



Queensland

Workers' Compensation and Rehabilitation and Other Legislation Amendment Regulation (No. 1) 2005

Explanatory Notes for SL 2005 No. 308

made under the

Electrical Safety Act 2002

Queensland Building Services Authority Act 1991

State Penalties Enforcement Act 1999

Workers' Compensation and Rehabilitation Act 2003

Workplace Health and Safety Act 1995

General Outline

1 Authorising law

Section 584 of the *Workers' Compensation and Rehabilitation Act 2003*.

Section 38 of the *Workplace Health and Safety Act 1995*.

Section 210 of the *Electrical Safety Act 2002*.

Section 116 of the *Queensland Building Services Authority Act 1991*.

Section 165 of the *State Penalties and Enforcement Act 1999*.

2 Policy objective of the legislation

The *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005* (the "Amendment Act") was given assent on 2 November 2005. The Amendment Act:

- gives effect to the outcomes of a National Competition Policy (NCP) Review of Certain Aspects of the *Workers' Compensation and Rehabilitation Act 2003*;
- enhances workers' compensation benefits for injured workers and their families;
- protects the WorkCover Queensland scheme from the impacts of employers exiting to the Commonwealth self-insurance scheme; and
- gives effect to aspects of the *National Standard for Construction Work* and the *National Standard for Plant* as declared by the National Occupational Health and Safety Commission (NOHSC).

The *Workers' Compensation and Rehabilitation and Other Legislation Amendment Regulation 2005* (the "Amendment Regulation") supports the Amendment Act in achieving its aims by making a number of consequential and miscellaneous amendments to the *Workers' Compensation and Rehabilitation Regulation 2003* and the *Workplace Health and Safety Regulation 1997*.

The Amendment Regulation supports the Amendment Act by achieving greater national consistency of workplace health and safety arrangements for:

- asbestos;
- construction work;
- prescribed occupations; and
- plant.

The Amendment Regulation also supports the Amendment Act by ensuring the continued effective and efficient operation of workplace health and safety arrangements in Queensland.

As a result of these changes, consequential amendments are also required to the *Electrical Safety Regulation 2002* and the *State Penalties and Enforcement Regulation 2000* to ensure consistency across legislation.

3 How policy objectives will be achieved

Workers' Compensation

The Amendment Regulation will achieve its objectives for the workers' compensation scheme primarily through supporting the Amendment Act by:

- implementing a number of recommendations from the NCP Review of Certain Aspects of the *Workers' Compensation and Rehabilitation Act 2003*;
- prescribing the additional lump sum compensation payable to workers with terminal conditions that are latent onset injuries;
- providing the process for calculation of a non-scheme employer's liability on exit from the Queensland workers' compensation scheme;
- specifying the composition and procedural requirements for the medical assessment tribunals;
- ensuring the delivery of consistent decisions across the scheme; and
- simplifying and updating the table of injuries and the associated definitions.

Workplace Health and Safety

The Amendment Regulation will achieve its objectives for workplace health and safety primarily through supporting the Amendment Act by:

- implementing the National Occupational Health and Safety Council's *National Code of Practice for the Management and Control of Asbestos in Workplaces* and the revised *National Code of Practice for the Safe Removal of Asbestos* 2nd edition;
- effecting the transition of training and assessment for prescribed occupations to the Vocational Education and Training sector;
- applying those elements of the *National Standard for Construction Work* not previously adopted by the Amendment Act;
- providing the process for calculation of the workplace health and safety contribution;

- ensuring the continued effective operation of workplace health and safety arrangements by clarifying administrative matters relating to maintenance and certification of mobile and tower cranes; and
- making other minor amendments including updating terminology and increasing regulatory fees with the CPI.

Electrical Safety

The Amendment Regulation will achieve its objectives for electrical safety primarily through supporting the Amendment Act by ensuring consistency in the meaning of certain definitions.

Queensland Building Services Authority

The Amendment Regulation will achieve its objectives for building services authority primarily through supporting the Amendment Act by ensuring consistency.

State Penalties and Enforcement Regulation

The Amendment Regulation will achieve its objectives for State Penalties and Enforcement by ensuring schedule 5 of the *State Penalties and Enforcement Regulation 2000* is consistent with the *Workplace Health and Regulation 1997*.

4 Consistency with authorising Act and other legislation

The purpose of the *Workers' Compensation and Rehabilitation Act 2003* is to establish a workers' compensation scheme for Queensland by providing benefits for workers who sustain injury in their employment, for dependants if a worker's injury results in the worker's death, for persons other than workers, and for other benefits; and encouraging improved health and safety performance by employers. The proposed amendments are consistent with the purpose of the *Workers' Compensation and Rehabilitation Act 2003*.

The objective of the *Workplace Health and Safety Act 1995* is to prevent a person's death, injury or illness being caused by a workplace, by workplace activities or by plant or substances. This objective is achieved by establishing a framework for preventing or minimising a person's exposure

to the risk of death, injury or illness caused by a workplace, by workplace activities or by plant or substances. The proposed amendments are consistent with the objective of the *Workplace Health and Safety Act 1995*.

The purpose of the *Electrical Safety Act 2002* is to eliminate the human cost to individuals, families and the community of death, injury and destruction that can be caused by electricity. This purpose of the Act is achieved by establishing a legislative framework for preventing persons from being killed or injured by electricity and preventing property from being destroyed or damaged by electricity. The proposed amendments are consistent with the purpose of the *Electrical Safety Act 2002*.

The objective of the *Queensland Building Services Authority Act 1991* is to regulate the building industry to ensure the maintenance of proper standards in the industry; and to achieve a reasonable balance between the interests of building contractors and consumers; and to provide remedies for defective building work; and to provide support, education and advice for those who undertake building work and consumers.

The purpose of the *State Penalties and Enforcement Act 1999* is to include maintaining the integrity of fines as a viable sentencing or punitive option for offenders; and maintaining confidence in the justice system by enhancing the way fines and other money penalties may be enforced; and reducing the cost to the State of enforcing fines and other money penalties. The proposed amendments are consistent with the purpose of the *State Penalties and Enforcement Act 1999*.

5 Possible alternative approach

In relation to the amendments for asbestos and prescribed occupations, the Department of Industrial Relations consulted with the community through the release of separate Regulatory Impact Statements which outlined various policy options and detailed the benefits and costs of each option.

In addition, the Department of Industrial Relations consulted with stakeholders to present a range of policy options regarding other amendments to address industry, government and community concerns. A number of proposals were prepared throughout consultation with stakeholders. The proposed Regulation reflects those proposals given support by stakeholders.

6 Benefits and costs of implementing the legislation

Workers' Compensation

The Amendment Regulation eases the burden on employers by raising the threshold for the appointment of a rehabilitation and return to work coordinator. This change, considered in conjunction with recent amendments to the *Workers' Compensation and Rehabilitation Act 2003* which permits employers to outsource the role of the rehabilitation and return to work coordinator, will deliver savings for employers by providing greater flexibility in organising their workers' compensation and workplace rehabilitation arrangements to suit their business needs.

Workplace Health and Safety

The Amendment Regulation implements the two National Standards for asbestos. This allows for a nationally consistent approach to the safe management, control and removal of asbestos. Therefore, businesses working across state boundaries will only have to comply with one set of regulations. It also means minimised exposure to workers from asbestos which in turn may mean reduced workers' compensation premiums. The costs for these amendments are minimal and centre on administration costs.

The transition of prescribed occupations to the Vocational Education and Training (VET) sector achieves the aims of the national certification system by embedding the OHS assessment requirements into the VET sector. The provisions provide a platform for a more vigorous and flexible training framework and align training and assessment into the recognised mainstream training framework. This means a better form of quality and assessment with minimal costs to industry. The provisions will now require the assessors to operate according to the Australian Quality Training Framework, assuring a higher standard. Although there are some costs, better assessment quality could lead to reductions in workplace incidents.

The implementation of the *National Standard for Construction Work* and further alignment with the *National Standard for Plant* will mean greater national consistency for business, particularly for employers whose business also operates outside Queensland. The re-arrangement of the construction provisions throughout the Regulation will make the Regulation more user-friendly for principal contractors, relevant persons and workers.

Electrical Safety

Changes to the *Electrical Safety Regulation 2002* are to ensure consistency with the *Workplace Health and Safety Act 1995*.

Queensland Building Services Authority Regulation 2003

Consequential changes are also required to the *Queensland Building Services Authority Regulation 2003* to ensure consistency with the *Workplace Health and Safety Regulation 1997*.

State Penalties and Enforcement

As a consequence of the renumbering of a major portion of the *Workplace Health and Safety Regulation 1997*, amendments have been made to Schedule 5 of the *State Penalties Enforcement Regulation 2000*. This will ensure the ongoing effective enforcement of the amended provisions. In addition, a number of additional provisions, relating principally to those parts of the *Workplace Health and Safety Regulation 1997* dealing with asbestos and registered training organisations have been added to the *State Penalties Enforcement Regulation 2000*.

7 Fundamental legislative principles

The Amendment Regulation has sufficient regard to the rights and liberties of individuals and the institution of Parliament, and is consistent with the fundamental legislative principles provided for under the *Legislative Standards Act 1992*.

8 Consultation

The following stakeholders were consulted over the package of proposed amendments:

Workers' Compensation

- The Workers' Compensation Regulatory Authority, Q-COMP
- WorkCover Queensland
- The Queensland Council of Unions (Queensland)

- The Australian Workers' Union
- Queensland Workers' Compensation Self-Insurance Association
- Australian Industry Group
- National Retailers Association
- Commerce Queensland
- Queensland Rehabilitation Providers Association

Workplace Health and Safety

- The Workplace Health and Safety Board and Industry Sector Standing Committees
- The Queensland Council of Unions
- The Australian Industry Group
- Queensland Master Builders Association
- Commerce Queensland
- Australian Industry Group
- Asbestos Industry Association
- National Retailers Association
- Queensland Asbestos Related Disease Support Society
- Crane Industry Association Of Qld
- Housing Industry Association (Queensland)
- Construction Forestry Mining Employees Union (Queensland)
- Australian Workers Union (Queensland)
- Safework Queensland
- Accredited Providers Association Queensland
- Building Labourers Federation (Queensland)
- Electrical Trades Union (Queensland)
- Joint OHS/VET stakeholder reference group.
- Queensland Health
- Department of Education and the Arts

- Department of Public Works
- Department of Housing
- Department of Premier and Cabinet
- Queensland Treasury
- Department of Employment and Training.

Notes on Provisions

Part 1 Preliminary

Short Title

Clause 1 provides the short title of the Regulation.

Commencement

Clause 2 provides that the Regulation will commence on its notification, other than prescribed sections that will commence at various later dates.

Part 2 Amendment of *Workers' Compensation and Rehabilitation Regulation 2003*

Regulation amended in pt 2 and sch

Clause 3 provides that Part 2 amends the *Workers' Compensation and Rehabilitation Regulation 2003*.

Amendment of s 3 (Definitions)

Clause 4 amends the definitions for the hearing, vision and injury guides to reflect changes in the names of the organisations that publish the

documents and the full titles of the documents. In addition, the clause inserts a new definition that relates to industries that require a rehabilitation and return-to-work coordinator and workplace rehabilitation policy and procedures for the purposes of sections 99C and 99D and schedule 5A.

Insertion of new pt 4, divs 3B and 3C

Clause 5 inserts new divisions which prescribe the process for calculation of the amount of liability for when a Queensland self-insurer or member of a group employer exits the Queensland scheme and becomes a national self-insurer under the Commonwealth legislation ('non-scheme employer' or 'non-scheme member').

The provisions for non-scheme employers provide for an initial calculation of outstanding and residual liability at the end of their continued licence and a recalculation and finalisation of outstanding and residual liability four years after the non-scheme employer's continued licence is cancelled under section 105E of the Act. For a non-scheme member the regulation prescribes the process for calculation of an amount for total liability from the day the member stops being a member of the group self-insurer.

These provisions mirror the existing liability calculation provisions contained in the Regulation which prescribe for matters such as appointment of actuaries, standards for actuarial reports, dispute resolution and timeframes for payment of liabilities.

Insertion of new s 95A

Clause 6 inserts a new section which provides for the additional lump sum payment to workers with latent onset injuries that are terminal conditions in accordance with section 128B of the *Workers' Compensation and Rehabilitation Act 2003*. The additional lump sum payable is prescribed by a graduated scale in Schedule 2A of the Regulation.

Insertion of new pt 6, div 1A

Clause 7 introduces a new division into part 6 relating to rehabilitation and return to work coordinators. The division requires a person to have satisfactorily completed a workplace rehabilitation course approved or conducted by the Authority in order to qualify to be a rehabilitation and return to work coordinator.

The division specifies the core functions of a rehabilitation and return to work coordinator. The functions apply to both outsourced and in-house rehabilitation and return to work coordinators.

The division also sets out the criteria determining which employers must engage a rehabilitation and return to work coordinator. Employers with more than 30 workers at a workplace in a high-risk industry or with annual wages exceeding \$4.9 million (in the preceding financial year) for all of their employees statewide will be required to engage a rehabilitation and return to work coordinator. As at 1 January 2006, the preceding financial year is the 2004/2005 financial year. The high risk industries are listed in the Schedule 5A of the Regulation (see Clause 16).

The employer must ensure that the rehabilitation and return to work coordinator can satisfactorily discharge all the functions for which each workplace the coordinator is responsible. For example, where an employer has a number of workplaces across Queensland, the employer may need to appoint a rehabilitation and return to work coordinator for each workplace to ensure that the rehabilitation coordinator is able to discharge their functions for the employer's workers. An employer can only appoint one rehabilitation and return to work coordinator to service several workplaces if the coordinator is able to perform their functions to an acceptable standard in all of the workplaces for which they are appointed.

Insertion of new s 99D

Clause 8 inserts a new section setting out the criteria for determining which employers must develop workplace rehabilitation policy and procedures. Employers with more than 30 workers at a workplace in a high-risk industry or with annual wages exceeding \$4.9 million (in the preceding financial year) for all of their employees statewide will be required to have workplace rehabilitation policy and procedures. As at 1 January 2006, the preceding financial year is the 2004/2005 financial year. An employer may have one workplace rehabilitation policy and procedures for all of its workplaces. The high risk industries are listed in the Schedule 5A of the Regulation (see Clause 16).

Replacement of s 104 (Doctor's approval)

Clause 9 replaces s 104 which requires the treating doctor's approval of the rehabilitation and return to work plan. The amendment clarifies that this approval is only required if the doctor does not give sufficient information

in the medical certificate or report on which to base the development of the plan.

Replacement of s 106 (Rehabilitation Plan)

Clause 10 amends s 106 which sets out the requirements of a rehabilitation and return to work plan. The amendments clarify that the plan should be consistent with the medical certificate or report, who should be consulted in the development of a rehabilitation and return to work plan, and that a suitable duties program must be included in the plan.

Clause 10 also inserts a new s106A relating to the development of a suitable duties program for workers undertaking rehabilitation. Employers are required to develop suitable duties programs in consultation with relevant parties and ensure that the duties are meaningful and consistent with the objective of the worker's rehabilitation. Where an employer has a rehabilitation and return to work coordinator, the rehabilitation and return to work coordinator should develop the suitable duties program on the employer's behalf. Where an employer does not have a rehabilitation and return to work coordinator, the employer should discuss the suitable duties program with the insurer.

Amendment of s 107 (Case notes)

Clause 11 amends s 107 which requires case notes to be kept for workers undertaking rehabilitation. The amendment clarifies that all communications between relevant parties should be included in the case notes.

Amendment of s 109 (Rehabilitation)

Clause 12 amends s 109 which sets out requirements relating to rehabilitation. The amendment omits subsections (3) to (5) which have been relocated to the *Workers' Compensation and Rehabilitation Act 2003* or other parts of the *Workers' Compensation and Rehabilitation Regulation 2003*. In addition, the amendment clarifies that the employer is responsible for evaluating the rehabilitation strategies used in the workplace and is responsible for coordinating rehabilitation within the workplace. Where a rehabilitation and return to work coordinator is appointed, it is taken to be on the employer's behalf. The insurer retains responsibility for overall coordination of the rehabilitation and return to work plan under section 220

of the *Workers' Compensation and Rehabilitation Act 2003*, which includes evaluating the rehabilitation strategies contained in the rehabilitation and return to work plan.

Insertion of new pt 8A

Clause 13 inserts a new part which prescribes the composition and procedural requirements for the medical assessment tribunals as established under the Act.

The new section 118A outlines the nine medical assessment tribunals that are to be maintained under section 492 of the Act. The Regulation introduces a composite tribunal which comprises members chosen from the panel of doctors appointed to the general medical assessment tribunal and the specialty medical assessment tribunals. The purpose of the composite medical assessment tribunal is to provide for where a worker has sustained an injury or different types of injuries that require assessment by a variety of specialists.

The new section 118B outlines the constitution and composition of the general medical assessment tribunal when deciding a matter referred to it.

The new section 118C provides the chairperson must preside over the tribunal meetings however where the chairperson is not available this provision allows for delegation of the duty to the deputy chairperson of the tribunal.

The new section 118D outlines the constitution and composition of the specialty medical assessment tribunal when deciding a matter referred to it.

The new section 118E provides the chairperson must preside over the tribunal meetings however where the chairperson is not available this provision allows for delegation of the duty to the deputy chairperson of the tribunal.

The new section 118F outlines the constitution and composition of the composite medical assessment tribunal when deciding a matter referred to it. The constitution of the composite medical assessment tribunal is decided by the chairperson of the composite medical assessment and chairpersons of the relevant medical assessment tribunal/s in consultation with the tribunal secretary.

The composite medical assessment tribunal must not consist of more than five members including the chairperson. There must be at least one specialist per specialty for each injury type that is referred to the tribunal

for assessment and these specialists must be represented on the tribunal in equal numbers.

The new section 118G provides the chairperson must preside over the tribunal meetings however where the chairperson is not available this provision allows for delegation of the duty to the deputy chairperson of the tribunal.

Amendment of s 120 (Reasons for decision must address certain matters—Act, s 540(4))

Clause 14 amends section 120 which prescribes the matters that must be addressed when providing reasons for decisions. The amendment provides the matters that the Authority's reasons for decision must address under section 546(3AA) of the *Workers' Compensation and Rehabilitation Act 2003*.

Replacement of schs 2-4

Clause 15 replaces schedule 2, Table of Injuries, which sets out the framework for medical practitioners to assess permanent impairment and the administrative processes insurers are to follow to calculate lump sum payments. The clause updates the lump sum compensation amounts for injuries resulting in permanent impairment to reflect the increase to the maximum lump sum compensation payable under the *Workers' Compensation and Rehabilitation Act 2003*.

In addition, the clause removes those injuries from schedule 2 where there is duplication between the Table of Injuries and the prescribed guide that must be used in determining the degree of permanent impairment so that the Table of Injuries only includes those injuries where a different maximum degree of permanent impairment or a different amount of compensation applies under the Table of Injuries than the prescribed guide. This will not change workers' entitlements.

The clause also removes the injury codes listed in the Table of Injuries as these are for administrative use only.

Clause 15 inserts a new schedule 2A which prescribes the graduated scale for calculation of the amount of additional lump sum compensation payable to a worker who has a terminal condition that is a latent onset injury. The maximum rate is payable to workers who are under 70 years of age when the worker lodges an application for compensation. This amount

of additional lump sum compensation will reduce between the age of 70 and 80 years to nil.

Clause 15 also replaces schedules 3 and 4 to update the compensation payable to reflect the increase in QOTE under section 205 of the *Workers' Compensation and Rehabilitation Act 2003*.

Insertion of new sch 5A

Clause 16 inserts a new schedule specifying high-risk industries for the purposes of section 99C and 99D. High-risk industries have been calculated using the following formula:

$$A = \frac{B}{C} \times \frac{D}{E} > \frac{C}{E} \times \frac{E}{C}$$

Where:

“A” means a high-risk industry.

“B” means median average workdays absent for an industry over a 3 year period using the latest data available from the Queensland Employee Injury Database (QEIDB).

“C” means median average workdays absent for all industries over a 3 year period using the latest data available from the QEIDB.

“D” means the mean average injury rate for an industry over a 3 year period using the latest data available from the QEIDB and Australian Bureau of Statistics (ABS) Labour Force data.

“E” means the injury rate for all industries over a 3 year period using the latest data available from the QEIDB and ABS Labour Force data.

Industries are based on Australian New Zealand Standard Industrial Classifications (ANZSIC) and only claims of 5 days or greater duration are used.

The following high risk industries are specified:

Agriculture, Forestry and Fishing - The term agriculture is used here in the broad sense to include the breeding, keeping or cultivation of all kinds of animal or vegetable life except forest trees and marine life. Forestry includes afforestation, harvesting and gathering of forest products. Fishing

includes the catching, gathering, breeding and cultivation of marine life from ocean, coastal and inland waters. Hunting includes the catching or taking of all types of animal wildlife on land.

Mining - The term mining is used in the broad sense to include the extraction of minerals occurring naturally as solids such as coal and ores, liquids such as crude petroleum, or gases such as natural gas. Extraction of minerals is undertaken by such processes as underground or open cut mining, dredging, quarrying, the operation of wells or evaporation pans, or by recovery from ore dumps or tailings, and all supplementary activities aimed at preparing the crude materials for marketing.

Activities include milling, dressing and beneficiation of ores, screening, washing and flotation. These activities are generally carried out at or near mine sites as an integral part of mining operations. Natural gas absorption, purifying and similar treatment plants are also included in this division.

Manufacturing - includes all units mainly engaged in manufacturing. In a broad sense manufacturing relates to the physical or chemical transformation of materials or components into new products, whether the work is performed by power driven machines or by hand. In general the manufacture of parts or components is a primary activity of the same class as the manufacture of the finished product except where the manufacture of parts or components is specifically shown as a primary activity of another class.

Construction - includes all units mainly engaged in constructing buildings (including the on-site assembly and erection of prefabricated buildings), roads, railroads, aerodromes, irrigation projects, harbour or river works, water, gas, sewerage or stormwater drains or mains, electricity or other transmission lines or towers, pipelines, oil refineries or other specified civil engineering projects. In general, units mainly engaged in the repair of buildings or of other structures are also included in this Division, as are those engaged in the alteration or renovation of buildings, preparation of mine sites, demolition or excavation.

Transport and Storage - includes all units mainly engaged in providing passenger or freight transport by road, rail, water or air; terminal facilities for passengers or freight; services related to transport such as car parking, stevedoring, harbour services, navigation services, airport operation or space port operation; booking, travel, freight forwarding, crating or customs agency services; and storage facilities. Units mainly engaged in operating pipelines for the transportation of oil, gas, etc., on a contract or fee basis are included in this Division.

Health and Community Services - includes all units mainly engaged in providing health and community services.

Personal and Other Services - Public Order and Safety Services - this class consists of units including: government police or security forces; corrective and penal units including prisons or similar corrective units; fire fighting or related services and units mainly engaged in providing civil emergency services other than police services; and collecting or disposing of refuse (except through sewerage systems).

Part 3 Amendment of *Workplace Health and Safety Regulation 1997*

Regulation amended in pt 3 and sch

Clause 17 provides that Part 3 amends the *Workplace Health and Safety Regulation 1997*.

Amendment of s 3A (References to standards)

Clause 18 amends section 3A so that a reference in the regulation to an Australian Standard or to a standard published jointly by Standards Australia and Standards New Zealand is a reference to the standard as in force at 1 January 2006 instead of 1 April 2003.

Amendment of s17 (Authority to perform work in prescribed occupation)

Clause 19 amends section 17, which prevents a person performing work in a prescribed occupation without the appropriate authority to perform the work. The clause removes the provision of a temporary authority to work and omits the requirements on principal contractors to Part 17 Division 2 to join other requirements on principal contractors (see clause 50).

Amendment of s 19 (Application for certificate to work in prescribed occupation)

Clause 20 amends section 19, which provides the requirements on the application of a certificate to work in a prescribed occupation, such as a crane operator. The section is amended to give effect to the transition of assessments for prescribed occupations to the vocational education and training sector. The clause recognises a qualification issued by a registered training organisation as evidence of an applicant's competency to perform work in a prescribed occupation.

Requirements on an accredited provider to record assessments is located in Part 4A, which provides common duties and requirements on registered training organisations and accredited providers in conducting training and assessment.

Omission of s 23 (Principal contractor's duty for training in prescribed occupation)

Clause 21 removes section 23, which provides the duty on a principal contractor for training in prescribed occupations. This clause removes the provision on the principal contractor for training in prescribed occupations thereby reinforcing the responsibility of an employer for training in prescribed occupations.

Omission of pt 3, div 3

Clause 22 removes part 3, division 3, which provides the grounds and procedures for cancelling or suspending a certificate to work in a prescribed occupation. These requirements have been relocated to a new Part 5, Division 4 (see clause 50) which provides common cancellation or suspension requirements for all certificates issued under the Regulation.

Replacement of s 29B (Certificate to perform prescribed activity)

Clause 23 amends section 29B, which prevents a person from performing a prescribed activity such as demolition work without a certificate to perform the activity. The clause also relocates the requirement on principal contractors to Part 17 Division 2 (see clause 50).

Amendment of s 29C (Application for certificate to perform prescribed activity)

Clause 24 amends section 29C by recognising a qualification issued by a registered training organisation as evidence of an applicant's competency to perform a prescribed activity.

Requirements for recording assessments are located in Part 4A (see clause 32), which will provide common duties and requirements on registered training organisations and accredited providers in conducting training and assessment. The terms 'chief executive' replace 'department' and 'asbestos removal' is replaced with 'asbestos removal work'.

Amendment of s 29F (Supervision of performance of prescribed activity)

Clause 25 amends section 29F, which provides a requirement for a holder of a certificate to perform a prescribed activity to ensure the performance of the activity is directly supervised by a competent person. The terms 'chief executive' replace 'department' and 'asbestos removal' is replaced with 'asbestos removal work'.

Omission of pt 3A, div 4

Clause 26 removes Part 3A, Division 4. The grounds and procedure for cancelling or suspending a certificate to perform a prescribed activity have been relocated to a new Part 5, Division 4 (see clause 41).

Replacement of pt 4, hdg and pt 4, div 1, hdg

Clause 27 changes the heading for part 4 to reflect that this part is only about workplace health and safety officers.

Amendment of s 30 (Workplaces requiring a workplace health and safety officer-Act, s 93)

Clause 28 amends section 30, which prescribes workplaces in certain industries that require a workplace health and safety officer. The clause replaces the exclusion of "construction workplaces: with 'workplaces where "construction work is performed" as a consequence of the Amendment Act.

Amendment of s 31 (Grant certificate of authority)

Clause 29 amends section 31 by recognising a qualification issued by a registered training organisation as evidence of an applicant's competency. The clause also introduces a process for renewing a certificate for a workplace health and safety officer.

Replacement of pt 4, div 2 hdg

Clause 30 replaces Part 4 Division 2 with a new Part 4A, which introduces arrangements in conducting training and assessment arrangements for registered training organisations and preserves the same arrangements for accredited providers.

Amendment of s 33 (Application for appointment as an accredited provider)

Clause 31 amends section 33 by inserting a note advising of the further provisions about the appointment of accredited providers in the Act.

Insertion of new ss 33A and 33B

Clause 32 inserts two new sections, which prescribe the duties and requirements on registered training organisations and authorised accredited providers conducting training and assessment for prescribed occupations, workplace health and safety officers and prescribed activities.

The clause requires registered training organisations to ensure training and assessment complies with the *Vocational Education, Training and Employment Act 2000* and any agreement (e.g. a licence agreement) for the conduct of that training or assessment.

The clause also requires authorised accredited providers or registered training organisations to make a record of the assessment and give a copy of the record of the assessment to the applicant.

Amendment of pt 5, div 1 hdg

Clause 33 amends the heading of Part 5, Division 1 as a result of the rearrangement of the Part.

Amendment of s 34 (Definition)

Clause 34 amends the section heading, reflecting that this division deals with definitions for part 5.

Insertion of new pt 5, div 1A hdg and sdiv 1 hdg

Clause 35 inserts a new division heading and places the provisions about applications for certificates in one division, separating them from provisions dealing with definitions.

Clause 35 also inserts a subdivision heading under which general provisions about applying for certificates are grouped, thus enabling these requirements to be distinguished from specific provisions that relate to particular types of certificates, such as certificates of registration of registrable plant design (subdivision 2) and certificates of registration of tower cranes or mobile cranes (subdivision 3).

Amendment of s 35 (How to apply)

Clause 36 omits subsections (2) and (3) in section 35, which deal with certificates of registration of registrable plant design. These provisions are moved to form a new subdivision (see Clause 39) in Part 5.

Omission of ss 35A-35C

Clause 37 omits sections 35A – 35C, which deal with certificates of registration of registrable plant design. These provisions are moved to form a new subdivision in Part 5. The content of the provisions remain unchanged (see Clause 38).

Insertion of new s 36A

Clause 38 inserts a new section 36A, which requires the chief executive to refuse an application for a certificate if the applicant has previously been granted the same type of certificate and the certificate has been cancelled within the last two years. This amendment is intended to preclude certificate holders who have had their certificates cancelled from reapplying within two years from the date of cancellation.

Insertion of new pt 5, div 1A, sdivs 2 and 3

Clause 39 inserts a new subdivision containing the provisions regarding registration of registrable plant design that were previously located elsewhere in part 5. The content of these provisions has not changed, except to –

- reflect the change in location and the subsequent re-numbering; and
- improve readability.

Clause 39 also inserts a new subdivision, introducing new requirements regarding certificates of registration for mobile cranes and tower cranes specified in schedule 3. These requirements are intended to mandate the maintenance, inspection and certification of certain types of high risk plant and reflect elements in the *National Standard for Plant 1994* and requirements in other States. The following provides an explanation of the new provisions for subdivision 3.

39G Application of sdiv 3

Section 39G states the application of subdivision 3.

39H Definition for sdiv 3

Section 39H provides a definition of a ‘competent person’ for subdivision 3. The section states that for cranes that on and from 1 February 2007 are 10 years old or a multiple of 10 years a ‘competent person’ means an engineer; for other cranes a ‘competent person’ means a person who has certain knowledge and skills, as specified in the section.

39I Application for certificate of registration of registrable plant

Section 39I requires that an application for a certificate must include:

- the age of the crane;
- a statement by the owner of the crane that–
 - during the previous 1 year before the application was made–the crane has been maintained in accordance with

the designer's and manufacturer's instructions and with relevant standards and legislation; and

- within 6 months before the application was made—the crane has been inspected by a competent person who has certified that the crane has been maintained in accordance with the designer's and manufacturer's instructions and with relevant standards and legislation and that the crane is safe to use; and
- the name, address, contact details and qualifications of the competent person and the date the competent person inspected the crane.

Amendment of s 43 (Div 1 applies to application for renewal)

Clause 40 amends section 43—

- subclause (2) removes subsection (2) in section 43 as it has been relocated to part 4, the part dealing with workplace health and safety officers. Subclauses (3) and (4) effect consequential rewording and re-numbering.

Insertion of new pt 5, div 4

Clause 41 inserts a new division into Part 5, which consolidates provisions relating to the suspension and cancellation of certificates. Provisions about the suspension and cancellation of a certificate to work in a prescribed occupation and of a certificate to perform a prescribed activity were previously located in Part 3, Divisions 3 and 4, respectively. Following is an explanation of the provisions of the new Part 5, Division 4.

46A Grounds for suspension or cancellation

Section 46A states the grounds on which the chief executive may suspend or cancel a certificate. This section—

- introduces new requirements for all certificates to which this division applies; and
- amends some of the requirements for a certificate to work in a prescribed occupation and for a certificate to perform a

prescribed activity, previously located in part 3 of the Regulation.

Subsection 2(e) introduces a new ground for the suspension or cancellation of a certificate to work in a prescribed occupation, a certificate to perform a prescribed activity and a certificate of appointment of a workplace health and safety officer, namely that the holder is medically unfit to perform work in the prescribed occupation or to perform the activity. This is intended to allow officials to deal with situations where a person's medical condition may place them or others at risk when doing certain work.

46B Procedure for suspension or cancellation

Section 46B sets out the procedure for suspension and cancellation of certificates. This section introduces new requirements for some certificates and amends some of the requirements for a certificate to work in a prescribed occupation and for a certificate to perform a prescribed activity, previously in part 3 of the Regulation as follows—

- subsection (1): the chief executive is required to give the holder of the certificate a written notice (show cause notice) – previously this was at the discretion of the chief executive;
- subsection (6)(b): regarding when the decision takes effect, (b) states 'the day stated in the notice' – previously sections 27(7)(b) and 29H(7)(b), respectively, stated 'the day of effect stated in the notice.'

46C Suspension or cancellation of certificate to work in prescribed occupation on recommendation of recognised official

Section 46C sets out the process to be followed where a recognised official (this is a comparable official in another State where a certificate has been issued) recommends that a certificate to work in a prescribed occupation be suspended or cancelled. This section preserves the requirements for a certificate to work in a prescribed occupation, previously in part 3 of the Regulation.

46D Certificate to be returned

Section 46D sets the process to be followed with respect to the return of certificates that have been suspended or cancelled. This section –

- preserves the requirements for a certificate to work in a prescribed occupation and for a certificate to perform a prescribed activity, previously in part 3 of the Regulation; and
- introduces new requirements for other certificates.

Amendment of s52 (Notifying of particular workplace incidents)

Clause 42 amends section 52, to update relevant terminology as a consequence of the Amendment Act.

Amendment of s53 (Recording particular workplace incidents)

Clause 43 amends section 53, to update relevant terminology as a consequence of the Amendment Act.

Omission of pts 8 – 9

Clause 44 omits Parts 8 to 9 due to restructuring of the construction provisions in the Regulation.

Amendment of s68 (What is *excessive noise*)

Clause 45 amends Section 68 (1) to reference ASIEC61672.1 which supersedes AS1259.1.

Replacement of s69 (Preventing risk from exposure to excessive noise)

Clause 46 amends section 69, to update terminology as a consequence of the Amendment Act.

Replacement of pt 11 (Asbestos)

Clause 47 omits Part 11 of the Regulation, which deals with the identification of asbestos in workplaces and asbestos removal work. These provisions will be replaced by a new Part 11 which is explained in the following provisions:

Part 11 Asbestos

Division 1 Interpretation

69A Definitions for pt 11

This section identifies the national codes of practice relevant to asbestos. These are the:

- *National Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC: 2018 (2005)]* (asbestos management code); and
- *National Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC: 2002 (2005)]* (asbestos removal code).

It also defines asbestos removalist as a person who holds the appropriate certificate under section 29B of the Workplace Health and Safety Regulation 1997 to perform asbestos removal work.

Division 2 Prohibitions relating to ACM

69B Prohibited substances and prohibited ACM

This section provides that a relevant person must not use a prohibited substance (any of the asbestos mineral group) or a prohibited asbestos containing material (ACM) for a prohibited purpose. These provisions were formerly contained in section 114 of the Regulation. The exemptions and specific prohibitions are set out in Schedule 7 of the Regulation.

69C Performing work on ACM

This section provides that relevant persons must not perform work on ACM (such as painting, drilling holes etc) other than in accordance with the asbestos management code. The section also provides that an employer must not allow a worker to perform work on ACM other than in accordance with the asbestos management code. Both requirements are workplace health and safety obligations.

69D Removing ACM

This section provides that relevant persons must not remove ACM other than in accordance with the asbestos removal code. This code details specific work methods for such procedures. It also provides that an employer must not allow a worker to remove ACM other than in accordance with the asbestos removal code. Both requirements are workplace health and safety obligations.

69E Cleaning ACM

This section provides for prohibitions about the way a person may clean ACM. Use of power tools, high pressure water processes compressed air and abrasive blasting is prohibited. It also provides that an employer must not allow a worker to clean ACM in the prohibited manner. These requirements are workplace health and safety obligations.

Division 3 On-site management of ACM

Division 3 deals with the on-site management of ACM and splits management requirements between particular buildings (subdivision 1) and particular structures (subdivision 2).

Subdivision 1 Particular buildings

70 Application of sdiv 1

Subdivision 1 applies to owners of buildings that are workplaces who have not complied with the obligation under the repealed

regulation to identify asbestos materials, such as installed thermal or acoustic insulation containing asbestos, and to keep a register of such materials.

71 Compliance with asbestos management code

This section requires owners identified in section 70 to immediately comply with the asbestos management code.

Subdivision 2 Particular structures

72 Application of sdiv 2

Subdivision 2 is applicable to a structure, or part of a structure, which is a workplace and was built under an approval given by a local government before 1990. Buildings built after this date should not contain any ACM.

Structures used for domestic residential purposes are excluded from the requirements of this subdivision.

Common property which serves structures used only for domestic residential purposes and workplaces forming part of a structure used for domestic residential purposes which were previously excluded from the requirements of this subdivision are no longer exempted.

73 Compliance with asbestos management code

This section requires the owner of a structure to comply with the asbestos management code by 1 January 2008. The management code requires all ACM to be identified, labelled, its location and condition to be placed in a register and for a management plan to be developed in relation to identified ACM. Owners to whom this subdivision applies have two years to comply with these requirements. However if, the structure is offered for sale, is to be demolished, dismantled or altered the owner must comply with the asbestos management code before those events occur. These requirements are workplace health and safety obligations.

Division 4 Asbestos removal work

74 Performing asbestos removal work

This section requires that an asbestos removalist must only perform asbestos removal work in accordance with the asbestos removal code.

The section also places an obligation on owners and persons engaged by the owner to supervise or arrange for asbestos removal work to comply with part 7.2 of the asbestos removal code. This part of the code places responsibilities on owners, supervisors and those who arrange asbestos removal work to ensure that an asbestos removalist carries out such removal work and to provide the asbestos removalist with all relevant information about the asbestos removal site and the nature of the work required. All these requirements are workplace health and safety obligations.

Omission of s114 (Prohibited substances and asbestos products)

Clause 48 omits s114 as it has been relocated to Part 11, Division 2.

Replacement of s135 (Removal from a lead-risk job)

Clause 49 omits section 135 and inserts new provisions that update relevant terminology as a consequence of the Amendment Act.

Replacement of pts 17-20

Clause 50 omits parts 17 – 20 and inserts a new Part 17 in the Regulation. The new part 17 –

- consolidates provisions about construction work previously found in various parts of the Regulation;
- incorporates consequential amendments as a result of the Amendment Act);
- introduces some elements of the *National Standard for Construction Work* [NOHSC 1016:(2005)]; and
- incorporates miscellaneous amendments.

Consolidation of provisions about construction work

Certain provisions from the following parts of the Regulation have been consolidated in the new Part 17 so that it is easier for readers to locate provisions about construction work. The following parts have been consolidated.

- Part 3 – Prescribed occupations
- Part 8 – Construction workplace plans, work method statements and inductions
- Part 8A – Safe housekeeping practices for construction work
- Part 8B – Common plant at a construction workplace
- Part 9 – Hazardous substances at construction workplaces
- Part 11 – Asbestos
- Part 17 – Excavations
- Part 18 – Construction work where there is a risk a person could fall
- Part 19 – Objects that could fall on or otherwise hit members of the public
- Part 20 – General provisions to be in place and monitored and reviewed
- Part 21 – Amenities
- Schedule 9 - Dictionary

Consequential amendments arising from amendments to the *Workplace Health and Safety Act 1995*

Amendments to the Act passed in 2005 have resulted in the need for some consequential amendments to the Regulation to ensure consistency. Amendments to the Act include –

- changes to the definition of ‘construction work’;
- inclusion of a definition for ‘structure’;
- removal of definitions for ‘building work’ and ‘construction workplace’. The concept of ‘construction workplace’ has been removed because the emphasis is on the work rather than the place of work. This will enable the construction regulations to apply where

construction work is done rather than at a traditional construction workplace; and

- use of the term 'relevant person'. Section 28 of the Act imposes an obligation on a person conducting a business or undertaking (a 'relevant person'). This obligation applies whether or not the relevant person conducts the business or undertaking as an employer or self-employed person. Rather than using the specific terms 'employer' and 'self-employed person', section 28 of the Act now establishes a 'relevant person' as an obligation holder. Consequently, some references to employer and self-employed person in the Regulation are being replaced with the term 'relevant person'.

National Standard for Construction Work [NOHSC 1016:2005]

Recent amendments to the Act introduced elements of the *National Standard for Construction Work* which in turn requires consequential amendments to the Regulation. This includes the definition of 'construction work' and 'structure'.

Other amendments to the Regulation reflect additional elements of the National Standard that are more appropriate for inclusion in the Regulation than the Act.

An amendment to provisions dealing with falls from height in construction (other than housing) lowers the height threshold from 2.4 metres to 2 metres in line with the definition of high-risk construction work in the *National Standard for Construction Work*.

Clause 50 inserts a new part 17 through the following provisions:

Division 1 Interpretation

The new division 1, part 17 sets out definitions relevant for this part of the Regulation. These definitions have been transferred from other parts of the Regulation. Many of the definitions for part 17 remain the same and have been redrafted for clarity without changing the intended meaning. However, the following definitions have been amended –

Civil construction work

The *Workers' Compensation Rehabilitation and other Acts Amendment Act 2005* omitted the definition of 'civil construction

work' from the *Workplace Health and Safety Act 1995*. The same definition has been inserted into the Regulation.

Common plant

The new definition omits the reference to a 'construction workplace'. It focuses on common plant provided by the principal contractor for use by 'any person' at the workplace. This broadens the scope to common plant used by any person (e.g. site visitors)

Construction safety plan

The new definition is now covered in section 62.

Geo-technical engineer

The new definition removes the requirement that a person has to be a registered professional engineer under the *Professional Engineers Act 2002* as this requirement is already included in the definition of 'engineer' in schedule 9 of the Regulation.

Site-specific induction

The new definition refers to 'a place where construction work is to be performed' rather than site-specific induction for a 'construction workplace'.

Fall protection cover

The meaning of this definition has not changed, however, subsection (b) has been restructured so that the examples stand alone rather than being contained in the provision.

Catch platform

The new definition has been broadened to provide that it is a platform designed to provide overhead protection 'to persons' by catching falling objects. Previously, the definition was limited to 'members of the public' rather than people generally.

Overhead platform

The new definition has been broadened to provide that it is a platform designed to provide overhead protection 'to persons' against falling objects. The former definition was limited to 'members of the public' rather than people generally.

Perimeter containment screening

Subsection (a) of this definition has been broadened to mean a screen designed to stop objects falling 'to persons' from a level of the building. The former definition was limited to 'members of the public' rather than people generally.

Meaning of high risk construction activity

Section 156 replaces the definition of 'high risk construction activity' so that –

- the provision incorporates elements of the definition of 'high risk construction work' in the *National Standard for Construction Work*.
- it is a high risk construction activity if a person could fall at least 2 metres carrying out construction work that is not housing construction work (the old definition specified 2.4 metres). This is consistent with the definition of 'high risk construction work' in the *National Standard for Construction Work*. However, it should be noted that for housing construction work, the height specification will remain the same, that is, if a person could fall at least 3 metres while carrying out housing construction work, this will continue to be regarded as a high risk construction activity.
- prescribed activities are included in the definition.
- the new definition also refers to the *Electrical Safety Act 2002* for definitions of 'electrical installation', 'energise' and 'exposed'.

Meaning of work method statement for high risk construction activity other than prescribed activity

The amendment of section 157 updates terminology as a consequence of the Amendment Act and also clarifies that the statement must be in writing and includes a new example in section 57 (1) (d).

Meaning of work method statement for high risk construction activity that is prescribed activity

Section 158 consolidates the former meanings of work method statement for the prescribed activities of demolition and removal of

asbestos materials and clarifies that the statement must be in writing.

Division 2 Principal Contractors

Subdivision 1 Preliminary

Application of div 2

Section 159 replaces the former section 61 of the Regulation and specifies when the division applies. The only change is that the provision now clarifies that a principal contractor may also have obligations when performing construction work as a relevant person, for example when the principal contractor is also an employer.

Subdivision 2 Obligation to prepare construction safety plan

Principal contractor must prepare construction safety plan

Section 160 consolidates the former sections 56 and 62 of the Regulation.

When principal contractor not to allow relevant person to start housing construction work

Section 161 replaces the former section 64 (1) of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

When principal contractor not to allow relevant person to start construction work other than housing construction work

This section reflects the former section 64 (2) of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Availability of current construction safety plan

Section 163 reflects the former section 65A of the Regulation. A principal contractor must make a construction safety plan or a work method statement available for inspection. This section has been changed by –

- integrating subsections (a) and (b) and simply requires a construction safety plan or work method statement to be *readily* available for inspection.
- replacing the expression ‘construction workplace plan’ with ‘construction safety plan’.

Amendment of construction safety plan

Section 164 updates relevant terminology as a consequence of the Amendment Act.

Subdivision 3 Principal contractor’s obligation for work method statements

Principal contractor not to allow relevant person to start high risk construction activity unless work method statement is prepared

Section 165 reflects the former section 64 (4) of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

Work method statements or amended work method statements to be kept with construction safety plan

Section 166 reflects the former section 63 of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Principal contractor not to allow person to perform prescribed activity unless in compliance with work method statement

Section 167 replaces the former section 65F of the Regulation, and broadens the scope to include the prescribed activity of asbestos removal, which requires the appointment of a Principal Contractor.

Principal contractor to monitor use of work method statement

Section 168 reflects the former section 65 of the Regulation.

Subdivision 4 Principal contractor's obligation to sight induction evidence and conduct site-specific workplace health and safety inductions

Principal contractor must sight general induction evidence before construction work starts

Section 169 reflects the former section 65J of the Regulation and updates relevant terminology as a consequence of the Amendment Act and excludes certain types of work requiring induction evidence.

Site specific induction to be given

Section 170 reflects the former section 65K of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 5 Principal contractor's obligation in relation to prescribed occupations and prescribed activities

Authority to perform work in prescribed occupation or prescribed activity

Section 171 reflects the former sections 17(1) and 29B(1) of the Regulation, updates relevant terminology as a consequence of the Amendment Act and broadens the scope to include the prescribed activity of asbestos removal .

Subdivision 6 Principal contractor's obligation to erect signs

Signs

Section 172 reflects the former section 202 and incorporates elements of the former section 65V(b) of the Regulation. However, the new provisions broaden in scope to apply to construction work. That is, it applies to housing and civil construction work regardless as to whether an object could fall on or otherwise hit a person.

Subdivision 7 Principal contractor's obligation about safe housekeeping practices

Purpose of sdiv 7

Section 173 states the purpose of this subdivision.

Safe housekeeping practices

Section 174 consolidates the former section 65W and the former sections 65V (a), (c) and (d) of the Regulation.

Subdivision 8 Principal contractor's obligation for common plant

Common plant

Section 175 reflects the former section 65ZA of the Regulation.

Subdivision 9 Principal contractor's obligation for hazardous substances

Register of hazardous substances

Section 176 reflects the former section 67 of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 10 Principal contractor's obligation for underground services

Information about underground services

Section 177 reflects the former section 169 of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 11 Principal contractor's obligation for falling objects

Application of sdiv 11

Section 178 sets out the application for Part 17 subdivision 11.

What is *mesh* for sdiv 11

Section 179 reflects the definition of mesh in section 199A.

Risk assessment and control measures for civil construction work and housing construction work

Section 180 reflects the former section 211 of the Regulation as it relates to principal contractors and updates relevant terminology as a consequence of the Amendment Act. The provision requires a principal contractor to assess the risk and implement control measures in relation to objects that could fall on or otherwise hit 'persons' during housing construction work and civil construction work. The former section 211 was limited to public protection. The provisions of the former subsections (4) and (5) of section 211 are now addressed in section 185.

Control measures for construction work that is not civil construction work or housing construction work

Section 181 reflects the former section 203 of the Regulation as it related to principal contractors and updates relevant terminology as a consequence of the Amendment Act.

Additional control measures if measured angle is 75° or more, other than for demolition work or work erecting or dismantling formwork

Section 182 reflects the former section 204 of the Regulation as it relates to principal contractors and updates relevant terminology and as a consequence of the Amendment Act.

Control measures for demolition work or work erecting or dismantling formwork

Section 183 replaces the former section 205 of the Regulation as it related to principal contractors and updates relevant terminology as a consequence of the Amendment Act.

Perimeter containment screening as a control measure

Section 184 reflects the former section 205A of the Regulation.

Catch platform as a control measure

Section 185 reflects the former section 206 of the Regulation.

Gantry as a control measure

Section 186 replaces the former section 207 of the Regulation.

Load lifted over adjoining area

Section 187 reflects the former section 208 of the Regulation.

Closure of part or all of adjoining area

Section 188 reflects the former section 209 of the Regulation as it related to principal contractors.

Subdivision 12 Principal contractor's obligation for amenities**Amenities**

Section 189 replaces the former sections 217 and 220(1) and (3) of the Regulation.

Division 3 Relevant persons**Subdivision 1 Preliminary****Application of div 3**

Section 190 sets out the application for Part 17, Division 3

Subdivision 2 Relevant Person's Obligations for work method statements

Relevant person to prepare work method statement before starting high risk construction activity

Section 191 consolidates the former section 65M, and 75F of the Regulation and updates terminology as a consequence of the Amendment Act.

When Relevant person not to allow another relevant person to start prescribed activity

Section 192 reflects the former section 65E and 75G of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

When relevant person who is employer not to allow worker to start high risk construction activity unless particular things have been done

Section 193 replaces the former section 65N of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

High risk construction activity not to be performed unless in compliance with work method statement

Section 194 consolidates the former sections 65O and 75K of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Amendment of work method statement

Section 195 consolidates the former sections 65P and 75I of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Availability and review of work method statement

Section 196 consolidates the former sections 65Q and 75J of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 3 Relevant person's obligation for general induction evidence

Definition for sdiv 3

Section 197 defines 'construction work' for pt 17, subdivision 3 thereby excluding certain types of construction work from provisions relating to induction

Relevant person must hold general induction evidence before starting construction work

Section 198 consolidates the former sections 65S(1) and 75K (2) of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Relevant person who is employer to ensure worker holds general safety induction evidence before worker starts construction work

Section 199 replaces sections 65S(2) and 75 K (3) of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 4 Relevant person's obligation for safe housekeeping practices

Safe housekeeping practices

Section 200 consolidates former sections 65X and 65Y of the Regulation, updates relevant terminology as a consequence of the Amendment Act and introduces the supply and maintenance of lighting.

Subdivision 5 Relevant person's obligation for common plant

Common plant

Section 201 reflects former section 65ZB (2) of the Regulation, and specifies how common plant must be used at the workplace. This section has been changed by replacing the expression 'employer or self-employed person' with 'relevant person'.

Subdivision 6 Relevant person's obligation for hazardous substances

Relevant persons to give principal contractor details of hazardous substances to be used

Section 202 reflects the former section 66 of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 7 Relevant person's obligation for underground services

Risk from contact with underground services – construction work for which there is principal contractor

Section 203 reflects former section 171 of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Risk from contact with underground services – construction work for which there is no principal contractor

Section 204 reflects the former section 172 of the Regulation.

Subdivision 8 Relevant person's obligation for excavation work that could reduce the stability of a structure

Obligation before excavation work starts

Section 205 reflects the former section 173 of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

Obligation during excavation work

Section 206 reflects the former section 174 of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 9 Relevant person's obligation for risk from excavations

Meaning of *competent person* for subdiv 9

Section 207 reflects the former provision of section 168 (2).

Risk from all excavations

Section 208 replaces the former section 175 of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

Risk from working in a trench at least 1 m deep

Section 209 reflects the former section 176 of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

Risk from working in trench more than 1.5 m deep

Section 210 consolidates the former sections 177 and 178 of the Regulation and updates relevant terminology as a consequence of the Amendment Act.

Access by ladders to trench more than 1.5 m deep

Section 211 reflects the former section 179 of the Regulation, and incorporates the former section 177, which makes it clear that the provision is about entering a trench more than 1.5 metres deep and updates relevant terminology as a consequence of the Amendment Act.

Events in a trench more than 1.5 m deep that is not shored, benched or battered

Section 212 reflects the former section 180 of the Regulation, and incorporates the former section 177, which makes it clear that the provision is about entering a trench more than 1.5 metres deep and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 10 Relevant person's obligation for risk of a person falling during construction work

Definition for sdiv 10

Section 213 inserts a definition of ladder for this subdivision.

Risk of fall of less than 3 m in housing construction work or less than 2 m in other construction work or construction work on roof with slope not over 26°

Section 214 reflects the former section 183 of the Regulation, and lowers from 2.4 metres to 2.0 metres the fall from height threshold for construction work that is not housing construction updates relevant terminology as a consequence of the Amendment Act.

Risk of fall of at least 3 m in housing construction work or at least 2 m in other construction work or construction work on roof with a slope over 26°

Section 215 reflects the former section 184 of the Regulation, and lowers from 2.4 metres to 2.0 metres the fall from height threshold for construction work that is not housing construction; and updates relevant terminology as a consequence of the Amendment Act.

Edge protection as control measure

Section 216 reflects the former section 185 of the Regulation, preserves the definition for 'toe board' from the former section 181 and inserting it in this section to improve clarity and updates relevant terminology as a consequence of the Amendment Act.

Fall protection cover as control measure

Section 217 reflects the former section 186 of the Regulation.

Travel restraint system as control measure

Section 217A replaces the former section 187 of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

Fall arresting platform as control measure

Section 217B reflects the former section 187A of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

Fall-arrest harness system as control measure

Section 217C reflects the former section 188 of the Regulation, and updates relevant terminology as a consequence of the Amendment Act. It also preserves the definitions for 'free fall' and 'limited free fall' from the former section 181.

Industrial safety net as control measure

Section 217D reflects the former section 189 of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 11 Relevant person's obligation for ladders

What work may be done from single or extension ladder

Section 217E reflects the former section 190 of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

Work on a ladder

Section 217F reflects the former section 191 of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

Ladders generally

Section 217G reflects the former section 192 of the Regulation, and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 12 Relevant person's obligation for platforms supported by trestle ladders

Work on platforms supported by trestle ladders

Section 217H reflects the former section 193 of the Regulation and lowers from 2.4 metres to 2.0 metres the fall from height threshold for construction work that is not housing construction; and updates relevant terminology as a consequence of the Amendment Act.

Platform supported by trestle ladders

Section 217I reflects the former section 194 of the Regulation, lowers from 2.4 metres to 2.0 metres the fall from height threshold for construction work that is not housing construction work; and rearranges the content of this section to improve readability; and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 13 Relevant person's obligation for scaffolding

Obligation before starting to erect or dismantle

Section 217J consolidates the former sections 195 and 196 of the Regulation, removes the 40 penalty unit penalty for a breach of this section and inserts a provision that subsection (1) is an obligation under the *Workplace Health and Safety Act 1995* and updates relevant terminology as a consequence of the Amendment Act.

Erecting scaffolding

Section 217K consolidates the former sections 197 of the Regulation, and specifies what a relevant person must do in relation to construction work that is the erection of scaffolding. This section has been changed by removing the expression 'employer or self-employer person' and replacing the expression 'a worker of the employer' with 'another person', to ensure that the scope of the provision captures all persons. It also lowers from 2.4 metres to 2.0 metres the fall from height threshold for construction work that is not housing construction.

Dismantling scaffolding

Section 217L reflects the former section 198 of the Regulation, lowers from 2.4 metres to 2.0 metres the fall from height threshold for construction work that is not housing construction and updates relevant terminology as a consequence of the Amendment Act.

Subdivision 14 Relevant person's obligation for falling objects

Application of sdiv 14

Section 217M sets out the application of Part 17, subdivision 4.

Relevant person's obligation if no principal contractor

Section 217N states what a relevant person must do in relation to the risk of falling objects in construction work where there is no principal contractor.

Subdivision 15 Relevant person's obligation for first aid

First Aid

Section 217O reflects the former section 225 of the Regulation and incorporates elements from the former section 223 and is about what a relevant person must do in relation to first aid.

Division 4 Workers

Application of div 4

Section 217P sets out the application of Part 17, division 4.

Worker to hold general induction evidence before starting construction work

Section 217Q reflects the former section 65U (2) of the Regulation, and specifies a worker's responsibility to hold evidence of general induction training before starting construction work.

Division 5 General provisions about control measures and plant for pt 17

Control measure to be in place and monitored and reviewed

Section 217R reflects the former section 212 of the Regulation, and specifies that control measures must be in place, monitored and reviewed by principal contractors and relevant persons. This section has been changed by replacing the expression 'employer or self-employed person' with 'relevant person'.

Plant not to be used as control measure unless it has been maintained

Section 217S reflects the former section 213 of the Regulation, and specifies that plant must not be used as a control measure unless it has been maintained.

Plant erected or installed after construction work starts

Section 217T reflects the former section 214 of the Regulation, and specifies requirements to apply to plant that is erected or installed after construction work starts.

Written evidence about plant from engineer or competent person may be relied on

Section 217U reflects the former section 215 of the Regulation, and specifies written evidence about plant from an engineer or competent person. This section has been changed by replacing the expression 'employer or self-employed person' with 'relevant person'.

Division 6 Chief executive may ask for information from Queensland Building Services Authority

Definitions for div 6

Section 217V replaces the former section 185A(4), which remains unchanged and provides the relevant definitions for division 6.

Chief executive may ask general manager of Queensland Building Services Authority for relevant information

Section 217W preserves the former section 185A of the Regulation and is about the chief executive's power to ask for certain information from the Queensland Building Services Authority. The only change to this section is that subsection (4) has been deleted as the definitions have been relocated.

Omission of pt 21, divs 1 and 2

Clause 51 deletes division 1 and 2 from Part 21. Division 1 definition of 'reasonably available' is now located in schedule 9. The former Division 2 of pt 21 is now located under Part 17 Division 2, subdivision 12 Principal contractor's obligation for amenities.

Amendment of s 220 (Maintenance of amenities)

Clause 52 makes minor consequential and renumbering amendments to section 220.

Amendment of s223 (Employers- all work)

Clause 53 amends section 223 such that the heading is changed and so that this section does not apply to construction work

Insertion of new pt 21D

Clause 54 inserts a new part to prescribe for Part 14, division 1B of the *Workplace Health and Safety Act 1995*, things that are necessary or

convenient for establishing and operating arrangements for the payment of workplace health and safety contributions.

Purpose of pt 21 D

Section 226 provides the purpose of the part.

Amount of workplace health and safety contribution

Section 227 provides how the workplace health and safety contribution payable by each non scheme employer for the current financial year is to be calculated. This is based on the number of workers employed in Queensland. This clause provides that where an amount has been paid for the current financial year under section 81 under the Workers' Compensation and Rehabilitation Act 2003 no amount is required to be paid for the workplace health and safety contribution.

Amendment of s229 (Rural Industry exemption)

Clause 55 amends section 229 to state those parts of the regulation that the rural industry is exempt from rather than to outline those parts with which the rural industry needs to comply.

Insertion of new pt 23, div 5

Clause 56 inserts after section 239 four transitional provisions.

Division 5 Transitional provision for *Workers' Compensation and Rehabilitation and Other Legislation Amendment Regulation 2005*

Certificates to work in prescribed occupation—self erecting tower cranes

Section 240 concerns a transitional provision for self erecting tower cranes. A person is not required to obtain a certificate for the prescribed occupation until 1 January 2007 if they already hold a certificate for the operation of a tower crane.

Construction work—construction safety plans

Section 241 inserts the transitional provision for construction work if it is already started upon commencement of the amendment regulation.

Construction work—general induction evidence

Sections 242 and 243 provide an exemption from having to obtain general induction evidence till 1 January 2007 by those persons who will perform activities (such as repair and refurbishment) which prior to 2 November 2005 were not included in the definition of construction work and which have, since 2 November 2005, been included.

Replacement of sch 1 (Fees)

Clause 57 replaces the existing schedule 1 which updates the fees in accordance with the CPI figure advised by Queensland Treasury.

Insertion of new sch 2

Clause 58 inserts a new schedule 2, which details the accredited courses for training or assessment in prescribed occupations, prescribed activities and workplace health and safety officers.

Amendment of sch 3 (Registrable plant)

Clause 59 amends the definition of class two amusement devices in schedule 3 to exclude coin operated amusement devices

Amendment of sch 4 (Registrable plant design for employer, self-employed person or supplier)

Clause 60 amends schedule 4, item 15 to exempt coin operated amusement devices from design registration and specified amusement devices which were classified under AS3533.1 (1988) as Class 1 amusement devices before 30 July 2004.

Amendment of sch 5 (Prescribed occupations)

Clause 61 amends schedule 5, which details prescribed occupations requiring an authority to perform work. The clause inserts a new class of prescribed occupation for operators of self-erecting tower cranes. The clause also makes a number of minor amendments.

Replacement of sch 7 (Prohibited substances and asbestos products and prohibited purposes)

Clause 62 repeals Schedule 7 of the regulation which itemised prohibitions and exemptions to prohibitions for uses of prohibited substances (being specific types of asbestos such as amosite, crocidolite and chrysotile) and asbestos products (items which contained any of the prohibited substances (such as gaskets, friction products or asbestos cement sheeting). Those provisions will be replaced by the following provisions, which remove one of the exemptions and align the schedule with the concept of ACM (asbestos containing material) rather than the previous concept of asbestos materials and asbestos products.

Schedule 7 Prohibited substances, prohibited ACM and prohibited purposes

1 Amosite, crocidolite, fibrous anthophyllite, tremolite or actinolite

This section remains unchanged except for the introduction of the concept of ACM.

2 Chrysotile

This section incorporates the concept of ACM into the schedule and deletes the previous non-prohibited use of reinstalling bonded asbestos products (such as asbestos cement sheeting) in a position where it was installed immediately before 31 December 2003. Such reinstallation is now prohibited.

Amendment of sch 9 (Dictionary)

Clause 63 amends definitions in the dictionary at schedule 9. Some definitions have been omitted from the dictionary and have been placed in those sections relevant to the specific term.

Part 4 Amendment of the *Electrical Safety Regulation 2002*

Regulation amended in pt 4

Clause 64 provides that Part 4 amends the *Electrical Safety Regulation 2002*.

Amendment of sch 9 (Dictionary)

Clause 65 inserts the definition of 'estimated final price' and prescribed activity. In addition, The *Electrical Safety Regulation 2002* has relied on the definition of 'construction work' in the previous section 13A of the *Workplace Health and Safety Act 1995*. This definition has been amended and renumbered. The amendment creates a linkage to the new construction work definition in the Act by now referencing section 14 of the Act.

Clause 65 also inserts the definition of construction workplace which has been deleted from the *Workplace Health and Safety Act 1995*. This definition was referenced by the *Electrical Safety Regulation 2002* for its construction workplace electrical safety provisions. This new definition will replace the deleted definition. The new definition draws from the former definition and aligns with new provisions for appointment of a principal contractor in the *Workplace Health and Safety Act 1995* so that consistency between the *Electrical Safety Act 2002* and the *Workplace Health and Safety Act 1995* is maintained.

Part 5 Amendment of the *Queensland Building Services Authority Regulation 2003*

Regulation amended in pt 5

Clause 66 provides that Part 5 amends the *Queensland Building Services Authority Regulation 2003*.

Amendment of s 5 (Work that is not building work)

Clause 67 amends the section 5 (1) (zh) to reflect the changes in regards to work that is done under part 11, division 3 of the *Workplace Health and Safety Regulation 1997* is not building work. A reference is also inserted in section 5(3) for the purpose of the amendment to section 5 (1) (zh).

Part 6 Amendment of the *State Penalties and Enforcement Regulation 2000*

Regulation amended in pt 6

Clause 68 provides that Part 6 amends the *State Penalties and Enforcement Regulation 2000* .

Amendment of sch 5 (Other Legislation)

Clause 69 amends entries under the *Workplace Health and Safety Act 1995* and the *Workplace Health and Safety Regulation 1997*. These amendments result from the renumbering within the *Workplace Health and Safety Regulation 1997* due to restructuring and as a result of the *Workers' Compensation Rehabilitation and Other Legislation Amendment Regulation 2005*.

Schedule Minor amendments

Workers' Compensation and Rehabilitation Regulation 2003

Makes minor amendments to update terminology relating to rehabilitation in line with amendments to the *Workers' Compensation and Rehabilitation Act 2003*.

Workplace Health and Safety Regulation 1995

Makes minor amendments as a consequence of the Amendment Act by:

- updating terminology from “employer and self-employed persons” to “relevant persons” in line with the Act;
- removing part 2A, division 1 which provided for the staged implementation of requirements for a certificate to perform prescribed activities. The requirements of this division have expired and are no longer required;
- Inserting examples in various provisions to provide greater clarity; and
- updating the context of various provisions in line with the new terminology adopted in the Act

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Industrial Relations.