a reviewable decision (see s 676).

**698      Notice of amendment or cancellation**

- (1) The regulator must give written notice of the amendment or cancellation of an exemption, within 14 days after making the decision to amend or cancel the exemption, to—
  - (a) if a person applied for the exemption—the applicant; or
  - (b) if the regulator granted the exemption on its own initiative—each person (other than persons to whom subsection (2) applies) to whom the exemption applies.
- (2) If the exemption affects a class of persons—
  - (a) for an amendment—the exemption as amended is a notifiable instrument; and



- (b) for a cancellation—notice of the cancellation is a notifiable instrument.

*Note* A notifiable instrument must be notified under the Legislation Act.

- (3) The notifiable instrument must state the regulator's reasons for the amendment or cancellation.
- (4) The amendment or cancellation takes effect—
- (a) for an amendment or cancellation mentioned in subsection (2)—on the day after the exemption as amended, or notice of cancellation, is notified or on a later date stated in the notifiable instrument; or
- (b) in any other case—on the giving of the notice to the applicant under subsection (1) or on a later date stated in the notice.

## Part 11.3                      Miscellaneous

### 699              Incident notification—prescribed serious illnesses— Act, s 36

For the purposes of the Act, section 36 (What is a *serious injury or illness*—pt 3), each of the following conditions is a serious illness:

- (a) any infection to which the carrying out of work is a significant contributing factor, including any infection that is reliably attributable to carrying out work—
  - (i) with micro-organisms; or
  - (ii) that involves providing treatment or care to a person; or
  - (iii) that involves contact with human blood or body substances; or
  - (iv) that involves handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products;
- (b) the following occupational zoonoses contracted in the course of work involving handling or contact with animals, animal hides, skins, wool or hair, animal carcasses or animal waste products:
  - (i) Q fever;
  - (ii) Anthrax;
  - (iii) Leptospirosis;
  - (iv) Brucellosis;
  - (v) Hendra Virus;
  - (vi) Avian Influenza;
  - (vii) Psittacosis.

**700 Inspectors' identity cards—Act, s 157 (1) (e)**

For the purposes of the Act, section 157 (1) (e) (Identity cards), an identity card given by the regulator to an inspector must include the following:

- (a) a recent photograph of the inspector of the size, and in the form, stated by the regulator;
- (b) the inspector's signature;
- (c) the date (if any) on which the inspector's appointment ends;
- (d) any conditions to which the inspector's appointment is subject, including the kinds of workplaces in relation to which the inspector may exercise his or her compliance powers.

**701 Review of decisions under the Act—stay of decision—  
Act, s 228 (6) (a)**

For the purposes of the Act, section 228 (6) (a) (Stays of reviewable decision on internal review), the prescribed period is 90 days.

**702 Confidentiality of information—exception relating  
administration or enforcement of other laws**

A corresponding WHS law is prescribed for the purposes of the Act, section 271 (3) (c) (ii).

## Chapter 20 Transitional

### Part 20.1 Definitions

#### 800 Definitions—ch 20

In this chapter:

*commencement day* means the day this regulation, section 5 (Dictionary) commences.

## **Part 20.2                    General**

### **801            Duty to prepare emergency plan**

- (1) This section applies to an emergency plan prepared for a workplace, under section 43 before 1 January 2013.
- (2) The emergency plan need not be in writing.
- (3) This section expires on 1 January 2013.

### **802            Audiometric testing**

- (1) This section applies if, under section 58 (2), a person must provide audiometric testing for a worker.
- (2) Section 58 (2) (a) does not apply to the person before 1 January 2013.

*Note*        Section 58 (2) (a) requires audiometric testing for a worker within 3 months of the worker commencing work.

- (3) The person must provide audiometric testing for the worker—
  - (a) before 1 January 2013; and
  - (b) at least every 2 years after the first audiometric testing is provided.
- (4) A contravention of subsection (3) is taken to be a contravention of section 58 (2).
- (5) This section expires on 1 January 2013.

**803 Confined space entry permit to be completed by competent person**

- (1) This section applies to a confined space entry permit issued under section 67 before 1 January 2013.
- (2) Section 67 (2) (a) does not apply to the confined space entry permit.  
*Note* Section 67 (2) (a) requires a confined space entry permit to be completed by a competent person.
- (3) This section expires on 1 January 2013.

**804 High risk work licences—competency requirements**

- (1) This section applies to the qualifications set out in an item in schedule 4, table 4.1, column 3 for a class of high risk work licence set out in column 2 for the item.
- (2) Before 1 January 2014—
  - (a) the regulator may determine an alternative qualification for the licence class; and
  - (b) for section 86 (Who may apply for a licence), a qualification determined by the regulator for the licence class is taken to be a qualification set out in schedule 4.
- (3) A determination is a notifiable instrument.  
*Note* A notifiable instrument must be notified under the Legislation Act.
- (4) This section expires on 1 January 2014.

**805 High risk work licences—VET courses**

- (1) This section applies to a unit of competency or module, published after the commencement day but before 1 January 2014, for a VET course mentioned in schedule 4, table 4.1, column 3.
- (2) The unit of competency or module is taken not to be included in the VET course until 18 months after the day it is published.

(3) In this section:

***module***, for a VET course—see the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

***unit of competency***—see the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

## Part 20.3 Work Safety Regulation 2009

### 806 Old entry permit to be confined space entry permit

- (1) This section applies if, immediately before the commencement day, a person gives an entry permit (an *old entry permit*) under the *Work Safety Regulation 2009*.
- (2) The old entry permit is, on the commencement day, taken to be a confined space entry permit—
  - (a) in the same terms as the old entry permit; and
  - (b) subject to the same conditions as the old entry permit.

### 807 Old high risk work licences to be new high risk work licences

- (1) This section applies if, immediately before the commencement day, a person holds a high risk work licence (an *old licence*) under the *Work Safety Regulation 2009*.
- (2) The old licence is, on the commencement day, taken to be a high risk work licence—
  - (a) in the same terms as the old licence; and
  - (b) subject to the same conditions as the old licence.
- (3) The high risk work licence—
  - (a) is taken to expire on the day stated in the old licence; and
  - (b) must not be amended, transferred or renewed.

### 808 Old statement of attainment taken to be certification

- (1) This section applies to a statement of attainment issued under the *Work Safety Regulation 2009* for a class of high risk work mentioned in that regulation, schedule 1, part 1.2, column 2.



(2) The statement of attainment is taken to be a certification in relation to a VET course for the corresponding licence class mentioned in schedule 4, table 4.1, column 2.

(3) In this section:

*statement of attainment*—see the *Work Safety Act 2008*, section 119.

**809 Old construction induction training cards to be general construction induction training cards**

(1) This section applies if, immediately before the commencement day, a person holds a construction induction training card (an *old card*) issued under the *Work Safety Regulation 2009*.

(2) The old card is, on the commencement day, taken to be a general construction induction training card in the same terms as the old card.

*Note* General construction induction training cards are dealt with in div 6.5.2.

**810 Expiry—pt 20.3**

This part expires on 1 January 2013.

## Part 20.4 Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000

### 811 Definitions—pt 20.4

In this part:

**certificate of competency** means a certificate of competency issued, or taken to have been issued, under the repealed regulation, section 12 as in force at any time.

*Note* The following certificates are taken to have been issued under the repealed regulation, s 12 (see repealed regulation, s 37):

- (a) a certificate of competency issued under the *Scaffolding and Lifts Regulation 1950*, s 159;
- (b) a boiler attendant's certificate issued under the *Boilers and Pressure Vessels Regulation 1954*, pt 4.

**repealed instruments** means the following instruments:

- (a) *Occupational Health and Safety (Mast-Type Elevating Work Platforms) Exemption 2009* (NI2009-190);
- (b) *Occupational Health and Safety (National Certificates of Competency) Exemption 2006* (NI2006-418);
- (c) *Occupational Health and Safety (Pallet Trucks) Exemption 2009* (NI2009-192);
- (d) *Occupational Health and Safety (Work Assist Vehicles) Exemption 2009* (NI2009-189).

**repealed regulation** means the *Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000* (SL2000-48).

**scheduled work** means work of the kind mentioned in the repealed regulation, schedule 1, part 1.2.

**812 Continuing application of repealed regulation in relation to scheduled work etc**

- (1) Despite the repeal of the repealed regulation, the repealed regulation (other than section 15) and the repealed instruments continue to apply to the following:
  - (a) a person doing scheduled work unless the person—
    - (i) holds a high risk work licence to carry out a class of high risk work that corresponds with the scheduled work the person is doing; or
    - (ii) is a trainee under this regulation for a class of high risk work that corresponds with the scheduled work the person is doing;
  - (b) a person supervising a trainee under the repealed regulation in relation to supervision of the trainee;
  - (c) an assessor accredited under the repealed regulation in relation to the assessment under the repealed regulation of a person's competency to do scheduled work.
- (2) A reference in the repealed regulation to a supervisor, for a trainee doing scheduled work, includes a reference to a person who holds a high risk work licence that corresponds with the scheduled work.
- (3) In this section:

***high risk work licence*** includes an equivalent licence issued under a corresponding WHS law if the licence—

  - (a) is being used in accordance with the terms and conditions under which it was granted and
  - (b) is not suspended, cancelled or expired in the corresponding jurisdiction.

### **813 Application of regulation in relation to scheduled work etc**

- (1) Division 4.5.1 (Licensing of high risk work) does not apply to the following:
- (a) a person doing scheduled work if the person—
    - (i) holds a certificate of competency to do the scheduled work issued under the repealed regulation; or
    - (ii) holds a notice of satisfactory assessment to do the scheduled work issued under the repealed regulation, and has applied for a certificate of competency under the repealed regulation; or
    - (iii) is a trainee in relation to the scheduled work under the repealed regulation;
  - (b) a person supervising a trainee under the repealed regulation in relation to supervision of the trainee;
  - (c) an assessor accredited under the repealed regulation in relation to the assessment under the repealed regulation of a person's competency to do scheduled work.

### **814 Certificates of competency**

- (1) A certificate of competency issued on a date mentioned in an item in table 814, column 2 continues in force until the date mentioned in the item, column 3 unless the certificate is cancelled or surrendered sooner.

**Table 814**

<b>column 1 item</b>	<b>column 2 date certificate issued</b>	<b>column 3 date until which certificate in force</b>
1	1 January 2005 to 30 June 2009	30 June 2012
2	1 July 2009 to 30 June 2011	30 June 2014

- (2) A certificate of competency authorising a person to operate a tower crane does not authorise the person to operate a self-erecting tower crane.

### **815 Converting certificate of competency to licence**

- (1) The regulator may, on application by the holder of a certificate of competency, convert the certificate to a high risk work licence that corresponds with the work for which the certificate was issued.

*Note* If a form is approved under the Act, s 277 for this provision, the form must be used.

- (2) The application must be accompanied by the following:
- (a) the certificate of competency to be converted, or proof that the applicant holds the certificate;
  - (b) evidence of current competency in the class of high risk work for which the application is made;
  - (c) a statutory declaration stating whether the applicant, in the 5 years before the day the application is made—
    - (i) has held a certificate of competency, a high risk work licence, or a recognised qualification to carry out high risk work under a corresponding law that has been suspended or cancelled; and
    - (ii) has been convicted or found guilty of a serious offence under any of the following:
      - (A) the *Work Health and Safety Act 2011*;
      - (B) the *Work Safety Act 2008*;
      - (C) the *Occupational Health and Safety Act 1989*;
      - (D) the *Crimes Act 1900*, part 2A (Industrial manslaughter);

(E) a corresponding offence against the law of a State;

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(d) any other document or further information required by the regulator that is relevant to the application.

*Note* A fee may be determined under the Act, s 278 for this provision.

- (3) If the holder of a certificate of competency applies to convert the certificate to a high risk work licence, the regulator must—
- (a) issue the licence; or
  - (b) refuse to issue the licence.
- (4) The regulator must issue the licence to the person if satisfied that the person—
- (a) has a valid certificate of competency for work that corresponds with the class of high risk work; and
  - (b) has the necessary competency to carry out the class of high risk work; and
  - (c) does not hold a high risk work licence; and
  - (d) does not hold a certificate of competency, a high risk work licence, or a recognised qualification to carry out high risk work under a corresponding law, that is or has been suspended in the 5 years before the day the application was made; and
  - (e) has not held a certificate of competency, a high risk work licence, or a recognised qualification to carry out high risk work under a corresponding law, that has been cancelled in the 5 years before the day the application was made; and

(f) has not, in the 5 years before the day the application was made, been convicted or found guilty of a serious offence under any of the following:

- (i) the *Work Health and Safety Act 2011*;
- (ii) the *Work Safety Act 2008*;
- (iii) the *Occupational Health and Safety Act 1989*;
- (iv) the *Crimes Act 1900*, part 2A (Industrial manslaughter);
- (v) a corresponding offence against the law of a State;

*Note* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

(5) However, the regulator must not issue a licence to convert a certificate of competency for a tower crane to a licence to carry out self-erecting tower crane work.

**816 Expiry—pt 20.4**

This part expires on 1 October 2014.

## Part 20.4A Modification of Act

### 816A Modification of Act, pt 20—Act, s 306

The Act, part 20 applies as if the following sections were inserted:

#### **‘305A Investigations under Work Safety Act 2008**

- (1) This section applies to an investigation under the *Work Safety Act 2008* of an event, accident or other incident that happened before the commencement day.
- (2) An inspector under this Act may exercise any function of an inspector under the *Work Safety Act 2008* in relation to the investigation.
- (3) This section expires on the day the *Work Health and Safety Act 2011*, part 20 expires.

#### **305B Functions under director-general’s delegations**

- (1) This section applies if—
  - (a) the director-general delegated a function of the director-general (the *delegated function*) under the *Work Safety Act 2008* to a person; and
  - (b) the delegation was in force immediately before the commencement day.
- (2) The person may exercise the delegated function in relation to an investigation under the *Work Safety Act 2008* of an event, accident or other incident that happened before the commencement day.
- (3) This section expires on the day the *Work Health and Safety Act 2011*, part 20 expires.



**305C Membership of Work Safety Council**

- (1) This section applies to a person who was a member of the Work Safety Council under the *Work Safety Act 2008* immediately before the commencement day.
- (2) The person is, on the commencement day, taken to be a member of the Work Safety Council appointed under this Act in the same capacity that the person was appointed under the *Work Safety Act 2008*.
- (3) The person's appointment ends at the end of the period stated in the appointment unless it is ended earlier.
- (4) This section expires on the day the *Work Health and Safety Act 2011*, part 20 expires.'

## **Part 20.5 Expiry**

### **817 Expiry—ch 20**

This chapter (other than sections 801 to 804 and parts 20.3 and 20.4) expires 3 years after the day it commences.

*Note* Transitional provisions are kept in the regulation for a limited time. A transitional provision is repealed on its expiry but continues to have effect after its repeal (see Legislation Act, s 88).

## Schedule 3 High risk work licences and classes of high risk work

(see s 81)

**Table 3.1**

column 1 item	column 2 high risk work licence	column 3 description of class of high risk work
<b>Scaffolding work</b>		
1	basic scaffolding	scaffolding work involving any of the following: <ul style="list-style-type: none"> <li>(a) modular or pre-fabricated scaffolds;</li> <li>(b) cantilevered materials hoists with a maximum working load of 500kg;</li> <li>(c) ropes;</li> <li>(d) gin wheels;</li> <li>(e) safety nets and static lines;</li> <li>(f) bracket scaffolds (tank and formwork);</li> </ul> but excluding scaffolding work involving equipment, loads or tasks listed in item 2 (2) (a) to (g) and item 3 (2) (a) to (c)
2	intermediate scaffolding	(1) scaffolding work included in the class of basic scaffolding; and (2) scaffolding work involving any of the following: <ul style="list-style-type: none"> <li>(a) cantilevered crane loading platforms;</li> <li>(b) cantilevered scaffolds;</li> <li>(c) spur scaffolds;</li> <li>(d) barrow ramps and sloping platforms;</li> <li>(e) scaffolding associated with perimeter safety screens and shutters;</li> <li>(f) mast climbing work platforms;</li> <li>(g) tube and coupler scaffolds (including tube and coupler covered ways and gantries);</li> </ul> but excluding scaffolding work involving equipment, loads or tasks listed in item 3 (2) (a) to (c)

**Schedule 3**

High risk work licences and classes of high risk work

<b>column 1 item</b>	<b>column 2 high risk work licence</b>	<b>column 3 description of class of high risk work</b>
3	advanced scaffolding	(1) scaffolding work included in the class of intermediate scaffolding; and (2) scaffolding work involving any of the following: (a) cantilevered hoists; (b) hung scaffolds, including scaffolds hung from tubes, wire ropes or chains; (c) suspended scaffolds
<b>Dogging and rigging work</b>		
4	dogging	dogging work
5	basic rigging	(1) dogging work (2) rigging work involving any of the following: (a) structural steel erection; (b) hoists; (c) pre-cast concrete members of a structure; (d) safety nets and static lines; (e) mast climbing work platforms; (f) perimeter safety screens and shutters; (g) cantilevered crane loading platforms; but excluding rigging work involving equipment, loads or tasks listed in item 6 (b) to (f) and item 7 (b) to (e)
6	intermediate rigging	rigging work involving any of the following: (a) rigging work in the class basic rigging; (b) hoists with jibs and self-climbing hoists; (c) cranes, conveyors, dredges and excavators; (d) tilt slabs; (e) demolition of structures or plant; (f) dual lifts; but excluding rigging work involving equipment listed in item 7 (b) to (e)

column 1 item	column 2 high risk work licence	column 3 description of class of high risk work
7	advanced rigging	rigging work involving any of the following: (a) rigging work in the class intermediate rigging; (b) gin poles and shear legs; (c) flying foxes and cable ways; (d) guyed derricks and structures; (e) suspended scaffolds and fabricated hung scaffolds
<b>Crane and hoist operation</b>		
8	tower crane	use of a tower crane
9	self-erecting tower crane	use of a self-erecting tower crane
10	derrick crane	use of a derrick crane
11	portal boom crane	use of a portal boom crane
12	bridge and gantry crane	use of a bridge crane or gantry crane that is— (a) controlled from a permanent cabin or control station on the crane; or (b) remotely controlled and having more than 3 powered operations; including the application of load estimation and slinging techniques to move a load
13	vehicle loading crane	use of a vehicle loading crane with a capacity of 10 metre tonnes or more, including the application of load estimation and slinging techniques to move a load
14	non-slewing mobile crane	use of a non-slewing mobile crane with a capacity exceeding 3t
15	slewing mobile crane—with a capacity up to 20t	use of a slewing mobile crane with a capacity of 20t or less
16	slewing mobile crane—with a capacity up to 60t	use of a slewing mobile crane with a capacity of 60t or less

**Schedule 3**

High risk work licences and classes of high risk work

<b>column 1 item</b>	<b>column 2 high risk work licence</b>	<b>column 3 description of class of high risk work</b>
17	slewing mobile crane—with a capacity up to 100t	use of a slewing mobile crane with a capacity of 100t or less
18	slewing mobile crane—with a capacity over 100t	use of a slewing mobile crane with a capacity exceeding 100t
19	materials hoist	use of a materials hoist
20	personnel and materials hoist	use of a personnel and materials hoist
21	boom-type elevating work platform	use of a boom-type elevating work platform where the length of the boom is 11m or more
22	concrete-placing boom	use of a concrete-placing boom
<b>Reach stackers</b>		
<b>U</b> 23	<i>reach stacker</i>	<i>operation of a reach stacker of greater than 3t capacity that incorporates an attachment for lifting, moving and travelling with a shipping container, but does not include a portainer crane</i>
<b>Forklift operation</b>		
24	forklift truck	use of a forklift truck other than an order-picking forklift truck
25	order-picking forklift truck	use of an order-picking forklift truck
<b>Pressure equipment operation</b>		
26	standard boiler operation	operation of a boiler with a single fuel source that does not have a pre-heater, superheater or economiser attached

<b>column 1 item</b>	<b>column 2 high risk work licence</b>	<b>column 3 description of class of high risk work</b>
27	advanced boiler operation	operation of a boiler, including a standard boiler, which may have 1 or more of the following: (a) multiple fuel sources; (b) pre-heater; (c) superheater; (d) economiser
28	turbine operation	operation of a turbine that has an output of 500kW or more and— (a) is multi-wheeled; or (b) is capable of a speed greater than 3 600 revolutions per minute; or (c) has attached condensers; or (d) has a multi-staged heat exchange extraction process
29	reciprocating steam engine	operation of a reciprocating steam engine where the diameter of any piston exceeds 250mm

### **3.1 Boom-type elevating work platform**

For the purposes of table 3.1, item 21, the *length of a boom* is the greater of the following:

- (a) the vertical distance from the surface supporting the boom-type elevating work platform to the floor of the platform, with the platform extended to its maximum height;
- (b) the horizontal distance from the centre point of the boom's rotation to the outer edge of the platform, with the platform extended to its maximum distance.



## Schedule 4 High risk work licences— competency requirements

(see s 81)

### 4.1 Purpose—sch 4

This schedule sets out the qualifications for high risk work licences.

**Table 4.1**

column 1 item	column 2 licence class	column 3 VET course
1	basic scaffolding	licence to erect, alter and dismantle scaffolding basic level
2	intermediate scaffolding	licence to erect, alter and dismantle scaffolding basic level; and licence to erect, alter and dismantle scaffolding intermediate level
3	advanced scaffolding	licence to erect, alter and dismantle scaffolding basic level; and licence to erect, alter and dismantle scaffolding intermediate level; and licence to erect, alter and dismantle scaffolding advanced level
4	dogging	licence to perform dogging
5	basic rigging	licence to perform dogging; and licence to perform rigging basic level
6	intermediate rigging	licence to perform dogging; and licence to perform rigging basic level; and licence to perform rigging intermediate level
7	advanced rigging	licence to perform dogging; and licence to perform rigging basic level; and licence to perform rigging intermediate level; and licence to perform rigging advanced level

**Schedule 4** High risk work licences—competency requirements

Section 4.1

<b>column 1 item</b>	<b>column 2 licence class</b>	<b>column 3 VET course</b>
8	tower crane	licence to operate a tower crane
9	self-erecting tower crane	licence to operate a self-erecting tower crane
10	derrick crane	licence to operate a derrick crane
11	portal boom crane	licence to operate a portal boom crane
12	bridge and gantry crane	licence to operate a bridge and gantry crane
13	vehicle loading crane	licence to operate a vehicle loading crane (capacity 10 metre tonnes and above)
14	non-slewing mobile crane	licence to operate a non-slewing mobile crane (greater than 3t capacity)
15	slewing mobile crane—with a capacity up to 20t	licence to operate a slewing mobile crane (up to 20t)
16	slewing mobile crane—with a capacity up to 60t	licence to operate a slewing mobile crane (up to 60t)
17	slewing mobile crane—with a capacity up to 100t	licence to operate a slewing mobile crane (up to 100t)
18	slewing mobile crane—with a capacity over 100t	licence to operate a slewing mobile crane (over 100t)
19	materials hoist	licence to operate a materials hoist
20	personnel and materials hoist	licence to operate a personnel and materials hoist
21	boom-type elevating work platform	licence to operate a boom-type elevating work platform (boom length 11 m or more)
22	concrete-placing boom	licence to conduct concrete boom delivery operations
<b>U</b> 23	<i>reach stacker</i>	<i>licence to operate a reach stacker of greater than 3t capacity</i>

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<b>column 1 item</b>	<b>column 2 licence class</b>	<b>column 3 VET course</b>
24	forklift truck	licence to operate a forklift truck
25	order-picking forklift truck	licence to operate an order-picking forklift truck
26	standard boiler operation	licence to operate a standard boiler
27	advanced boiler operation	licence to operate a standard boiler; and licence to operate an advanced boiler
28	turbine operation	licence to operate a turbine
29	reciprocating steam engine operation	licence to operate a reciprocating steam engine

## **Schedule 5      Registration of plant and plant designs**

(see s 243 and s 246)

### **Part 5.1              Plant requiring registration of design**

#### **5.1              Items of plant requiring registration of design**

- 5.1.1 Pressure equipment, other than pressure piping, and categorised as hazard level A, B, C or D according to the criteria in AS 4343:2005 (Pressure equipment—hazard levels), section 2.1.

*Note* AS 4343:2005 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

- 5.1.2 Gas cylinders covered by AS 2030.1:2009 (Gas cylinders—General Requirements), section 1.1

*Note* AS 2030.1:2009 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

- 5.1.3 Tower cranes including self-erecting tower cranes.
- 5.1.4 Lifts, including escalators and moving walkways.
- 5.1.5 Building maintenance units.
- 5.1.6 Hoists with a platform movement exceeding 2.4m, designed to lift people.
- 5.1.7 Work boxes designed to be suspended from cranes.

5.1.8 Amusement devices covered by AS 3533.1:2009 (Amusement rides and devices—Design and construction), section 2.1, except devices stated in this schedule, section 5.2 (2).

*Note* AS 3533.1:2009 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

5.1.9 Concrete-placement units with delivery booms.

5.1.10 Prefabricated scaffolding and prefabricated formwork.

5.1.11 Boom-type elevating work platforms.

5.1.12 Gantry cranes with a safe working load greater than 5t or bridge cranes with a safe working load of greater than 10t, and any gantry crane or bridge crane which is designed to handle molten metal or a dangerous substance mentioned in the *Dangerous Substances (General) Regulation 2004*, schedule 1, table 1.1.

5.1.13 Vehicle hoists.

5.1.14 Mast climbing work platforms.

5.1.15 Mobile cranes with a rated capacity of greater than 10t.

## **5.2 Exceptions**

(1) The items of plant listed in this schedule, section 5.1 do not include—

- (a) a heritage boiler; or
- (b) a crane or hoist that is manually powered; or
- (c) an elevating work platform that is a scissor lift or a vertically moving platform; or
- (d) a tow truck.

(2) The following devices are excluded from subsection 5.1.8:

- (a) class 1 devices;

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Section 5.2

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- (b) playground devices;
- (c) water slides where water facilitates patrons to slide easily, predominantly under gravity, along a static structure;
- (d) wave generators where patrons do not come into contact with the parts of machinery used for generating water waves;
- (e) inflatable devices that are sealed;
- (f) inflatable devices that do not use a non-return valve.

## **Part 5.2**                      **Items of plant requiring registration**

### **5.3**                      **Items of plant requiring registration**

- 5.3.1 Boilers categorised as hazard level A, B or C according to criteria in AS 4343:2005 (Pressure equipment—Hazard levels), section 2.1.
- 5.3.2 Pressure vessels categorised as hazard level A, B or C according to the criteria in AS 4343:2005 (Pressure equipment—Hazard levels), section 2.1, except—
  - (a) gas cylinders; and
  - (b) LP Gas fuel vessels for automotive use; and
  - (c) serially produced vessels.
- 5.3.3 Tower cranes including self-erecting tower cranes.
- 5.3.4 Lifts, including escalators and moving walkways.
- 5.3.5 Building maintenance units.
- 5.3.6 Amusement devices covered by AS 3533.1:2009 (Amusement rides and devices—Design and construction), section 2.1, except devices stated in this schedule, section 5.4 (2).
- 5.3.7 Concrete-placement units with delivery booms.
- 5.3.8 Mobile cranes with a rated capacity of greater than 10t.

### **5.4**                      **Exceptions**

- (1) The items of plant listed in this schedule, section 5.3 do not include a crane or hoist that is manually powered.
- (2) The following devices are excluded from this schedule, section 5.3.6:
  - (a) class 1 devices;

- (b) playground devices;
- (c) water slides where water facilitates patrons to slide easily, predominantly under gravity, along a static structure;
- (d) wave generators where patrons do not come into contact with the parts of machinery used for generating water waves;
- (e) inflatable devices that are sealed;
- (f) inflatable devices that do not use a non-return valve.



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## Dictionary

(see s 3)

*Note 1* The Legislation Act contains definitions and other provisions relevant to this regulation.

*Note 2* For example, the Legislation Act, dict, pt 1, defines the following terms:

- AS (see s 164 (1))
- AS/NZS (see s 164 (2))
- in relation to
- instrument
- Legislation Act

*Note 3* Terms used in this regulation have the same meaning that they have in the *Work Health and Safety Act 2011* (see Legislation Act, s 148). For example, the following terms are defined in the *Work Health and Safety Act 2011*, dict:

- compliance powers
- construct
- corresponding regulator
- corresponding WHS law
- demolition
- design
- designer (see s 22)
- disclose
- document
- eligible person
- employee record
- handling
- health
- health and safety committee
- health and safety representative
- import
- importer (see s 24)
- inspector
- internal reviewer

- manufacturer (see s 23)
- medical treatment
- notifiable incident (see s 35)
- parties
- person conducting a business or undertaking (see s 5)
- person with management or control of a workplace (see s 20)
- person with management or control of plant at a workplace (see s 21)
- plant
- reasonably practicable
- regulator
- relevant worker
- reviewable decisions
- structure
- substance
- supplier
- supply
- union
- volunteer
- WHS entry permit
- WHS entry permit-holder
- worker (see s 7)
- work group
- workplace (see s 8).

***administrative control*** means a method of work, a process or a procedure designed to minimise risk, but does not include—

- (a) an engineering control; or
- (b) the use of personal protective equipment.

***airborne contaminant*** means a contaminant in the form of a fume, mist, gas, vapour or dust, and includes microorganisms.

***amusement device*** means plant operated for hire or reward that provides entertainment, sightseeing or amusement through

movement of the equipment, or part of the equipment, or when passengers travel on, around or along the equipment, but does not include—

- (a) a miniature train and railway system owned and operated by a model railway society, club or association; or
- (b) a ride or device that is used as a form of transport and that is, in relation to its use for that purpose, regulated under another Act or an Act of the commonwealth; or
- (c) a boat or flotation device—
  - (i) that is solely propelled by a person who is in or on the boat or device; and
  - (ii) that is not attached to any mechanical elements or equipment outside the boat or device, and that does not rely on any artificial flow of water to move; or
- (d) any plant specifically designed for a sporting, professional stunt, theatrical or acrobatic purpose or activity; or
- (e) a coin-operated or token-operated device that—
  - (i) is intended to be ridden, at the one time, by not more than 4 children who must be below the age of 10 years; and
  - (ii) is usually located in a shopping centre or similar public location; and
  - (iii) does not necessarily have an operator.

***appropriate training in underwater medicine*** means training that results in knowledge of the matters stated in AS/NZS 2299.1:2007 (Occupational diving operations—Standard operational practice), Appendix M, clause M3.

*Note* AS/NZS 2299.1:2007 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

***boiler***—

(a) means—

- (i) a vessel, or an arrangement of vessels and interconnecting parts, in which steam or vapour is generated or in which water or other liquid is heated at a pressure above that of the atmosphere by the application of fire, the products of combustion, electrical power or similar high temperature means; and
- (ii) the superheaters, reheaters, economisers, boiler piping, supports, mountings, valves, gauges, fittings, controls, boiler setting and other equipment directly associated with those vessels; but

(b) does not include—

- (i) except in schedule 3 (High risk work licences and classes of high risk work) and schedule 4 (High risk work licences—competency requirements), a fully flooded or pressurised system where water or another liquid is heated to a temperature lower than the normal atmospheric boiling temperature of the liquid; or

(ii) for the purposes of part 5.2 (Additional duties relating to registered plant and plant designs), part 5.3 (Registration of plant designs and items of plant), schedule 3 and schedule 4—a boiler designed or manufactured to the following codes:

- (A) AMBSC part 1—Australian Miniature Boiler Safety Committee Code for Copper Boilers;
- (B) AMBSC part 2—Australian Miniature Boiler Safety Committee Code for Steel Boilers; or

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

(iii) for schedule 3 and schedule 4—

- (A) a direct-fired process heater; or
- (B) boilers with less than 5m<sup>2</sup> heating surface or 150kW output; or
- (C) unattended boilers certified in compliance with AS 2593:2004 (Boilers—Safety management and supervision systems).

*Note* AS 2593:2004 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

***boom-type elevating work platform*** means a telescoping device, hinged device, or articulated device, or any combination of these, used to support a platform on which personnel, equipment and materials may be elevated.

**bridge crane** means a crane that—

- (a) consists of a bridge beam or beams, that are mounted to end carriages at each end; and
- (b) is capable of travelling along elevated runways; and
- (c) has 1 or more hoisting mechanisms arranged to traverse across the bridge.

**building maintenance equipment** means a suspended platform and associated equipment, including a building maintenance unit or a swing stage, that incorporates permanently installed overhead supports to provide access to the faces of a building for maintenance, but does not include a suspended scaffold.

**building maintenance unit** means a power-operated suspended platform and associated equipment on a building specifically designed to provide permanent access to the faces of the building for maintenance.

**card-holder** means the person to whom a general construction induction training card is issued.

**certificate of medical fitness** means a certificate of medical fitness that complies with section 0 (Certificate of medical fitness).

**certification**, in relation to a specified VET course, means—

- (a) a statement of attainment issued by an RTO stating that the person to whom it is issued has successfully completed the specified VET course; or
- (b) in the case of high risk work—a notice of satisfactory assessment stating that the person to whom it is issued has successfully completed the specified VET course; or
- (c) an equivalent statement or notice issued by a corresponding RTO.

**class** means, in relation to high risk work, a class of work stated in schedule 3 (High risk work licences and classes of high risk work).

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***combustible liquid*** means a liquid, other than a flammable liquid, that has a flash point, and a fire point less than its boiling point.

***combustible substance***—

- (a) means a substance that is combustible; and
- (b) includes dust, fibres, fumes, mists or vapours produced by the substance.

**Examples**

wood, paper, oil, iron filings

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***competency assessment***, in part 4.5 (High risk work), means an assessment in relation to the completion of a specified VET course to carry out a class of high risk work.

***competent person*** means—

- (a) for electrical work on energised electrical equipment or energised electrical installations (other than testing mentioned in section 150 (Inspection and testing of electrical equipment) and section 165 (Testing of residual current devices)—a licensed electrical worker; and
- (b) for general diving work—see—
  - (i) section 174 (Competence of competent person supervising general diving work—Act, s 44); and
  - (ii) section 177 (Appointment of competent person to supervise diving work); and
- (c) for inspection and testing of mobile cranes and tower cranes under section 235 (Major inspection of registered mobile cranes and tower cranes)—see section 235; and

- (d) for inspection of amusement devices under section 241 (Annual inspection of amusement device)—see section 241; and
- (e) for design verification under section 252 (Who can be the design verifier)—a person who has the skills, qualifications, competence and experience to design the plant or verify the design; and
- (f) for any other case—a person who has acquired through training, qualification or experience the knowledge and skills to carry out the task.

***concrete-placement unit with delivery boom***, for schedule 5 (Registration of plant and plant designs), means plant that—

- (a) is used to place concrete by pumping the concrete through a pipeline attached to, or forming part of, the boom; and
- (b) relies on gravity for stability, without the need for a vertical restraining connection with the supporting surface or a horizontal restraining connection (other than frictional forces at supporting surface level) to aid stability.

***concrete-placing boom*** means plant incorporating a knuckle boom, capable of power-operated slewing and luffing to place concrete by way of pumping through a pipeline attached to, or forming part of, the boom of the plant.

***confined space***—

- (a) means an enclosed or partially enclosed space that—
  - (i) is not designed or intended primarily to be occupied by a person; and
  - (ii) is, or is designed or intended to be, at normal atmospheric pressure while any person is in the space; and



- (iii) is, or is likely to be, a risk to health and safety from—
  - (A) an atmosphere that does not have a safe oxygen level; or
  - (B) contaminants, including airborne gases, vapours and dusts, that may cause injury from fire or explosion; or
  - (C) harmful concentrations of any airborne contaminants; or
  - (D) engulfment; but

(b) does not include a mine shaft or the workings of a mine.

**confined space entry permit** means a confined space entry permit issued under section 0 (Confined space entry permit).

**construction project**, for chapter 6 (Construction work)—see section 292.

**construction work**, for chapter 6 (Construction work)—see section 289.

**contaminant** means any substance that may be harmful to health or safety.

**control measure**, in relation to a risk to health and safety, means a measure to eliminate or minimise the risk.

**conveyor**—

- (a) means equipment or apparatus operated by power other than manual power and by which loads are raised, lowered or transported or capable of being raised, lowered, transported, or continuously driven, by—
  - (i) an endless belt, rope or chain or other similar means; or
  - (ii) buckets, trays or other containers or fittings moved by an endless belt, rope, chain or similar means; or
  - (iii) a rotating screw; or

- (iv) a vibration or walking beam; or
- (v) a powered roller conveyor if the rollers are driven by an endless belt, rope or chain or other similar means; and
- (b) includes the superstructure, gear and auxiliary equipment used in connection with that equipment or apparatus.

***crane***—

- (a) means an appliance intended for raising or lowering a load and moving it horizontally; and
- (b) includes the supporting structure of the crane and its foundations; but
- (c) does not include any of the following:
  - (i) an industrial lift truck;
  - (ii) earthmoving machinery;
  - (iii) an amusement device;
  - (iv) a tractor;
  - (v) an industrial robot;
  - (vi) a conveyor;
  - (vii) building maintenance equipment;
  - (viii) a suspended scaffold;
  - (ix) a lift.

***current certificate of medical fitness*** means a certificate of medical fitness that—

- (a) was issued within the past 12 months; and
- (b) has not expired or been revoked.

**demolition work**—

- (a) means work to demolish or dismantle a structure, or part of a structure that is load-bearing or otherwise related to the physical integrity of the structure; but
- (b) does not include—
  - (i) the dismantling of formwork, falsework, or other structures designed or used to provide support, access or containment during construction work; or
  - (ii) the removal of power, light or telecommunication poles.

**derrick crane** means a slewing strut-boom crane with its boom pivoted at the base of a mast that is—

- (a) guyed (guy-derrick) or held by backstays (stiff-legged derrick); and
- (b) capable of luffing under load.

**direct-fired process heater** means an arrangement of 1 or more coils, located in the radiant zone or convection zone, or both, of a combustion chamber, the primary purpose of which is to raise the temperature of a process fluid circulated through the coils, to allow distillation, fractionalism, reaction or other petrochemical processing of the process fluid, whether that fluid is liquid or gas, or a combination of liquid and gas.

**dogging work** means—

- (a) the application of slinging techniques, including the selection and inspection of lifting gear, to safely sling a load; or
- (b) the directing of a plant operator in the movement of a load when the load is out of the operator's view.

**duty-holder**, for part 3.1 (Managing risks to health and safety), means a person mentioned in section 32 (Application—pt 3.1).

**EANx**, for part 4.8 (Diving work), means a mixture of oxygen and nitrogen in which the volume of oxygen is at least 22%.

***earthmoving machinery***—

- (a) means operator-controlled plant used to excavate, load, transport, compact or spread earth, overburden, rubble, spoil, aggregate or similar material; but
- (b) does not include a tractor or industrial lift truck.

***electrical equipment***—

- (a) for division 4.7.3 (Electrical equipment and electrical installations)—see section 148 (Electrical equipment and electrical installations—div 4.7.3); and
- (b) for the remainder of part 4.7 (General electrical safety in workplaces and energised electrical work)—see section 144 (Meaning of *electrical equipment*—pt 4.7).

***electrical installation***—

- (a) for division 4.7.3 (Electrical equipment and electrical installations)—see section 148 (Electrical equipment and electrical installations—div 4.7.3); and
- (b) for the remainder of part 4.7 (General electrical safety in workplaces and energised electrical work)—see section 145 (Meaning of *electrical installation*—pt 4.7).

***electrical risk*** means risk to a person of death, shock or other injury caused directly or indirectly by electricity.

***electrical work***—for part 4.7 (General electrical safety in workplaces and energised electrical work)—see section 146 (Meaning of *electrical work*—pt 4.7).

***electricity distributor***—see the *Utilities Act 2000*, dictionary.

***electricity supply authority*** means an electricity distributor.

***emergency service organisation*** means—

- (a) the Australian Federal Police; or

(b) an emergency service.

*Note* An **emergency service** means the ambulance service, the fire brigade, the rural fire service or the SES (see Legislation Act, dict, pt 1).

**emergency services worker** means—

- (a) a police officer; or
- (b) a member of an emergency service.

*Note* An **emergency service** means the ambulance service, the fire brigade, the rural fire service or the SES (see Legislation Act, dict, pt 1).

**engineering control** means a control measure that is physical in nature, including a mechanical device or process.

**entry**, by a person into a confined space, means the person's head or upper body is in the confined space or within the boundary of the confined space.

**essential services** means the supply of—

- (a) gas, water, sewerage, telecommunications, electricity and similar services; or
- (b) chemicals, fuel and refrigerant in pipes or lines.

**excavation** means a trench, tunnel or shaft, but does not include—

- (a) a mine; or
- (b) a bore to which the *Water Resources Act 2007* applies; or
- (c) a trench for use as a place of interment.

**excavation work** means work to—

- (a) make an excavation; or
- (b) fill or partly fill an excavation.

***exposure standard***, except in part 4.1 (Noise), means an exposure standard in the Workplace Exposure Standard for Airborne Contaminants.

*Note 1* The text of an applied, adopted or incorporated law or instrument, whether applied as in force from time to time or at a particular time, is taken to be a notifiable instrument if the operation of the Legislation Act, s 47 (5) or (6) is not disapplied (see s 47 (7)).

*Note 2* A notifiable instrument must be notified under the Legislation Act.

***exposure standard for noise***, in relation to a person—see section 56 (Meaning of *exposure standard for noise*).

***external review*** means an external review under part 11.1 (Review of decisions under this regulation).

***extra-low voltage*** means voltage that does not exceed 50V AC or 120V ripple-free DC.

***fall arrest system*** means plant or material designed to arrest a fall.

**Examples**

- 1 an industrial safety net
- 2 a catch platform
- 3 a safety harness system (other than a system that relies entirely on a restraint technique system)

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

***fault***, in relation to plant, means a break or defect that may cause the plant to present a risk to health and safety.

***fitness criteria***, in relation to diving work, means the fitness criteria stated in AS/NZS 2299.1:2007 (Occupational diving operations—Standard operational practice), Appendix M, clause M4.

*Note* AS/NZS 2299.1:2007 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

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**flammable gas**—see the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, 7th edition, published by the Commonwealth.

**forklift truck**, for schedule 3 (High risk work licences and classes of high risk work) and schedule 4 (High risk work licences—competency requirements)—

- (a) means a powered industrial truck equipped with lifting media made up of a mast and an elevating load carriage to which is attached a pair of fork arms or other arms that can be raised 900mm or more above the ground; but
- (b) does not include a pedestrian-operated truck or a pallet truck.

**gantry crane** means a crane that—

- (a) consists of a bridge beam supported at each end by legs mounted on end carriages; and
- (b) is capable of travelling on supporting surfaces or deck levels, whether fixed or not; and
- (c) has a crab with 1 or more hoisting units arranged to travel across the bridge.

**gas cylinder** means a rigid vessel that—

- (a) does not exceed 3 000L water capacity and is without openings or integral attachments on the shell other than at the ends; and
- (b) is designed for the storage and transport of gas under pressure; and
- (c) is covered by AS 2030.1:2009 (Gas cylinders—General requirements).

*Note* AS 2030.1:2009 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

**general construction induction training** means training delivered in Australia by an RTO for the specified VET course for general construction induction training.

**general construction induction training card** means—

- (a) for division 6.5.2 (General construction induction training cards)—a general construction induction training card issued under division 6.5.2; and
- (b) in any other case—a general construction induction training card issued—
  - (i) under division 6.5.2 or under a corresponding WHS law; or
  - (ii) by an RTO under an agreement between the regulator and an RTO or a corresponding regulator and an RTO.

**general construction induction training certification** means a certification for the completion of the specified VET course for general construction induction training.

**general diving work**—

- (a) means work carried out in or under water while breathing compressed gas; and
- (b) includes—
  - (i) incidental diving work; and
  - (ii) limited scientific diving work; but
- (c) does not include high risk diving work.



**hazardous area** means a hazardous area under—

- (a) AS/NZS 60079.10:2004 (Electrical apparatus for explosive gas atmospheres—Classification of hazardous areas); or

*Note* AS/NZS 60079.10:2004 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

- (b) AS/NZS 61241.10:2005 (Electrical apparatus for use in the presence of combustible dust—Classification of areas where combustible dusts are or may be present).

*Note* AS/NZS 61241.10:2005 does not need to be notified under the Legislation Act because s 47 (5) does not apply (see s 15 and Legislation Act, s 47 (7)). The standard may be purchased at [www.standards.org.au](http://www.standards.org.au).

**hazardous atmosphere**—see section 51 (2).

**hazardous manual task** means a task that requires a person to lift, lower, push, pull, carry or otherwise move, hold or restrain any person, animal or thing that involves 1 or more of the following:

- (a) repetitive or sustained force;
- (b) high or sudden force;
- (c) repetitive movement;
- (d) sustained or awkward posture;
- (e) exposure to vibration.

**Examples**

- 1 a task requiring a person to restrain live animals
- 2 a task requiring a person to lift or move loads that are unstable or unbalanced or are difficult to grasp or hold
- 3 a task requiring a person to sort objects on a conveyor belt

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**head or upper body** means the area of a person's body at or above the person's shoulders.

**heritage boiler** means a boiler that—

- (a) was manufactured before 1952; and
- (b) is used for a historical purpose or activity, including an activity that is ancillary to a historical activity.

**Example—historical activity**

a historical display, parade, demonstration or re-enactment

**Example—activity ancillary to a historical activity**

restoring, maintaining, modifying, servicing, repairing or housing a boiler used, or to be used, for a historical activity

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**high risk construction work**, for chapter 6 (Construction work)—see section 291.

**high risk diving work**—

- (a) means work—
  - (i) carried out in or under water or any other liquid while breathing compressed gas; and
  - (ii) involving 1 or more of the following:
    - (A) construction work;

*Note 1* Par (B) includes some additional construction-related activities.

*Note 2* For construction work generally, see ch 6. **Construction work**—see s 289.

- (B) work of the kind described in section 289 (c) (iv);
    - (C) inspection work carried out in order to determine whether or not work described in subparagraph (A) or (B) is necessary;

(D) the recovery or salvage of a large structure or large item of plant for commercial purposes; but

- (b) does not include minor work carried out in the sea or the waters of a bay or inlet or a marina that involves cleaning, inspecting, maintaining or searching for a vessel or mooring.

**high risk work** means any work set out in schedule 3 (High risk work licences and classes of high risk work) as being within the scope of a high risk work licence.

**high risk work licence** means any of the licences listed in schedule 3 (High risk work licences and classes of high risk work).

**hoist**—

- (a) means an appliance intended for raising or lowering a load or people; and
- (b) includes an elevating work platform, a mast climbing work platform, personnel and materials hoist, scaffolding hoist and serial hoist; but
- (c) does not include a lift or building maintenance equipment.

**ignition source** means a source of energy capable of igniting flammable or combustible substances.

**incidental diving work** means general diving work that—

- (a) is incidental to the conduct of the business or undertaking in which the diving work is carried out; and

**Example**

acting underwater is incidental to the business or undertaking of filming

*Note* An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (b) involves limited diving; and

- (c) is carried out while being accompanied and supervised in the water by a person who has the qualifications or experience stated in section 171 (Competence of worker—general diving work—Act, s 44).

***industrial lift truck***—

- (a) means powered mobile plant, designed to move goods, materials or equipment that is equipped with an elevating load carriage and is in the normal course of use equipped with a load-holding attachment; but
- (b) does not include a mobile crane or earthmoving machinery.

***industrial robot*** means plant that is a multifunctional manipulator and its controllers, capable of handling materials, parts or tools, or specialised devices, through variable programmed motions for the performance of a variety of tasks.

***internal review*** means internal review under part 11.1 (Review of decisions under this regulation).

***licence-holder***, for a high risk work licence, means a person who is licensed to carry out the work.

***licensed electrical worker*** means a person who holds a licence under the *Construction Occupations (Licensing) Act 2004*, in the class of electrician.

***lift***—

- (a) means plant that is, or is intended to be, permanently installed in or attached to a structure, in which people, goods or materials may be raised or lowered within a car or cage, or on a platform and the movement of which is restricted by a guide or guides; and
- (b) includes—
  - (i) a chairlift, escalator, moving walkway and stairway lift; and

- 
- (ii) any supporting structure, machinery, equipment, gear, lift well, enclosures and entrances.

**limited diving** means diving that does not involve any of the following:

- (a) diving to a depth below 30m;
- (b) the need for a decompression stop;
- (c) the use of mechanical lifting equipment or a buoyancy lifting device;
- (d) diving beneath anything that would require the diver to move sideways before being able to ascend;
- (e) the use of plant that is powered from the surface;
- (f) diving for more than 28 days during a period of 6 months.

**limited scientific diving work** means general diving work that—

- (a) is carried out for the purpose of professional scientific research, natural resource management or scientific research as an educational activity; and
- (b) involves only limited diving.

**lower explosive limit (LEL)**, in relation to a flammable gas, vapour or mist, means the concentration of the gas, vapour or mist in air below which the propagation of a flame does not occur on contact with an ignition source.

**maintain**, in relation to plant or a structure in chapter 5 (Plant and structures), includes repair or servicing of plant or a structure.

**mast climbing work platform** means a hoist with a working platform used for temporary purposes to raise personnel and materials to the working position by means of a drive system mounted on an extendable mast that may be tied to a structure.

**materials hoist** means a hoist that—

- (a) consists of a car, bucket or platform cantilevered from, and travelling up and down outside, a face of the support of a structure; and
- (b) is used for hoisting things and substances but not persons.

**mobile crane** means a crane capable of travelling over a supporting surface without the need for fixed runways and relying only on gravity for stability.

**musculoskeletal disorder**—

- (a) means an injury to, or disease of, the musculoskeletal system, whether occurring suddenly or over time; but
- (b) does not include an injury caused by crushing, entrapment or cutting resulting principally from the mechanical operation of plant.

**non-slewing mobile crane**—

- (a) means a mobile crane incorporating a boom or jib that cannot be slewed; and
- (b) includes—
  - (i) an articulated mobile crane; and
  - (ii) a locomotive crane; but
- (c) does not include vehicle tow trucks.

**notice of satisfactory assessment** means a notice stating that the person to whom it is issued has successfully completed a specified VET course.

**operator protective device**, includes a roll-over protective structure, falling object protective structure, operator restraining device and seat belt.

**order-picking forklift truck**, in schedule 3 (High risk work licences and classes of high risk work) and schedule 4 (High risk work

licences—competency requirements), means a forklift truck where the operator's controls are incorporated with the lifting media and elevate with the lifting media.

***personal protective equipment*** means anything used or worn by a person to minimise risk to the person's health and safety, including air-supplied respiratory equipment.

***personnel and materials hoist*** means a hoist that is—

- (a) a cantilever hoist, a tower hoist or several winches configured to operate as a hoist; and
- (b) intended to carry goods, materials or people.

***pipeline*** means pipe work that crosses a boundary of a workplace, beginning or ending at the nearest fluid or slurry control point (along the axis of the pipeline) to the boundary.

***plant***, in part 5.2 (Additional duties relating to registered plant and plant designs) and part 5.3 (Registration of plant designs and items of plant), includes a structure.

***portal boom crane*** means a boom crane or a jib crane that is mounted on a portal frame that, in turn, is supported on runways along which the crane travels.

***powered mobile plant*** means plant that is provided with some form of self-propulsion that is ordinarily under the direct control of an operator.

***presence-sensing safeguarding system*** includes—

- (a) a sensing system that uses 1 or more forms of radiation either self-generated or otherwise generated by pressure; and
- (b) the interface between the final switching devices of the sensing system and the machine primary control elements; and
- (c) the machine stopping capabilities, by which the presence of a person or part of a person within the sensing field will cause the dangerous parts of a machine to be brought to a safe state.

***pressure equipment*** means boilers, pressure vessels and pressure piping.

***pressure piping***—

- (a) means an assembly of pipes, pipe fittings, valves and pipe accessories subject to internal or external pressure and used to contain or convey liquid or to transmit liquid pressure; and
- (b) includes distribution headers, bolting, gaskets, pipe supports and pressure containing accessories; but
- (c) does not include a boiler or pressure vessel.

***pressure vessel***—

- (a) means a vessel subject to internal or external pressure; and
- (b) includes—
  - (i) interconnected parts and components, valves, gauges and other fittings up to the first point of connection to connecting piping; and
  - (ii) fired heaters; and
  - (iii) gas cylinders; but
- (c) does not include a boiler or pressure piping.

***principal contractor***, in relation to a construction project, for chapter 6 (Construction work)—see section 293.

***reach stacker*** means a powered reach stacker that incorporates an attachment for lifting and lowering a shipping container.

***reciprocating steam engine***—

- (a) means equipment that is driven by steam acting on a piston causing the piston to move; and
- (b) includes an expanding (steam) reciprocating engine.



**registered medical practitioner** means a doctor.

*Note* **Doctor**—see the Legislation Act, dictionary, pt 1.

**registered training organisation (RTO)** means a training organisation listed as a registered training organisation on the National Register established under the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

**rigging work** means—

- (a) the use of mechanical load shifting equipment and associated gear to move, place or secure a load using plant, equipment or members of a structure to ensure the stability of those members; or
- (b) the setting up or dismantling of cranes or hoists.

**RTO (registered training organisation)**—see registered training organisation.

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

**safe work method statement** means—

- (a) in relation to electrical work on energised electrical equipment—a safe work method statement prepared under section 161 (How the work is to be carried out); and
- (b) in relation to high risk construction work—a safe work method statement mentioned in section 299 (Safe work method statement required for high risk construction work) (as revised under section 302 (Review of safe work method statement)).

**scaffold** means a temporary structure specifically erected to support access or working platforms.

**scaffolding work** means erecting, altering or dismantling a temporary structure that is or has been erected to support a platform

and from which a person or object could fall more than 4m from the platform or the structure.

***self-erecting tower crane*** means a crane—

- (a) that is not disassembled into a tower element and a boom or jib element in the normal course of use; and
- (b) where the erection and dismantling processes are an inherent part of the crane's function.

***shaft*** means a vertical or inclined way or opening, from the surface downwards or from any underground working, the dimensions of which (apart from the perimeter) are less than its depth.

***slewing mobile crane*** means a mobile crane incorporating a boom or jib that can be slewed, but does not include the following when configured for crane operation:

- (a) a front-end loader;
- (b) a backhoe;
- (c) an excavator;
- (d) other earth moving equipment.

***slinging techniques*** means the exercising of judgment in relation to the suitability and condition of lifting gear and the method of slinging, by consideration of the nature of the load, its mass and its centre of gravity.

***specified VET course*** means, in relation to general construction induction training, the VET course *Work Safely in the Construction Industry* or a corresponding subsequent VET accredited course.

***structure***, for chapter 6 (Construction work)—see section 290.

***suspended scaffold*** means a scaffold incorporating a suspended platform that is capable of being raised or lowered when in use.

***temporary work platform*** means—

- (a) a fixed, mobile or suspended scaffold; or

- (b) an elevating work platform; or
- (c) a mast climbing work platform; or
- (d) a work box supported by a crane, hoist, forklift truck or other form of mechanical plant; or
- (e) building maintenance equipment, including a building maintenance unit; or
- (f) a portable or mobile fabricated platform; or
- (g) any other temporary platform that—
  - (i) provides a working area; and
  - (ii) is designed to prevent a fall.

***theatrical performance*** means acting, singing, playing a musical instrument, dancing or otherwise performing literary or artistic works or expressions of traditional custom or folklore.

***tower crane***—

- (a) means a boom crane or a jib crane mounted on a tower structure; and
- (b) in schedule 3 (High risk work licences and classes of high risk work)—
  - (i) for a jib crane—includes a horizontal or luffing jib type crane; and
  - (ii) means the tower structure may be demountable or permanent; but
  - (iii) does not include a self-erecting tower crane.

***tractor***—

- (a) means a motor vehicle, whether wheeled or track mounted, designed to provide power and movement to any attached machine or implement by a transmission shaft, belt or linkage system; but

(b) does not include earthmoving machinery.

**trench** means a horizontal or inclined way or opening—

- (a) the length of which is greater than its width and greater than or equal to its depth; and
- (b) that commences at and extends below the surface of the ground; and
- (c) that is open to the surface along its length.

**tunnel** means an underground passage or opening that—

- (a) is approximately horizontal; and
- (b) commences at the surface of the ground or at an excavation.

**turbine** means equipment that is driven by steam acting on a turbine or rotor to cause a rotary motion.

**vehicle hoist** means a device to hoist vehicles designed to provide access for under-chassis examination or service.

**vehicle loading crane** means a crane mounted on a vehicle for the purpose of loading and unloading the vehicle.

**VET course**—see the *National Vocational Education and Training Regulator Act 2011* (Cwlth).

**WHS management plan**, in relation to a construction project, means a management plan prepared or revised under part 6.4 (Additional duties of principal contractor).

**work box** means a personnel carrying device, designed to be suspended from a crane, to provide a working area for a person elevated by and working from the device.

**work positioning system** means any plant or structure, other than a temporary work platform, that enables a person to be positioned and safely supported at a location for the duration of the relevant work being carried out.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

#### **Work Health and Safety Regulation 2011 SL2011-36**

notified LR 19 December 2011

s 1, s 2 commenced 19 December 2011 (LA s 75 (1))

div 4.7.4, ss 168-170 commence 1 July 2012 (s 2 (2))

s 53, s 164, s 165, ss 171-175, div 4.8.3, div 4.8.4, div 5.2.2, div 5.2.3, s 235, pt 5.3, ss 309-311, s 313 commence 1 January 2013 (s 2 (3))

sch 3, table 3.1, item 23, sch 4, table 4.1, item 23 commence 1 July 2013 (s 2 (4))

remainder commenced 1 January 2012 (s 2 (1) and see Work Health and Safety Act 2011 A2011-35, s 2 and CN2011-12)

as amended by

#### **Work Health and Safety Amendment Regulation 2012 (No 1) SL2012-9**

notified LR 19 March 2012

s 1, s 2 taken to have commenced 1 January 2012 (LA s 75 (2))

remainder taken to have commenced 1 January 2012 (s 2)

#### **Work Health and Safety Amendment Regulation 2012 (No 2) SL2012-31**

notified LR 5 July 2012

s 1, s 2 taken to have commenced 1 January 2012 (LA s 75 (2))

remainder taken to have commenced 1 January 2012 (s 2)

## 4 Amendment history

### Transitional

ch 20 hdg [exp 1 January 2015 \(s 817\)](#)

### Definitions

pt 20.1 hdg [exp 1 January 2015 \(s 817\)](#)

### Definitions—ch 20

s 800 [exp 1 January 2015 \(s 817\)](#)

def **commencement day** [exp 1 January 2015 \(s 817\)](#)

### General

pt 20.2 hdg [exp 1 January 2015 \(s 817\)](#)

### Duty to prepare emergency plan

s 801 [exp 1 January 2013 \(s 801 \(3\)\)](#)

### Audiometric testing

s 802 [exp 1 January 2013 \(s 802 \(5\)\)](#)

### Confined space entry permit to be completed by competent person

s 803 [exp 1 January 2013 \(s 803 \(3\)\)](#)

### High risk work licences—competency requirements

s 804 [exp 1 January 2014 \(s 804 \(4\)\)](#)

### High risk work licences—VET courses

s 805 [exp 1 January 2015 \(s 817\)](#)

### Work Safety Regulation 2009

pt 20.3 hdg [exp 1 January 2013 \(s 810\)](#)

### Old entry permit to be confined space entry permit

s 806 [exp 1 January 2013 \(s 810\)](#)

### Old high risk work licences to be new high risk work licences

s 807 [exp 1 January 2013 \(s 810\)](#)

### Old statement of attainment taken to be certification

s 808 [exp 1 January 2013 \(s 810\)](#)

### Old construction induction training cards to be general construction induction training cards

s 809 [exp 1 January 2013 \(s 810\)](#)

### Expiry—pt 20.3

s 810 [exp 1 January 2013 \(s 810\)](#)

### Occupational Health and Safety (Certification of Plant Users and Operators) Regulation 2000

pt 20.4 hdg [exp 1 October 2014 \(s 816\)](#)

## Endnotes

4 Amendment history

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### Definitions—pt 20.4

s 811 [exp 1 October 2014 \(s 816\)](#)  
def **certificate of competency** [exp 1 October 2014 \(s 816\)](#)  
def **repealed instruments** [exp 1 October 2014 \(s 816\)](#)  
def **repealed regulation** [exp 1 October 2014 \(s 816\)](#)  
def **scheduled work** [exp 1 October 2014 \(s 816\)](#)

### Continuing application of repealed regulation in relation to scheduled work etc

s 812 [exp 1 October 2014 \(s 816\)](#)

### Application of regulation in relation to scheduled work etc

s 813 [exp 1 October 2014 \(s 816\)](#)

### Certificates of competency

s 814 [exp 1 October 2014 \(s 816\)](#)

### Converting certificate of competency to licence

s 815 [exp 1 October 2014 \(s 816\)](#)

### Expiry—pt 20.4

s 816 [exp 1 October 2014 \(s 816\)](#)

### Modification of Act

pt 20.4A hdg ins SL2012-9 s 4  
[exp 1 January 2015 \(s 817\)](#)

### Modification of Act, pt 20—Act, s 306

s 816A ins SL2012-9 s 4  
sub SL2012-31 s 4  
[exp 1 January 2015 \(s 817\)](#)

### Expiry

pt 20.5 hdg [exp 1 January 2015 \(s 817\)](#)

### Expiry—ch 20

s 817 [exp 1 January 2015 \(s 817\)](#)



## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 1 Jan 2012	1 Jan 2012– 30 June 2012	not amended	new regulation
R1 (RI) 19 Mar 2012	1 Jan 2012– 30 June 2012	not amended	reissue for retrospective amendments by SL2012-9

## 6 Uncommenced provisions

Sections 53, 164, 165, 168-175, 235, 309-311, 313, divisions 4.7.4, 4.8.3, 4.8.4, 5.2.2, 5.2.3, part 5.3, schedule 3, table 3.1, item 23 and schedule 4, table 4.1, item 23 were uncommenced at the republication date but have been included in this republication with the symbol **U** immediately before the provision headings.

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