



Queensland

# Work Health and Safety Regulation 2011

## Explanatory Notes for SL 2011 No. 240

made under the

*Building Act 1975*

*Child Employment Act 2006*

*Coal Mining Safety and Health Act 1999*

*Explosives Act 1999*

*Forensic Disability Act 2011*

*Health Act 1937*

*Mining and Quarrying Safety and Health Act 1999*

*Petroleum and Gas (Production and Safety) Act 2004*

*Public Health Act 2005*

*Queensland Building Services Authority Act 1991*

*Queensland Civil and Administrative Tribunal Act 2009*

*Sustainable Planning Act 2009*

*Transport Operations (Road Use Management) Act 1995*

*Work Health and Safety Act 2011*

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## General outline

### Short title

*Work Health and Safety Regulation 2011.*

## Authorising law

Section 276 of the *Work Health and Safety Act 2011*.

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

## Policy objective of the legislation

The objective of the *Workplace Health and Safety Regulation 2011* is to give effect to the model WHS regulations.

The harmonisation of work health and safety (WHS) laws is part of the Council of Australian Governments' National Reform Agenda aimed at reducing the regulatory burden and creating a seamless economy. The objects of harmonising WHS laws through a model framework are to protect the safety of workers, improve safety outcomes, reduce compliance costs for business and improve efficiency for health and safety regulators.

The national model WHS laws comprise a national model WHS Act, national model WHS regulations and a suite of national model WHS codes of practice. The package of WHS laws has been developed by Safe Work Australia (SWA) and agreed under the *Inter-Governmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety* (IGA). SWA is comprised of Commonwealth, State and Territory governments, employer and worker representatives. Under the IGA, decisions of SWA are made by a two thirds majority of all members and a majority vote from the Commonwealth and State and territory government members.

Development of the model WHS regulations has been progressed by the Strategic Issues Group OHS (SIG-OHS) of SWA. This group is composed of representatives of all nine jurisdictions, the Australian Industry Group (AiG), the Australian Chamber of Commerce and Industry (ACCI) and the Australian Council of Trade Unions (ACTU).

Development of the model WHS regulations has been based on matters that are:

- broadly common to all current jurisdictional regulations;
- in existing National Standards and National Codes of Practice;
- broadly included in the majority of jurisdictions' regulations; and
- policy decisions of SIG-OHS in line with the guidelines specified in the IGA.

The draft model WHS regulations and a number of codes of practice were released for a public consultation process of four months from December 2010 to April 2011. Comments by industry groups, unions and others who lodged submissions were reviewed through a tripartite process (including employer and worker representatives) managed by SWA and the SIG-OHS. A total of 1,343 public submissions were received, 836 from individuals and 507 from organisations.

Following public comment and consideration by SWA, the regulations were revised to remove unnecessary duplication and prescription by, for example:

- inserting generic risk management principles including a hierarchy of control;
- moving regulations which apply more broadly than one chapter or part to the chapter on general workplace management;
- replacing annual registration of items of plant with five yearly registrations and streamlining the registration process;
- streamlining the process for developing a safety case and becoming a major hazard facility; and

- removing the requirement for documenting the use of ‘administrative’ control measures for the risk of falls from two metres.

A number of policy amendments were also made to the model WHS regulations, including:

- redrafting the procedures for the election of Health and Safety Representatives to ensure flexibility;
- revising the hazardous chemicals regulations to rely on the Global Harmonised System of Classification and Labelling of Chemicals published by the United Nations (GHS);
- being silent about the right of a worker to refuse blood lead level monitoring because this right is covered by industrial and anti-discrimination laws;
- introducing new regulations dealing specifically with asbestos-related workers, other than removal workers;
- giving powers to the regulator to have competency for high risk work licences reassessed where the regulator doubts a worker’s competency;
- including audiometric testing requirements for exposure to hazardous noise and to detect hearing loss;
- taking a risk-based approach to requiring Residual Current Devices (RCDs) and their use in ‘hostile operating environments’;
- removing the requirement for notification of certain prescribed excavation work and reducing the coverage of the construction regulations to cover work on ‘fixed plant’;
- realigning the definition of ‘confined space’ to the relevant Australian Standard, for example, by removing the requirement that a space have a restricted means of entry and exit; and
- making a clearer distinction between high risk diving work (e.g. construction diving and other general diving work).

The model WHS Regulation is broadly comparable to the existing *Workplace Health and Safety Regulation 2008* (WHS Regulation 2008) in most areas and includes additional regulations in some areas such as manual handling, asbestos, remote and isolated work, issue resolution and falls and falling objects in non-construction workplaces. However, there are several important differences.

Firstly, the model WHS laws do not include specific regulations for recreational diving and snorkelling. In order to continue to maintain Queensland's high standards of safety for this important industry, the *Safety in Recreational Water Activities Regulation 2011*, which replicates the existing regulations for underwater recreational diving and snorkelling in the WHS Regulation 2008, will be enacted under the *Safety in Recreational Water Activities Act 2011*. Maintenance of the existing regulations is strongly supported by the Queensland dive industry.

Secondly, under the model WHS regulations a person conducting a business or undertaking (PCBU) is not required to keep a record of their reasons for using lower end administrative control measures such as relying on training to prevent falls from height in high risk construction work. This is considered to be a diminution of the existing Queensland standards, which require administrative controls to be used in combination with higher order control measures for a fall risk greater than 2 metres. Falls from height in construction is a significant issue with eight fatalities and approximately 2,832 serious injuries between 2004-05 and 2009-10. The *WHS Regulation 2011* will require a person conducting a business or undertaking to document why higher order controls such as edge protection were not used. This variation has the strong support of unions and employer representatives.

Thirdly, much of the prescriptive requirements currently specified in the *Workplace Health and Safety Regulation 2008* will be contained in specialised national model Codes of Practice. Codes provide business operators with flexibility while drawing a "line in the sand" regarding acceptable levels of safety. Safety standards will not be lowered as the national codes of practice have evidentiary status under the WHS Act 2011. Duty holders can adopt other ways that provide a level of safety equal to or better than the standards set out in the national codes.

On 10 August 2011, the Workplace Relations Ministers Council (WRMC) approved a number of priority codes of practice. These will be adopted in Queensland and will commence on 1 January 2012 along with the WHS Regulation. The IGA envisages the ongoing development of codes of practice. Codes will continue to be developed throughout 2012 (and beyond). There are matters that are currently administered through regulations that are proposed to be dealt with in codes of practice. As such codes are still under development, in order to avoid a regulatory gap, and as an interim measure until the relevant national model codes of practice are approved, the *WHS Regulation 2011* will contain additional requirements relating to construction amenities, falling objects and excavation and spray painting. These additional regulations will be repealed once the relevant codes of practice are approved and made.

## How policy objectives will be achieved

The policy objectives of the *Work Health and Safety Regulation 2011* are to be achieved by:

- giving effect to the national model WHS Regulations to ensure that Queensland's work health and safety legislation embraces the harmonisation of work health and safety laws as endorsed by the Council of Australian Governments, and to ensure that Queensland's health and safety legislation is in line with other jurisdictions' legislation;
- repealing the *Workplace Health and Safety Regulation 2008*;
- regulating dangerous goods and major hazard facilities under the *Work Health and Safety Regulation 2011* and repealing the *Dangerous Goods Safety Management Regulation 2001*;
- amending the *State Penalties Enforcement Regulation 2000* to implement the new penalty structure for infringement offences under the *Work Health and Safety Regulation 2011*.

## Consistency with authorising Act and other legislation

The main objective of the *Work Health and Safety Act 2011* is to provide a balanced and nationally consistent framework to secure the health and safety of workers and workplaces through a number of measures. This objective is achieved by establishing a framework for eliminating risks, or where this is not reasonably practicable, for minimising risks to health and safety. The *Work Health and Safety Regulation 2011* is consistent with this objective.

## Possible alternative approach

The *Work Health and Safety Regulation 2011* will support the *Work Health and Safety Act 2011* in providing a balanced and nationally consistent framework to secure the health and safety of workers and workplaces in Queensland. As it replaces the existing *Workplace Health and Safety Regulation 2008* and the *Dangerous Goods Safety Management Regulation 2001*, there is no alternative to enacting the *Work Health and Safety Regulation 2011*.

## Benefits and costs of implementing the legislation

The national Regulatory Impact Statement (RIS) suggests that harmonisation provides a net gain to the Australian economy. Despite initial adjustment costs, indicatively modelled at around \$886 million (Queensland's share being \$176 million), harmonisation is estimated to produce a net annual average benefit of around \$250 million (Queensland's share being \$50 million) over the next 10 years. This estimate does not include the expected potential productivity benefits of \$300M to \$400M over the next 10 years.

The RIS concludes that businesses that operate in more than one state or territory are \$44.93 per worker better off per year under harmonised WHS regulations. This consists of \$22.24 in compliance cost savings, an additional \$16.12 in safety benefits from harmonisation, \$10.91 in net red tape reductions, but a loss of an average of \$4.33 in general regulatory changes. While these businesses will have one-off adjustment costs of around \$74.62 per worker, the compliance and safety benefits over the longer term are expected to be considerably greater and this is before productivity benefits are even considered.

It is expected that single state businesses and small businesses will face a net cost of \$3.27 per worker per annum. This is because, while Queensland businesses gain an average of \$10.91 per worker from (net) red tape reductions, they will lose an average of \$4.33 per worker from general regulatory changes and there will be an initial, once-off, adjustment cost of \$74.62 per worker (the same as for multi-state businesses).

Adjustment costs consist largely of the one off cost of audit activity associated with determining whether existing safety management systems comply with the proposed regulations. In addition there will be some costs associated with new requirements that include:

- having an agreed procedure for resolving work health and safety issues at a workplace that is communicated to all workers;
- preparation of emergency plans for workplaces that include evacuation procedures, notification to emergency service organisations and effective communication to coordinate an emergency response at the workplace;
- managing the risk of falls that will apply across all industries. Currently Queensland only has specific regulations for the risk of falls in the construction industry; and
- managing the risks of musculoskeletal disorders associated with hazardous manual tasks.

The RIS estimates the safety benefits to the rest of society at \$13.22 per worker for businesses operating in one state or territory and \$27.53 for businesses operating inter-state. There is also a net benefit to the Queensland Government of \$10.92 per worker per annum.

### **Fundamental legislative principles**

The regulation does not breach any fundamental legislative principles.

### **Consultation**

#### *Community*

At the national level, the development of the model WHS regulation and codes of practice has been progressed by the Strategic Issues Group OHS (SIG-OHS) of SWA. This group is comprised of representatives of all nine jurisdictions, the Australian Industry Group (AiG), the Australian Chamber of Commerce and Industry (ACCI) and the ACTU. The model WHS regulation and eleven first stage codes of practice have been approved by SWA which is made up of Commonwealth, State and Territory Governments, employer and worker representatives.

During the public comment period, the Department of Justice and Attorney-General (DJAG) conducted Queensland stakeholder forums on 18 and 19 November 2010 to consult with stakeholders on the content of the proposed package of WHS regulations and codes and to identify any stakeholder issues. Following the finalisation of the model WHS regulations in late July 2011, DJAG held a further two stakeholder forums on 4 and 5 August 2011 to identify any stakeholder issues. These forums included representatives of employers including Civil Contractors Federation, Local Government Association of Queensland, Queensland Rail, Queensland Farmer's Federation, Queensland Hotels Association, Safety Institute of Australia. Union representatives included the Queensland Council of Unions, Australian Workers' Union, Builders Labourers Federation, Construction, Forestry, Mining and Energy Union and the Communication Electrical Plumbers Union. Additionally there has been ongoing consultation with a large number of stakeholders during the development of the model WHS regulations.

#### *Government*

- Department of the Premier and Cabinet
- Queensland Treasury.
- Department of Communities
- Department of Community Safety and Queensland Corrective Services

- Department of Education and Training
- Department of Employment, Economic Development and Innovation
- Department of Environment and Resource Management
- Queensland Health
- Department of Local Government and Planning
- Queensland Police Service
- Queensland Building Services Authority
- Department of Public Works
- Department of Transport and Main Roads
- Corporate Administration Agency

## Notes on provisions

These Regulations are made under section 276 of the *Work Health and Safety Act 2011* and cover a wide range of matters relating to work health and safety, including:

- representation and participation (Chapter 2);
- risk management and general workplace management (Chapter 3);
- hazardous work involving noise, hazardous manual tasks, confined spaces, falls, demolition work, diving work and work requiring a high risk work licence (Chapter 4);
- plant and structures (Chapter 5);
- construction work (Chapter 6);
- hazardous chemicals including lead (Chapter 7);
- asbestos (Chapter 8);
- major hazard facilities (Chapter 9); and
- review of decisions, exemptions and miscellaneous (Chapter 11).

## Chapter 1 Preliminary

### Part 1.1 Introductory matters

#### Short title

*Clause 1* states that this regulation may be cited as the *Work Health and Safety Regulation 2011*.

#### Commencement

*Clause 2* provides that the regulation commences when section 277 of the Act (Repeal of the *Workplace Health and Safety Act 1995*) commences apart from:

- clause 142 (Notice of demolition work) which commences on 1 July 2012; and
- clause 48 (remote or isolated work);
- clause 217 (protective structures on earthmoving machinery);
- clause 272 (duration of registration of an item of plant);
- clause 279(2)(d) (decision on application of registration of an item of plant);
- clause 343 (labelling hazardous chemicals—pipe work);
- clauses 432 (Asbestos management plan) and 433 (Review of asbestos management plan);
- part 8.5, division 1 (Health monitoring);

which commence on 1 January 2013.

In addition clauses 492(2)(i)(ii) and 500(b)(ii) commence on the commencement of the *Waste Reduction and Recycling Act 2011*, section 103.





**Section number not used**

*Clause 3* states that the numbering of provisions of this regulation corresponds to the same numbering in the model regulations prepared for and approved by the Council of Australian Governments. To maximise uniformity, numbers of some regulations in the model regulations which are not relevant to these regulations have not been used unless required for provisions particular to the State. In addition, alphanumeric numbering has been used to insert further provisions peculiar to the State.

**Section number not used**

*Clause 4* refers to the note in clause 3.

**Definitions**

*Clause 5* states that the dictionary in schedule 19 defines particular words used in the regulation.

**Determination of safety management system**

*Clause 6* provides that the regulator may make a determination for the purpose of the definition of *certified safety management system* in chapter 8 (Asbestos).

**Meaning of person conducting a business or undertaking—persons excluded**

*Clause 7* excludes a strata title body corporate that is responsible for any common areas used only for residential purposes from the meaning of a person conducting a business or undertaking in relation to those premises, for the purposes of section 5(6) of the Act. However, the exclusion does not apply if the strata title body corporate engages any worker as an employee.

**Meaning of supply**

*Clause 8* clarifies the meaning of *supply* for the purposes of section 6(3)(b) of the Act. It specifies that the supply of a thing does not include the situation where a thing is supplied by a person, for example, an auctioneer or a real estate agent, who does not control the supply and has no authority to make decisions about the supply.

**Provisions linked to health and safety duties in Act**

*Clause 9* states that where a note at the foot of a provision of this regulation refers to the WHS Act followed by a reference to a section number, the regulation provision sets out the way in which the 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 provision. A failure to comply with a duty or obligation under a section of the Act referred to in such a note is an offence to which a penalty applies.

## **Part 1.2 Application**

### **Application of the Act to dangerous goods and high risk plant**

*Clause 10* excludes the application of the provisions under the WHS Act relating to consultation, representation and participation, discriminatory, coercive and misleading conduct and workplace entry by WHS entry permit holders from the operation of schedule 1 of the Act, which relates to the application of provisions relating to dangerous goods and high risk plant at places that are not workplaces.

### **Application of this regulation**

*Clause 11* specifies that a duty imposed on a person under the 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 the regulation.

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

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

## **Part 1.3 Incorporated documents**

### **Documents incorporated as in force when incorporated**

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

### **Inconsistencies between provisions**

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

### **References to standards**

*Clause 15* clarifies what is meant by references made to Australian Standards and Australia/New Zealand Standards in the regulation.

## **Chapter 2 Representation and participation**

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

This chapter prescribes matters for part 5 (Consultation, representation and participation) of the Act and part 7 (Workplace entry by WHS entry permit holders) of the Act.

## **Part 2.1 Representation**

### **Division 1 Work groups**

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

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

Clause 16 also notes that under section 51(3) of the Act, a work group may be determined so as to include workers at more than one workplace. Under subdivision 3 of division 3 of part 5 of the Act, a work group may also be determined to include workers who carry out work for two or more PCBUs at one or more workplaces.

#### **Matters to be taken into account in negotiations**

*Clause 17* provides that all relevant matters must be taken into account when negotiating for, determining or varying work groups as required by sections 52(6) and 56(4) of the Act. These relevant matters must include the thirteen matters set out by this clause.

### **Division 2 Health and safety representatives**

#### **Procedures for election of health and safety representatives**

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

Subclause 18(2) requires the person conducting the election to take all reasonable steps to ensure that:

- each PCBU with a worker in the work group is informed of the date of the election as soon as practicable after the date is determined,
- all workers in the workgroup are given an opportunity to nominate for the position of health and safety representative and to vote in the election, and
- all workers in the work group and all relevant PCBUs are informed of the outcome of the election.

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

*Clause 19* provides that a PCBU must not unreasonably delay the election of a health and safety representative.

#### **Removal of health and safety representatives**

*Clause 20* provides further details on how a majority of members of a work group may remove a health and safety representative as allowed under section 64(2)(d) of the Act.

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

Subclause 20(2) provides that a member of the work group nominated by the members who signed the declaration removing the health and safety representative, must, as soon as practicable, inform

the removed health and safety representative and each PCBU with a worker in the work group of the removal. The nominated member must also, as soon as practicable, take all reasonable steps to inform all members of the work group of the removal.

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

### **Training for health and safety representatives**

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

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

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

- the content and quality of the curriculum,
- relevance of the curriculum to the powers and functions of a health and safety representative, and
- the qualifications, knowledge and experience of the person who is to provide the training.

Clause 21 also notes that in addition to the entitlements set out in this clause, the health and safety representative and the relevant PCBU may agree that the representative will attend or receive further training.

It is further noted that the power to approve a course of training includes a power to revoke or vary the approval.

## **Part 2.2 Issue resolution**

### **Agreed procedure—minimum requirements**

*Clause 22* sets out the minimum requirements for an agreed procedure for issue resolution at the workplace.

Subclause 22(2) requires the agreed procedure for issue resolution to include the steps set out in clause 23.

Subclause 22(3) further requires the PCBU to ensure that the agreed procedure is set out in writing, and is communicated to all workers to whom the agreed procedure applies.

### **Default procedure**

*Clause 23* provides the default procedure for issue resolution as allowed under section 81(2) of the Act.

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

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

In attempting to resolve the issue, subclause 23(4) provides that all parties must have regard to all relevant matters including:

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

Subclause 23(5) allows a party who is involved in resolving the issue to be assisted or represented by a person nominated by the party.

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

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

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

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

### **Continuity of engagement of worker**

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

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

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

### **Training requirement for WHS entry permits**

*Clause 25* provides that the prescribed training required under sections 131 and 133 of the Act is training that is provided or approved by the regulator. Subclause 25(1) sets out the matters that must be covered by the training.

Subclause 25(2) requires the training to provide participants with information about the availability of any guidance material published by the regulator in relation to the Act and the regulation.

Subclause 25(3) provides that for the purpose of approving training, the regulator may have regard to any relevant matter, including:

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

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

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

### **Notice of entry—general**

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

### **Additional requirements—entry under section 117**

*Clause 28* sets out additional requirements for entry under section 117 of the Act (entry to enquire into suspected contraventions). A notice of entry in relation to section 119 of the Act must also include:

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

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

### **Additional requirements—entry under section 120**

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

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

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

### **Additional requirements—entry under section 121**

Clause 30 sets out additional requirements for a notice of entry under section 122 of the Act. A notice of entry in relation to section 121 must also include:

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

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

### **Register of WHS entry permit holders**

Clause 31 provides that the commission must publish on its website an up-to-date register of WHS entry permit holders and the date on which the register was last updated as required by section 151 of the Act.

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

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

Part 3.1 requires duty-holders to manage risks to health and safety by identifying all reasonably foreseeable hazards, applying a control measure that is reasonably practicable after working through a hierarchy of risk control measures, and then maintaining and reviewing these risk control measures..

There are additional regulations about risk management in part 4.3 (Confined spaces), part 4.8 (Diving work), part 7.1 (Hazardous chemicals) and chapter 9 (Major Hazard Facilities).

#### **Application of part 3.1**

Clause 32 specifies that part 3.1 applies to a PCBU who has a duty under the regulation to manage risks to health and safety.

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

Clause 33 provides that any specific requirements, such as a requirement to assess a risk or not to exceed an exposure standard or to implement a specific control measure, under the regulation for the management of that risk must be complied with when implementing the requirements of part 3.1.

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

Clause 34 states that a duty holder, in managing risks to health and safety, must identify reasonably foreseeable hazards that could result in risks to health and safety.



### **Management of risk**

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

### **Hierarchy of control measures**

*Clause 36* sets out the hierarchy of control measures to be implemented to minimise risks to health and safety if it is not reasonably practicable for a duty holder to eliminate risks to health and safety. If it is not possible to eliminate a risk, then a duty holder must, so far as is reasonably practicable, either substitute the hazard with something that gives rise to a lesser risk or isolate the hazard from any person exposed to it or implement engineering controls. If it is not reasonably practicable to do any of these things, or if a risk remains, the duty holder needs to consider administrative controls or the provisions and use of suitable personal protective equipment. A duty holder may use a combination of controls to minimise a risk so far as is reasonably practicable if a single control is not sufficient for the purpose.

### **Maintenance of control measures**

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

### **Review of control measures**

*Clause 38* requires a duty holder to review and revise control measures implemented under the regulation in circumstances set out in this clause so as to maintain, so far as is reasonably practicable, a work environment that is without risks to health or safety.

## **Part 3.2 General workplace management**

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

There are additional regulations about emergency plans in part 4.3 (Confined spaces), part 4.4 (Falls), part 4.8 (Diving work), part 7.1 (Hazardous chemicals) and chapter 9 (Major hazard facilities). Additional regulations about personal protective equipment are contained in part 4.3 (Confined spaces), part 4.4 (Falls); chapter 6 (Construction work), and chapter 8 (Asbestos).

Additional regulations about workplace environment can be found in part 4.2 (Hazardous manual tasks), part 4.3 (Confined spaces), part 4.4 (Falls), chapter 6 (Construction work), chapter 8 (Asbestos) and chapter 9 (Major hazard facilities).

Regulations about training, information and instruction are also included in part 4.3 (Confined spaces), part 4.4 (Falls); part 4.8 (Diving work); chapter 6 (Construction work), part 7.1 (Hazardous chemicals), part 7.2 (Lead), chapter 8 (Asbestos) and chapter 8 (Major hazard facilities).

Part 3.2 (General workplace management) covers work health and safety requirements in relation to:

- Training, information and instruction
- Workplace facilities
- First aid
- Emergency plans
- Personal protective equipment
- Remote or isolated work
- Managing risks from airborne contaminants
- Hazardous atmospheres
- Ignition sources
- Storage of flammable or combustible substances
- Falling objects

## **Division 1 Information, training and instruction**

### **Provision of information, training and instruction**

*Clause 39* specifies that this clause applies to a PCBU for the purposes of section 19 of the Act. The PCBU must ensure that information, training and instruction provided to a worker includes consideration of certain matters in a way that is suitable, adequate and readily understood.

## **Division 2 General working environment**

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

*Clause 40* sets out the requirements for a PCBU at a workplace to ensure that the workplace layout and maintenance allows persons to enter, exit and move about without risk to health and safety in normal working conditions and in an emergency. It also sets out similar requirements in relation to space for work to occur, floors and other surfaces, lighting, ventilation, work undertaken in extremes of heat or cold, and work on or near essential services.

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

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

## **Division 3 First aid**

### **Duty to provide first aid**

*Clause 42* states that a PCBU at a workplace must ensure first aid equipment is provided, access to first aid facilities and access by each worker to the equipment. A PCBU is also required to ensure that an adequate number of workers are trained to administer first aid, and to enable access by workers to these trained persons. The PCBU is required to consider a number of listed relevant matters in determining the adequacy of first aid facilities and equipment.

## **Division 4 Emergency plans**

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

*Clause 43* requires a PCBU at a workplace to prepare an emergency plan for the workplace which provides for specified requirements. All relevant matters must be considered when preparing the plan, and the PCBU is required to implement the emergency plan in the event of an emergency.

This section commences 1 July 2012 (see Clause 716).

## **Division 5 Personal protective equipment**

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

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

The PCBU who directs the carrying out of work must ensure that the personal protective equipment provided is selected to minimise the risk to health and safety, is suitable to the work, hazard, and to the reasonable comfort and fit of the wearer, and is maintained and used as required. The PCBU must provide the worker with training, information and instruction in the proper use, wearing, storage and maintenance requirements

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

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

### **Duties of worker**

*Clause 46* applies if a PCBU provides a worker with personal protective equipment. The worker is required:

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

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

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

## **Division 6 Remote or isolated work**

### **Remote or isolated work**

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

This section commences 1 January 2013 (see Clause 2).

## **Division 7 Managing risks from airborne contaminants**

### **Ensuring exposure standards for substances etc not exceeded**

*Clause 49* provides that a PCBU 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 relevant exposure standard.

### **Monitoring airborne contaminant levels**

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

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

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

## **Division 8 Hazardous atmospheres**

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

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

### **Ignition sources**

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

## **Division 9 Storage of flammable or combustible substances**

### **Flammable and combustible material not to be accumulated**

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

## **Division 10 Falling objects**

### **Management of risk of falling objects**

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

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

*Clause 55* requires a PCBU to minimise the risk of an object falling by providing adequate protection against the risk if it is not reasonably practicable to eliminate the risk referred to in clause 54. It describes *adequate protection against the risk* as the provision and maintenance of a safe system of work, including preventing an object from falling freely, so far as is reasonably practicable. If it is not reasonably practicable to prevent an object from falling, a system to arrest a falling object must be provided, so far as is reasonably practicable. Examples include the provision of a secure barrier, a safe means of raising and lowering objects or an exclusion zone which prohibits persons from entering the area.

## **Chapter 4 Hazardous work**

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

### **Part 4.1 Noise**

Part 4.1 imposes duties on PCBUs in relation to the exposure of workers to noise at the workplace.

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

*Clause 56* sets out and explains the exposure standard for noise.

#### **Managing risk of hearing loss from noise**

*Clause 57* provides that, a PCBU at a workplace must manage the risks to health and safety relating to hearing loss associated with noise. Subclause 57(1) also refers to section 19 of the Act and clarifies that part 3.1 of this Regulation contains general risk management requirements.

Subclause 57(2) provides that the PCBU must ensure that workers at the workplace are not exposed to noise that exceeds the exposure standard.

#### **Audiometric testing**

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

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

Subclause 58(2) requires the PCBU who provides the personal protective equipment must also provide audiometric testing for the worker within 3 months of the worker commencing the work and, in any event, at least every 2 years. However, if a worker commences work for a PCBU in 2012, the PCBU has 12 months from the date of the worker commencing the work to provide the audiometric testing (see Clause 777).

Subclause 58(3) provides the meaning of audiometric testing.

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

*Clause 59* sets out the duties of designers, manufacturers, importers or suppliers of plant.

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

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

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

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

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

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

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

Subclause 59(6) requires a supplier of plant to take all reasonable steps to obtain the information the designer, manufacturer or importer is required to provide to a supplier and to give that information to any person to whom the supplier supplies the plant.

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

Part 4.2 imposes duties on PCBUs to manage the risk of a musculoskeletal disorder associated with a hazardous manual task. It also specifies the duties placed on designers, manufacturers, importers and suppliers of plant or structures for hazardous manual tasks.

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

*Clause 60* specifies that a PCBU must manage the risk of a musculoskeletal disorder associated with a hazardous manual task. The PCBU must have regard to all relevant matters that may contribute to a musculoskeletal disorder when determining what control measures must be implemented to manage the risk of the musculoskeletal disorder. The matters that must be regarded in this process are listed in this clause.

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

*Clause 61* outlines the duties placed on designers, manufacturers, importers and suppliers of plant or structures.

A designer and manufacturer of plant or a structure must eliminate, or if it is not reasonably practicable to do so, minimise the need for a hazardous manual task to be carried out in relation to the plant or structure when it is being designed and manufactured.

A designer and manufacturer of plant or a structure must also give adequate information about the features of the plant or structure that eliminate or minimise the need for any hazardous manual task to an importer or supplier of the plant or structure.

An importer or a supplier of plant or a structure must take all reasonable steps to obtain the relevant information about the features of the plant or structure from the manufacturer. The importer or supplier must give this information to any person to whom the plant or structure is supplied.

### **Part 4.3 Confined spaces**

Part 4.3 applies to any confined space that is or could be entered by a person. It imposes duties on PCBUs to comply with particular requirements relating to minimising the need to enter confined spaces, safe working practices and confined space hazards including risk assessment, control measures, training, emergency response and record keeping. It also imposes duties on designers, manufacturers and suppliers about confined spaces related to plant and structures.

#### **Division 1 Preliminary**

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

*Clause 62* provides that part 4.3 of the regulation applies to any confined space that is or could be entered by a person. It also clarifies that the person with management or control of the confined space is the PCBU.

##### **Application to emergency service workers**

*Clause 63* exempts an emergency service worker from the requirements for an entry permit and signage if they are either rescuing or performing first aid on a person in a confined space at the direction of the emergency service organisation.

#### **Division 2 Duties of designer, manufacturer, importer, supplier, installer and constructor of plant or structure**

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

*Clause 64* imposes a duty on a designer, manufacturer, importer or supplier, and a person who installs or constructs plant or a structure that is or is intended to be a confined space, to eliminate or minimise the need for a person to enter the space, or minimise health and safety risks for any person entering the space, including safe access.

#### **Division 3 Duties of person conducting business or undertaking**

##### **Entry into confined space must comply with this Division**

*Clause 65* provides that a PCBU must ensure that a worker does not enter a confined space before the duties in division 3 of part 4.3 have been complied with.

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

*Clause 66* requires a PCBU to manage risks to health and safety associated with a confined space at a workplace by having the risks assessed by a competent person, and the results recorded in writing, which includes all relevant matters as well as those specified in subclause 61(4). Furthermore, the clause requires the PCBU to ensure that this risk assessment is revised to reflect any review of control measures.

### **Confined space entry permit**

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

### **Signage**

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

### **Communication and safety monitoring**

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

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

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

### **Specific control—atmosphere**

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

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

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



monitoring flammable gas detector is used in the space. The PCBU must ensure that any worker is immediately removed from the space if the concentration of any flammable gas, vapour or mist in the atmosphere of the confined space is equal to or greater than 10% of its LEL.

### **Specific control—fire and explosion**

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

### **Emergency procedures**

*Clause 74* requires a PCBU to establish first aid and rescue procedures to be followed in the event of an emergency in a confined space, and to ensure that the procedures are practised to ensure that they are efficient and effective. The PCBU is required to ensure that first aid and rescue procedures are initiated from outside the confined space as soon as practicable in an emergency. Furthermore, the PCBU must ensure that access is large enough to facilitate emergency access, that access is not obstructed, and that plant, equipment and personal protective equipment provided for first aid or emergency rescue are maintained in good working order.

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

*Clause 75* 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. The clause requires the PCBU to take all reasonable steps to ensure that air supplied respiratory equipment is provided and available for use by the worker in an emergency where the atmosphere in the confined space does not have a safe oxygen level, or has a harmful concentration of an airborne contaminant, or there is a serious risk of the atmosphere developing such a condition. Furthermore, the PCBU is required to ensure that suitable personal protective equipment is provided and available for use by the worker in an emergency in which an engulfment has occurred inside the confined space, or there is a serious risk of an engulfment occurring while the worker is in the space.

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

*Clause 76* requires a PCBU to ensure that relevant workers are provided with suitable and adequate information, training and instruction in relation to particular listed issues. The PCBU is also required to keep a record of this training for two years. This clause clarifies the meaning of *relevant worker* to include workers (and their supervisors) who may enter the confined space, or carry out regulated confined space functions (including emergency procedures), whether they enter the confined space or not.

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

*Clause 77* states that if a PCBU prepares a risk assessment under clause 66, or issues a confined space entry permit under clause 67, the PCBU must keep a copy of the risk assessment and a copy of the confined space entry permit as required under this clause. In addition to this, the PCBU must keep the copy of the assessment or permit (as the case requires) for at least 2 years after the occurrence of a notifiable incident in connection with the work to which the assessment or permit relates. This clause also requires the PCBU to ensure that, for the period for which the assessment or permit must be kept, a copy is available for inspection under the Act, and by any relevant worker on request.

## Part 4.4 Falls

Part 4.4 applies to situations where a person could fall from one level to another where that fall is reasonably likely to cause injury to the person or any other person. This part also sets out requirements for control measures which eliminate or minimise the risk of a fall.

### Management of risk of fall

Clause 78 requires a PCBU at a workplace to manage the risk of a fall by a person from one level to another, where that fall is reasonably likely to cause injury to the person or any other person. The clause explains that a fall from one level to another includes a potential fall in or on an elevated workplace, or in the vicinity of an opening or edge through which or over which a person could fall, or a surface through which a person could fall, or any other place from which a person could fall.

The clause goes on to require the PCBU to ensure, so far as is reasonably practicable, that any work that involves the risk of a fall is carried out on the ground or on a solid construction. The PCBU is also required to provide a safe means of access to and exit from the workplace or areas within the workplace. This clause also provides a meaning for the term *solid construction*.

### Specific requirements to minimise risk of fall

Clause 79 applies if it is not reasonably practicable to eliminate the risk of a fall referred to in clause 78. This clause requires a PCBU to minimise the risk of a fall by providing adequate protection against the fall risk. In this clause, *adequate protection* is taken to be provided if the PCBU provides and maintains a safe system of work, including:

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

This clause provides examples of what a safe system of work could include, and makes note of the potential to use a combination of control measures to minimise a risk so far as is practicable if a single control is not sufficient for the purpose.

This clause does not apply to the performance of stunt work, acrobatics, theatrical performance, a sporting or athletic activity or horse riding. This clause also provides examples of fall prevention devices.

### Emergency and rescue procedures

Clause 80 requires a PCBU (who implements a fall arrest system as a measure to control risk) to establish emergency and rescue procedures in relation to the use of the system, and ensure that the emergency and rescue procedures are tested so that they are effective. The PCBU is further required to provide relevant workers with suitable and adequate information, training and instruction in relation to the emergency and rescue procedures.

This clause also provides a meaning for *relevant worker*, which includes both a worker who uses or is required to use a fall arrest system, as well as a worker who may be involved in initiating or implementing the emergency and rescue procedures.

Clause 80 commences on 1 January 2013 for work that is not construction work (see Clause 717).

## Part 4.5 High risk work

Part 4.5 requires persons carrying out high risk work to be licensed, identifies relevant qualifications for an applicant for a high risk work licence, establishes the licensing process and process for review of licensing decisions and provides for accreditation of assessors of competency.

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

Schedules 4-5 of the Regulation apply to this part.

Licence categories for high risk work are:

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

Most of these licences were required under the previous *Workplace Health and Safety Regulation 2008*. However:

- (i) Reach stacker – because this is a new licence category the requirement to hold this licence will commence on 1 January 2013. In the meantime, operators will be able to continue to operate reach stackers if they hold a non-slewing mobile crane licence;
- (ii) Vehicle mounted concrete placing boom unit – because new units of competency are to be developed during 2012, operators will be able to continue operating under existing licences till 31 December 2012;
- (iii) Reciprocating steam engines and steam turbines – because new units of competency are to be developed during 2012, operators will be able to continue operating under existing licences till 31 December 2012; and
- (iv) Boilers – because the categories of basic and intermediate boiler have been amalgamated and new units of competency are to be developed for the amalgamated licence (standard boiler operation) during 2012, operators will be able to continue operating under existing licences till 31 December 2012.

The previous *Workplace Health and Safety Regulation 2008* also allowed operators of vehicle loading cranes and bridge and gantry cranes (remote control only) to also perform dogging work when the load was lifted within their view. Because this is no longer allowed, the requirement to have a dogger will not commence till 1 January 2013.

This part also outlines how to apply for a high risk work licence and places certain requirements on the regulator relating to the granting or refusal of an application. It contains provisions covering the replacement, surrender, renewal, suspension and cancellation of licences.

This part also sets out the accreditation requirements for accredited assessors in relation to assessing competency for a high risk work licence.

## **Division 1 Licensing of high risk work**

### **Subdivision 1 Requirement to be licensed**

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

*Clause 81* specifies that 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.

Licences for high risk work issued under the repealed regulation are considered to be licences under the WHS regulation and will continue in force under the same conditions and for the same term for which they were issued (see *Clause 722*). Any applications for a category of high risk work licence made, but not determined, under the repealed regulation will be considered under the provisions of the repealed regulation and, if granted, will be recognised under the WHS regulation (see *Clause 723*).

However, the following new requirements are introduced by the WHS regulation:

- (i) reach stacker – new licence category;
- (ii) vehicle mounted concrete placing boom – new training units of competency will be developed during 2012;
- (iii) reciprocating steam engines and steam turbines – new units of competency will be developed during 2012; and
- (iv) basic and intermediate boiler classes are being amalgamated (standard boiler operation) – new units of competency will be developed during 2012 (see *Clause 722*).

Where a person applies for a licence under a new category during 2012 and the VET course for that licence category is not available, the person may use an assessment summary or statement of attainment obtained for the equivalent course under the repealed regulation to support an application for the licence (see *Clause 724*). Where the equivalent course has been undertaken prior to 2012, a person will require both a statement of attainment and an assessment summary to support an application for a licence. In this case the licence will be issued under the provisions of the repealed regulation but will be recognised as a licence under the WHS regulation (see *Clause 725*).

Licences issue prior to 1 July 2008 and not converted to renewable licences under the repealed regulation will also continue to be recognised under the WHS regulation (see *Clause 730*) and may be converted to renewable licences (see *Clause 729*).

In addition, persons may continue to operate the following types of plant with the nominated licences until 31 December 2012 (see *Clause 726*):

- (i) reach stacker – non-slewing mobile crane licence;
- (ii) vehicle loading crane – slewing mobile crane with a capacity up to 20t, 60t, 100t or over 100t;
- (iii) non-slewing mobile crane – slewing mobile crane with a capacity up to 20t, 60t, 100t or over 100t; and
- (iv) dogging – bridge and gantry crane or vehicle loading crane, but only while doing dogging work in connection with the operation of these 2 types of cranes and only where the load being lifted is by remote control and the load is within the view of the operator.

A person holding a standard boiler operation licence may, while the licence is in force, carry out intermediate boiler operation till 31 December 2012 (see *Clause 726*).

In addition, any exemptions given under the repealed regulation will remain in force till 31 December 2012 (see *Clause 727*) and any applications for exemption made under the repealed

regulation not determined by 1 January 2012 will be determined in accordance with the repealed regulation and, if granted, will continue till 31 December 2012 (see Clause 728).

### **Exceptions**

Clause 82 identifies the circumstances in which a person is not required to hold a high risk work licence.

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

Clause 83 clarifies that a reference to a high risk work licence includes a reference to an equivalent licence that was issued by a corresponding regulator under a corresponding WHS law and is being used according to the terms and conditions under which it was granted. It does not apply to a licence that is suspended or cancelled, or has expired in the corresponding jurisdiction.

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

Clause 84 provides that a PCBU must ensure that a person who is carrying out high risk work as part of training towards a high risk work certification is directly supervised except in the limited circumstances stated in this clause. The meaning of *direct supervision* is also provided.

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

Clause 85 requires the PCBU to sight specific written evidence before directing or allowing a worker to carry out high risk work. This includes sighting written evidence of the following:

- a worker has the relevant high risk work licence
- a worker is either undertaking training in a class of high risk work or has completed the training and has applied for a high risk work licence.

The PCBU must keep the written evidence for at least one year after the work was carried out.

A PCBU must also sight written evidence that a worker holds the relevant high risk work licence before directing or allowing the worker to supervise high risk work. The PCBU must keep the written evidence for at least one year after the last occasion on which the supervision work was carried out.

## **Subdivision 2          Licensing process**

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

Clause 86 specifies that only a person who holds a qualification set out in schedule 4 may apply for a high risk work licence.

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

Clause 87 sets out the requirements for an application for a high risk work licence. The application must be made in the approved form, include certain information and the relevant fee.

### **Additional information**

Clause 88 allows the regulator to seek additional information from the applicant if an application for a high risk work licence does not contain sufficient information for the regulator to make a decision whether or not to grant the licence. The request for additional information must be made

in writing and specify the date by which the information is to be given. The regulator may make more than one request for additional information.

The clause states that the application is taken to be withdrawn if the additional information is not provided by the specified date.

### **Decision on application**

*Clause 89* sets out the matters that the regulator must be satisfied with before deciding to grant or refuse a high risk work licence.

The regulator must notify the applicant within 14 days after making a decision to grant the high risk work licence.

An application is taken to have been refused if the regulator does not make a decision within 120 days after receiving the application or the additional information requested under clause 88.

A refusal to grant a high risk work licence is a reviewable decision under clause 676.

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

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

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

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

A decision to refuse to grant a licence is a reviewable decision under clause 676.

### **Duration of licence**

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

### **Licence document**

*Clause 93* provides that if the regulator grants a high risk work licence, the applicant must be issued with a licence document that contains the information specified in this clause.

The licence document must contain a description of each class of licence and the work that is within the scope of each licence if more than one class of high risk work licence is granted to a person.

If the licence holder holds more than one high risk work licence, the licence holder may be issued one licence document in relation to some or all of those licences. In this instance, the licences to which the licence document relates will expire on the date that the first of those licences expires.

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

*Clause 94* requires the licence holder to keep the licence document available for inspection under the Act. However, this requirement does not apply if the licence document is not in the licence holder's possession because it has been returned to the regulator to be amended under clause 97.

### **Reassessment of competency of licence holder**

*Clause 95* allows the regulator to direct a licence holder to obtain a reassessment of their competency to carry out the high risk work covered by the licence, if the regulator reasonably believes that the licence holder may not be competent to carry out that work.

### **Subdivision 3          Amendment of licence document**

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

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

#### **Licence holder to return licence**

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

#### **Replacement licence document**

*Clause 98* sets out the requirements for a licence holder to notify the regulator if the original licence document is lost, stolen or destroyed and to apply for a replacement licence document.. The application must include certain information and the relevant fee.

If the regulator is satisfied that the original licence document was lost, stolen or destroyed, the regulator must issue a replacement licence document. If the regulator refuses to issue a replacement licence document, the regulator must notify the licence holder in writing of this decision, within 14 days after making the decision.

A decision to refuse to replace a licence is a reviewable decision under clause 676.

#### **Voluntary surrender of licence**

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

### **Subdivision 4          Renewal of high risk work licence**

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

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

#### **Application for renewal**

*Clause 101* sets out the requirements for an application for renewal of a high risk work licence. The application must be made before the expiry of the licence and be accompanied by the relevant fee.

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

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

### **Renewal of expired licence**

*Clause 103* allows a person who has an expired high risk work licence to apply for the licence to be renewed within 12 months of the licence expiring. However, if the regulator is satisfied that exceptional circumstances exist, the application may be made within any time period allowed by the regulator. As the licence has expired, the applicant can not carry out the work covered by the licence until the licence is renewed. If the licence lapses beyond the time periods mentioned in this clause, the applicant is required to apply for a new licence under clause 87.

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

*Clause 104* provides that the requirements relating to:

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

also apply in relation to the requirements to renew a licence.

The regulator may renew a high risk work licence granted to a person under a corresponding WHS law if that licence has not been renewed under that law.

A refusal to renew a high risk work licence is a reviewable decision under clause 676.

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

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

## **Subdivision 5          Suspension and cancellation of high risk work licence**

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

*Clause 106* establishes the power of the regulator to suspend or cancel a high risk work licence. It provides that the regulator may suspend or cancel a high risk work licence if the regulator is satisfied about certain matters and specifies the action the regulator may take if the regulator suspends or cancels a licence, including disqualifying the licence holder from applying for a further licence.

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 under clause 676.

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

*Clause 107* sets out what the regulator must do before suspending or cancelling a high risk work licence.



### **Matters taken into account**

*Clause 108* provides that the regulator must consider certain matters before making a decision under clause 106 to suspend or cancel a high risk work licence.

### **Notice of decision**

*Clause 109* requires the regulator to notify the licence holder in writing of the decision to cancel or suspend a high risk work licence under clause 106 within 14 days after making the decision. The clause also specifies the information that must be included in the written notice.

### **Immediate suspension**

*Clause 110* establishes the power of the regulator to immediately suspend a high risk work licence. It also sets out the requirements for the regulator to immediately suspend a high risk work licence without giving notice under clause 109.

### **Licence holder to return licence document**

*Clause 111* provides that a licence holder must return the licence document to the regulator in accordance with a notice received under subclause 109(2)(e).

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

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

## **Division 2 Accreditation of assessors**

### **Subdivision 1 Requirement to be accredited**

#### **Accreditation required to assess competency for high risk work licence**

*Clause 113* provides that a person must not act as an accredited assessor to assess competency for high risk work licences unless appropriately accredited.

#### **Accredited assessor must act in accordance with accreditation**

*Clause 114* specifies that an accredited assessor must act within their scope of accreditation for conducting an assessment and issuing a notice of satisfactory assessment.

### **Subdivision 2 Accreditation process**

#### **Regulator may accredit assessors**

*Clause 115* allows the regulator to accredit persons to conduct assessments.

#### **Application for accreditation**

*Clause 116* sets out the process for an application for accreditation and specifies the information that must be included in the application. The application must be accompanied by the relevant fee.

### **Additional information**

*Clause 117* allows the regulator to seek additional information from the applicant if an application for accreditation does not contain sufficient information for the regulator to make a decision whether or not to grant the accreditation. The request for additional information must be made in writing and specify the date by which the information is to be given. The regulator may make more than one request for additional information.

The clause states that the application is taken to be withdrawn if the additional information is not provided by the specified date.

### **Decision on application**

*Clause 118* sets out the matters that the regulator must be satisfied with before deciding either to grant or refuse an accreditation.

The regulator must notify the applicant within 14 days after making a decision to grant the accreditation.

An application is taken to have been refused if the regulator does not make a decision within 120 days after receiving the application or the additional information requested under clause 117.

A refusal to grant accreditation is a reviewable decision under clause 676.

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

*Clause 119* specifies the matters the regulator must consider when determining whether the applicant for accreditation is able to conduct the assessment to which the application relates competently.

### **Refusal to grant accreditation—process**

*Clause 120* specifies the action the regulator must take if the regulator proposes to refuse to grant an accreditation.

A refusal to grant an accreditation is a reviewable decision under clause 676.

### **Conditions of accreditation**

*Clause 121* allows the regulator, when granting or renewing an accreditation, to impose conditions the regulator considers appropriate on the accreditation and a person must comply with the conditions of accreditation under section 45 of the Act.

A decision to impose a condition on an accreditation is a reviewable decision under clause 676.

### **Duration of accreditation**

*Clause 122* provides that an accreditation takes effect on the day it is granted and expires 3 years after that day unless it is cancelled earlier.

### **Accreditation document**

*Clause 123* provides that if the regulator grants an accreditation, the applicant must be issued with an accreditation document that contains the information specified in this clause.

If the assessor is accredited to conduct an assessment in relation to more than one class of high risk work, the accredited assessor may be issued one accreditation document in relation to some or all of those classes of high risk work. In this case, the accreditation document may contain a description of the class of work that represents the highest level of the classes of high risk work that the assessor is accredited to assess.

### **Accreditation document to be available**

*Clause 124* requires the accredited assessor to keep the accreditation document available for inspection under the Act. However, this requirement does not apply if the accreditation document is not in the accredited assessor's possession because it has been returned to the regulator to be amended under clause 126.

## **Subdivision 3          Amendment of accreditation document**

### **Changes to information**

*Clause 125* requires the accredited assessor of a high risk work licence to notify the regulator in writing of any change to any material particular given at any time by the assessor to the regulator in relation to the accreditation within 14 days after the assessor becomes aware of the change occurring.

### **Accredited assessor to return accreditation document**

*Clause 126* provides that if an accreditation is amended, the accredited assessor must comply with the written request of the regulator to return the accreditation document within the time specified in the request.

### **Replacement accreditation document**

*Clause 127* sets out the requirements for an accredited assessor to notify the regulator if the original accreditation document is lost, stolen or destroyed and to apply for a replacement licence document. The application must include certain information and the relevant fee.

If the regulator is satisfied that the original accreditation document was lost, stolen or destroyed, the regulator must issue a replacement accreditation document. If the regulator refuses to issue a replacement accreditation document, the regulator must notify the accredited assessor in writing of this decision, within 14 days after making the decision.

A refusal to issue a replacement accreditation document is a reviewable decision under clause 676.

### **Voluntary surrender of accreditation**

*Clause 128* provides that an accredited assessor may voluntarily surrender the accreditation document to the regulator, resulting in the expiry of the accreditation document.

## **Subdivision 4          Renewal of accreditation**

### **Regulator may renew accreditation**

*Clause 129* provides that the regulator may renew an accreditation on application by the licence holder.

### **Application for renewal**

*Clause 130* sets out the requirements for an application to renew accreditation. The application must be made before the expiry of the accreditation and be accompanied by the relevant fee.

### **Accreditation continues in force until application is decided**

*Clause 131* provides that if an accredited assessor has applied to renew an accreditation, the accreditation continues to be valid until the accredited assessor is notified about the decision on the application.

### **Provisions relating to application**

*Clause 132* states that the requirements relating to:

- the regulator being satisfied about certain matters before granting an accreditation under clauses 116, 118, 119 and 121; and
- the process for refusing an application for accreditation under section 120;

also apply in relation to the requirements related to the renewal of an accreditation.

A refusal to renew an accreditation is a reviewable decision under clause 676.

## **Subdivision 5            Suspension and cancellation**

### **Regulator may suspend or cancel accreditation**

*Clause 133* establishes the power of the regulator to suspend or cancel an accreditation and specifies the action the regulator may take in relation to suspending or cancelling an accreditation.

A decision to suspend or cancel an accreditation is a reviewable decision under clause 676.

### **Suspension or cancellation of accreditation**

*Clause 134* provides that the regulator may suspend or cancel an accreditation if the regulator is satisfied about certain matters and specifies the action the regulator may take if the regulator suspends or cancels an accreditation.

### **Notice to and submissions by accredited assessor**

*Clause 135* sets out what the regulator must do before suspending or cancelling an accreditation.

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

*Clause 136* provides that the regulator must consider certain matters before making a decision under clause 133 to suspend or cancel an accreditation.

### **Notice of decision**

*Clause 137* requires the regulator to notify the accredited assessor in writing of the decision to cancel or suspend an accreditation under clause 134 within 14 days after making the decision. The clause also specifies the information that must be included in the written notice.

### **Immediate suspension**

*Clause 138* establishes the power of the regulator to immediately suspend an accreditation. It also sets out the requirements for the regulator to immediately suspend an accreditation without giving notice under clause 135.

### **Accredited assessor to return accreditation document**

*Clause 139* provides that an accredited assessor must return the licence document to the regulator in accordance with a notice received under clause 137.

### **Regulator to return accreditation document after suspension**

*Clause 140* provides that the regulator must return the accreditation document to the accredited assessor within 14 days after the suspension ends.

### **Subdivision 6**

#### **Subdivision and section number not used**

*Clause 141* refers to the note to clause 3

## **Part 4.6 Demolition work**

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

### **Division 1 Notice of demolition work**

#### **Notice of demolition work**

*Clause 142* requires a PCBU who proposes to undertake the following demolition work to give the regulator at least 5 days notice:

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

The height of the structure referred to in this clause is measured from the lowest level of the ground immediately adjacent to the base of the structure to its highest point.

If the demolition work is carried out by an emergency service worker at the direction of the emergency service organisation, and to rescue or provide first aid to a person, the emergency service organisation must give notice as soon as practicable after carrying out the work.

*Clause 142* commences on 1 July 2012.

## **Division 2 Certificate for demolition work**

### **Certificate required to perform demolition work**

*Clause 143* states that a PCBU must not perform demolition work unless the PCBU holds a certificate to perform the work issued by the regulator.

Certificates issued under the repealed regulation will continue in force under the same conditions and for the same period for which they were issued (see Clauses 732, 733, 734 and 736). Applications made before 2012 will be considered under the provisions of the repealed regulation and, if granted, will be recognised under the WHS regulation (see Clause 735).

**Application for certificate** *Clause 144* allows a person to apply to the regulator for a certificate to perform demolition work. The circumstances under which the regulator may grant the application are specified. The clause also provides for the certificate to be valid for 2 years from the day it is granted unless suspended or cancelled.

### **Conditions**

*Clause 144A* provides that a certificate held by a person to perform demolition work is subject to certain conditions. Subclause 144A(a) requires the person to take all reasonable steps to ensure the person continues to satisfy the approved criteria defined in subclause 144(4). Subclause 144A(b) requires the performance of demolition work to be restricted to the particular structures or particular types of structures stated in the certificate.

### **How to apply for a certificate**

*Clause 144B* sets out the requirements for an application for a certificate to perform demolition work to be accompanied by the relevant fee.

### **Refusal to grant certificate—false assessment summary**

*Clause 144C* provides that the regulator may refuse to grant a certificate to perform demolition work if a person who performed an assessment summary that is relied on for the application has, within the five years immediately before the application is made, been charged with or convicted of an offence against a relevant WHS law for knowingly signing a false assessment summary. An application will not be refused if the charge is withdrawn or dismissed. However, the regulator may decide to grant the certificate if the regulator reasonably believes that the assessment summary is satisfactory in the particular case.

### **Refusal of application for lack of competence or for misconduct**

*Clause 144D* sets out the grounds under which the regulator may refuse the application.

### **Refusal of application**

*Clause 144E* provides that the regulator must refuse to grant the application if the applicant already holds a certificate of the same type. The regulator may refuse to grant the application if the regulator has cancelled a certificate of the same type within the two years immediately before the application is made because the certificate was obtained fraudulently or in another improper way.

### **Regulator to decide application within 28 days**

*Clause 144F* sets out the timeframes in which the regulator must decide an application.

### **Grant of certificate**

*Clause 144G* provides that if the regulator decides to grant the application the regulator must issue the certificate in the approved form to the applicant within 10 days after making the decision.

### **Notice of refusal of application**

*Clause 144H* provides that the regulator must give written notice to the applicant of the decision to refuse an application for a certificate within 10 days after making the decision. The notice must state the reasons for refusal and the appeal rights of the person under part 11.1.

### **Grant of certificate on conditions**

*Clause 144I* provides that the regulator may grant a certificate on conditions that the regulator considers appropriate.

### **Replacement of certificate**

*Clause 144J* provides that the holder of a lost, damaged, destroyed or stolen certificate may apply to the regulator for a replacement certificate. The clause sets out the requirements for an application for a replacement certificate. The regulator may replace the certificate if satisfied that it has been lost, damaged, destroyed or stolen.

### **Surrender of certificate**

*Clause 144K* sets out the requirements for the holder of a certificate to surrender their certificate.

### **Grounds for suspension or cancellation**

*Clause 144L* states the grounds on which the regulator may suspend or cancel a certificate.

### **Procedure for suspension or cancellation**

*Clause 144M* sets out the procedure and related timeframes that must be followed before action is taken to suspend or cancel a certificate under clause 144L.

### **Immediate suspension of certificate**

*Clause 144N* establishes the power, and sets out the requirements, for the regulator to immediately suspend a certificate to perform demolition work.

### **Further provision about immediate suspension**

*Clause 144O* provides further information about what happens if a notice of suspension is given to the holder of a certificate under clause 144N.

### **Certificate to be returned**

*Clause 144P* sets out the process to be followed for the return of a certificate to perform demolition work that has been suspended or cancelled. The clause also provides that the regulator must return the certificate to the holder at the end of the period of the suspension.

### **Duty of PCBU who is an employer for training in demolition work**

*Clause 144Q* requires PCBU who allows a worker to perform demolition work must ensure that the worker has received appropriate training in safe working methods for the performance of demolition work.

### **Supervision by competent person**

*Clause 144R* requires the holder of a certificate to perform demolition work to ensure the performance of demolition work is directly supervised by a competent person. This clause also provides the meaning of *competent person* for demolition work.

## **Part 4.7**

### **Part number and section numbers 145–166 not used**

*Clause 145* refers to the note to clause 3.

## **Part 4.8 Diving work**

Part 4.8 applies to a person carrying out a business or undertaking involving diving work at a workplace to ensure:

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

Part 4.8 prohibits workers from carrying out specified diving work unless relevant competency requirements are met.

## **Division 1 Preliminary**

### **Purpose of Part 4.8**

*Clause 167* provides that the purpose of part 4.8 is to impose duties on a PCBU to ensure the fitness, competence, and health and safety of persons who carry out general diving work and high risk diving work, as well as the health and safety of other persons at workplaces where general diving work or high risk diving work is carried out.

## **Division 2 General diving work—fitness and competence of worker**

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

*Clause 168* prevents a PCBU at a workplace from directing or allowing a worker to carry out general diving work or to undergo training for general diving work unless the worker holds a current certificate of medical fitness, and that the work or training complies with any conditions on the current certificate of medical fitness of the worker.

### **Certificate of medical fitness**

*Clause 169* requires that a certificate of medical fitness is issued by a registered medical practitioner with appropriate training in underwater medicine, and that the certificate must state a number of things, including any conditions imposed on the certificate holder.

### **Duty to keep certificate of medical fitness**

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



### **Competence of worker—general diving work**

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

### **Competence of worker— incidental diving work**

*Clause 172* requires that a person must not carry out incidental diving work unless the person has the listed training, qualification or experience and relevant diving experience. The meaning of *relevant diving experience* for this clause is also specified.

### **Competence of worker—limited scientific diving work**

*Clause 173* prescribes that a person who is not permanently resident in Australia must not carry out limited scientific diving work unless the person has the listed training, qualification or experience and relevant diving experience obtained outside Australia. The meaning of *relevant diving experience* for this clause is also specified.

### **Competence of competent person supervising general diving work**

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

### **Evidence of competence—duty of person conducting business or undertaking**

*Clause 175* states that a PCBU must not direct or allow a worker to carry out general diving work unless the person sees written evidence that the worker has the relevant competence, and keeps this evidence for at least 1 year after the diving work is performed.

A PCBU must not direct or allow a person appointed as a competent person to supervise diving work (under clause 177) unless the PCBU sees written evidence that the person appointed has the competence required under clause 174, and keeps this evidence for at least 1 year after the last occasion that supervision work is performed.

## **Division 3 Managing risks—general diving work**

### **Management of risks to health and safety**

*Clause 176* requires a PCBU to manage risks to health and safety associated with general diving work, which includes the need for a risk assessment which is conducted by a competent person and recorded in writing.

### **Appointment of competent person to supervise diving work**

*Clause 177* requires a PCBU to appoint one or more competent persons to supervise general diving work and to perform other functions required in division 3 of part 4.8 of this regulation.

### **Additional control—dive plan**

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

### **Dive plan must be complied with**

*Clause 179* requires a PCBU to ensure that general diving work is carried out in accordance with the dive plan prepared for that work, and that a dive supervisor is appointed (under clause 177) to brief workers on the dive plan before commencing work under the plan.

### **Additional control—dive safety log to be kept**

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

### **Use of dive safety log**

*Clause 181* requires a PCBU, in connection with the general diving work, to ensure that:

- after each dive, the return of each diver is verified in the dive safety log, by both the diver and the dive supervisor
- the dive supervisor makes and verifies entries in the dive safety log of the number of workers and other persons diving from a vessel, before the dive work commences and before the vessel leaves the location after the dive work is completed
- a dive safety log is kept for at least 1 year after the last entry is made

### **Record keeping**

*Clause 182* states that if a PCBU prepares a risk assessment or dive plan (clauses 176 and 178), they must keep the risk assessment for at least 28 days after the work is completed and the dive plan until the dive work is completed. However, if a notifiable incident occurs, the PCBU must keep the relevant documents for at least 2 years after the incident occurs. During these statutory record retention periods, the PCBU must make the record readily accessible to any worker involved in the work, and available for inspection under the Act.

## **Division 4 High risk diving work**

### **Duties of person conducting business or undertaking**

*Clause 183* requires a PCBU to ensure that the fitness and competence of persons carrying out high risk diving work, and the undertaking of that high risk diving work, meets the requirements of AS/NZS 2299.1:2007.

However, until the end of December 2012, a person may carry out high risk diving work as a dive supervisor if the person has:

- (a) the same qualification required by a person conducting the high risk diving work to be supervised; and
- (b) experience in the type of high risk diving work to be supervised (see Clause 778).

### **Duty of worker—competence**

*Clause 184* requires that a worker must not carry out high risk diving work unless the worker has the qualifications, knowledge, skills and experience required by AS/NZS 2299.1:2007 for high risk diving work.

However, until the end of December 2012, a person may carry out high risk diving work as a dive supervisor if the person has:

- (a) the same qualification required by a person conducting the high risk diving work to be supervised; and
- (b) experience in the type of high risk diving work to be supervised (see *Clause 778*).

## **Chapter 5 Plant and structures**

Chapter 5 imposes duties upon designers, manufacturers, importers and suppliers of plant, in order to ensure health and safety in respect of subsequent use of plant. It imposes duties upon PCBUs that commission plant or structures to comply with designer or manufacturer information, and with relevant health and safety instructions. It imposes complementary duties on PCBUs with management and control of plant, as well as imposing a range of additional control measures for specific types of plant. It provides for the registration of plant and plant designs, and imposes additional duties in respect of plant and plant designs that are required to be registered.

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

A note to this part states that schedule 1 of the Act will extend to plant outside the workplace. Part 12 contains operative provisions relating to high risk plant not at workplaces.

#### **Division 1 Preliminary**

##### **Application of part 5.1 to plant**

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

##### **Application of part 5.1 to structures**

*Clause 186* provides that this part applies to structures as well as to plant.

#### **Division 2 Duties of persons conducting businesses or undertakings that design plant**

##### **Provision of information to manufacturer**

*Clause 187* requires a designer of plant to ensure that, when the design is made available to the manufacturer, the manufacturer is provided with information to enable the plant to be manufactured in accordance with the design specifications. *Clause 187* lists other information about the plant that must be made available to the manufacturer if applicable.

### **Hazard identified in design during manufacture**

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

### **Guarding**

*Clause 189* applies if a designer of plant uses guarding as a measure to control risk.

Subclause 189(2) provides that, if a designer uses guarding as a measure to control risk, the designer must ensure, as far as reasonably practicable, that the guarding will prevent access to the danger point or area of the plant.

Subclause 189(3) requires the designer to ensure that, if access to the area of the plant requiring guarding is not necessary during the operation, maintenance or cleaning of the plant, that guarding is of the type specified in the subclause.

Subclause 189(4) requires the designer to ensure that guarding will withstand impact or shock, and that it is as difficult as reasonably possible to bypass or disable.

Subclause 189(5) requires the designer to ensure that, if the plant contains moving parts that may break or be ejected, guarding will control any risks from broken or ejected parts.

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

### **Operational controls**

*Clause 190* applies to an operator's controls for plant.

Subclause 190(1) lists requirements the designer must meet for the design of any operator's controls for plant.

Subclause 190 (2) provides that, if the need to operate plant during maintenance or cleaning cannot be eliminated, the designer is required to design operator's controls that cannot be operated by anyone other than the person maintaining or cleaning the plant, to allow the operation of the plant without risk, or with minimal risk, during maintenance or cleaning.

### **Emergency stop controls**

*Clause 191* applies to plant designed to be operated or attended by more than one person, and with more than one emergency stop control fitted.

Subclause 191(1) requires the designer to ensure that the design provides for stop controls of the 'stop and lock off' type so that the plant cannot be restarted unless they are reset after use.

Subclause 191(2) includes specifications to be met by the designer of the plant if the design includes an emergency stop control.

### **Warning devices**

Clause 192 applies if the design of plant includes an emergency warning device or if it is necessary to include an emergency warning device to minimise risk.

Subclause 192 (1) provides that, if the design of plant includes an emergency warning device, the designer must ensure it is positioned to work to best effect.

## **Division 3 Duties of persons conducting businesses or undertakings that manufacture plant**

### **Control of risk**

*Clause 193* applies to a manufacturer of plant.

Subclause 193(1) requires the manufacturer to ensure that the plant is manufactured, inspected and tested, if required, in accordance with the information provided by the designer of the plant under the Act and the Regulation.

Subclause 193(2) sets out the steps a manufacturer must take when a hazard is identified in the design of the plant during the manufacturing process for which the designer has not provided a control measure.

### **Guarding**

*Clause 194* applies to a manufacturer of plant in relation to guarding.

Subclause 194 (1) requires a manufacturer to ensure that guarding used to control risk will withstand impact or shock.

Subclause 194(2) also requires a manufacturer to ensure that guarding is removable to allow repair, servicing and maintenance when the plant is not in normal operation, and that the plant cannot be restarted unless the guarding is replaced.

### **Information must be obtained and provided**

*Clause 195* requires a manufacturer of plant to take all reasonable steps to obtain the information the designer of plant is required to provide under section 22(4)(a) and (c) of the Act and clauses 187 and 188 in this Chapter and to:

- provide the information supplied by the designer to a person to whom the manufacturer supplies the plant; and
- provide the information supplied by the designer about a hazard identified during the manufacturing process to a person to whom the manufacturer supplies the plant.

## **Division 4 Duties of persons conducting businesses or undertakings that import plant**

### **Information to be obtained and provided by importer**

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

### **Control of risk**

*Clause 197* requires an importer of plant to ensure that the plant is inspected, having regard to the information provided by the manufacturer, and if that information requires the plant to be tested, that it is tested in accordance with the information. The clause also provides that, if any hazards are identified, the importer must not supply the plant until the risks have been eliminated. If it is not reasonably practicable to eliminate the risks, the importer must advise the person to whom the plant is supplied of the risks and take all reasonable steps to ensure that the designer and manufacturer are consulted regarding any alteration made to the plant to control the risk.

## **Division 5 Duties of persons conducting businesses or undertakings that supply plant**

### **Information to be obtained and provided by supplier**

*Clause 198* requires a supplier of plant to take all reasonable steps to obtain the information to be provided by the manufacturer under section 23(4) (a) and (c) of the Act and this regulation, and to ensure that the person to whom the plant is supplied is given the information.

### **Supply of second-hand plant—duties of supplier**

*Clause 199* applies to a supplier of second-hand plant in relation to the plant.

Subclause 199(1) requires a supplier to ensure, so far as is reasonably practicable, that any faults in the plant are identified.

Subclause 199(2) requires a supplier to ensure that written notice is provided to the person to whom the plant is to be supplied, advising of the condition of the plant, of any faults identified, and if appropriate, that the plant should not be used until the faults are rectified.

Subclause 199(3) provides that this requirement does not apply to plant to be used as scrap or spare parts.

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

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

## **Division 6 Duties of persons conducting businesses or undertakings that install, construct or commission plant or structures**

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

*Clause 201* applies to a PCBU that installs, constructs or commissions plant to be used, or that is reasonably expected to be used, at a workplace.

Subclause 201(1) requires a PCBU to ensure that the plant is installed, constructed or commissioned having regard to the information provided by the designer or manufacturer under the Act and this regulation, or instructions provided by a competent person, to the extent that these instructions relate to health and safety.

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

*Clause 202* applies to a PCBU that installs, constructs or commissions a structure to be used, or that could reasonably be expected to be used, at a workplace.

Subclause 202(1) requires a PCBU to ensure that the structure is installed, constructed or commissioned having regard to the information provided by the designer or manufacturer under the Act and this regulation, or instructions provided by a competent person, to the extent that these instructions relate to health and safety.

## **Division 7 General duties of a person conducting a business or undertaking involving the management or control of plant**

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

### **Subdivision 1 Management of risks**

#### **Management of risks to health and safety**

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

### **Subdivision 2 Additional control measures for general plant**

#### **Control of risks arising from installation or commissioning**

*Clause 204* applies to a person with management or control of plant at a workplace. This clause requires a person with management or control of plant:

- not to commission the plant unless the person has established, so far as is reasonably practicable, that the plant is without risks to health and safety,
- not to decommission or dismantle the plant unless this can be carried out, so far as is reasonably practicable, without risks to health and safety,
- to ensure that a person who installs, assembles, constructs, commissions or decommissions or dismantles the plant is a competent person,
- to 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,
- to 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 are monitored.

#### **Preventing unauthorised alterations to or interference with plant**

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

### **Proper use of plant and controls**

*Clause 206* applies to a person with management or control of plant at a workplace.

Subclause 206(1) requires a person with management or control of plant to take reasonable steps to ensure that plant is used only for the purpose for which it was designed, unless the person has determined that the proposed use does not increase the risk to health or safety.

Subclause 206(2) states that 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 is assessed by a competent person.

Subclause 206 (3) provides that a person with management or control of plant must take all reasonable steps to ensure that health and safety features and warning devices are used in accordance with the instructions and information provided under clause 39.

### **Plant not in use**

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

### **Guarding**

*Clause 208* applies when guarding is used as a measure to control risk associated with plant at a workplace.

Subclause 208(2) provides that the person with management or control of the plant must ensure, as far as reasonably practicable, that the guarding specified in the clause is used for particular circumstances.

Subclause 208(3) requires the person with management or control of the plant to ensure that the guarding will withstand impact or shock, that it is difficult to bypass or disable, that it does not create risks in itself and that it is reasonably maintained.

Subclause 208(4) provides that, if the plant contains moving parts that may break or be ejected, the person with management or control of the plant must ensure, as far as is reasonably practicable, that the guarding will control any risk.

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

### **Guarding and insulation from heat and cold**

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

### **Operational controls**

*Clause 210* sets out the requirements for operational controls on plant at a workplace.



Subclause 210(1) requires the person with management or control of plant at a workplace to ensure that any operator's controls are identified, located, guarded and lockable as specified in the subclause.

Subclause 210(2) provides that, if the need to operate plant during maintenance or cleaning cannot be eliminated, the person with management or control of the plant must ensure that the operator's controls cannot be operated by anyone other than the person maintaining or cleaning the plant, or a person authorised by the person with management or control, and that the plant can be operated without risk, or with minimal risk, during maintenance or cleaning.

### **Emergency stops**

*Clause 211* applies to plant at a workplace that is designed to be operated or attended by more than one person and more than one emergency stop control is fitted.

Subclause 211(1) requires the person with management or control of the plant to ensure that the emergency stop controls are of the 'stop and lock-off' type so that the plant cannot be restarted unless they are reset after use.

Subclause 211(2) lists additional requirements for the emergency stop controls to be met by the person with management or control of the plant.

### **Warning devices**

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

### **Maintenance and inspection of plant**

*Clause 213* requires the person with management or control of the plant to ensure that the maintenance and inspection, and if necessary, testing of plant is carried out by a competent person.

Subclause 213(2) requires the person with management or control of plant to ensure that the maintenance, repair, inspection and, if necessary, testing of the plant is carried out:

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

### **Subdivision 3 Additional control measures for particular plant**

#### **Powered mobile plant—general control of risk**

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

- the plant overturning; or
- things falling on the operator of the plant; or
- the operator being ejected from the plant; or
- the plant colliding with any person or thing; or

- mechanical failure of pressurised elements of plant that may release fluids that pose a risk to health and safety.

### **Powered mobile plant—specific control measures**

Clause 215 requires a PCBU with management or control of powered mobile plant at a workplace to use specific control measures and to ensure, so far as is reasonably practicable:

- that a suitable combination of operator protective devices for the plant is provided, maintained and used,
- that no one other than the operator rides on the plant unless they are provided with a level of protection equivalent to that provided to the operator,
- that the plant does not collide with pedestrians or other powered mobile plant,

If there is a possibility of the plant colliding with pedestrians or other powered mobile plant, it must have a warning device that will warn persons who may be at risk from the movement of the plant.

### **Roll-over protection on tractors**

Clause 216 provides for roll-over protective structures to be fitted on tractors.

Subclause 216(1) requires the person with management or control of a tractor at a workplace to ensure that the tractor is not used unless it is securely fitted with a rollover protective structure.

Subclause 216(2) provides that, if a tractor is used in a place that is too low for the tractor to work while it is fitted with a roll-over protective structure, the structure may be lowered or removed while the tractor is used in such a situation (but only if other measures to minimise the risk of roll-over are in place).

Subclause 216(3) states that this regulation does not apply if the tractor is:

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

The clause includes definitions of *roll over protective structure* and *historical purpose or activity*, and notes that clauses 214 and 215 will also apply to a tractor.

### **Protective structures on earthmoving machinery**

Clause 217 provides for protective structures to be fitted to earthmoving machinery.

Subclause 217 (1) requires the person with management or control of earthmoving machinery at a workplace to ensure that the machinery is not used unless it is securely fitted with a protective structure.

Subclause 217 (2) clarifies that this provision does not apply to earthmoving machinery that has a weight of less than 1500 kg (not including attachments to the machinery) and is not designed to have a seated operator.

The clause includes a definition of *protective structure* and notes that clauses 214 and 215 also apply to earthmoving machinery.

Clause 217 commences on 1 January 2013 (see Clause 2).

### **Industrial lift trucks**

*Clause 218* provides for industrial lift trucks at a workplace to be fitted with a protective structure.

Subclause 218(1) requires the person with management or control of an industrial lift truck at a workplace to ensure that it is equipped with lifting attachments suitable for the load to be lifted or moved. The truck must be operated in a manner that ensures that the risks to the operator of the truck and other persons are eliminated or minimised as far as is reasonably practicable.

Subclause 218(2) also requires the person with management or control to ensure that the industrial lift truck is not used to carry a passenger unless it is designed to do so, and that the passenger seat complies with the requirements specified in the clause.

### **Plant that lifts or suspends loads**

*Clause 219* provides for the safe use of plant that lifts or suspends persons or things.

Clause 219(2) requires the person with management or control of plant used to lift or suspend persons or things at the workplace to ensure, as far as reasonably practicable, that the plant used is specifically designed to lift or suspend the load.

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

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

Subclauses 219(4), (5), (6) and (7) specify how the person must ensure that lifting and suspension are carried out.

### **Exception—Plant not specifically designed to lift or suspend a person**

*Clause 220* provides that the person with management or control of plant that is not specifically designed to lift or suspend a person at a workplace must ensure that:

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

Subclause 220(2) provides that clause 220 does not apply to plant used in connection with stunt work, acrobatics or theatrical performances, which are governed by part 4.4 (except clause 79).

### **Plant used in connection with tree lopping**

*Clause 221* provides that the requirements under clause 220 to use a work box to lift or suspend people do not apply in connection with tree lopping if:

- 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 to climb a tree; and
- the tree lopping is carried out by a competent person using that harness; and
- a crane is used to put the competent person in the tree to fell it; and

- the crane has safety mechanisms that would prevent the competent person from inadvertently falling; and
- while attached to the crane, the competent person is in visual, audio or radio communication with the crane operator.

*Harness* is defined for the purpose of this clause.

### **Industrial robots**

*Clause 222* provides for the safe use of industrial robots at the workplace.

*Clause 222(2)* states that the person with management or control of an industrial robot or other remotely or automatically energised plant at a workplace must not allow or direct a worker to work in the immediate vicinity of the plant if it could start without warning and cause a hazard, unless suitable control measures are in place to control the risks to health and safety.

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

### **Lasers**

*Clause 223* provides for the safe use of laser equipment at the workplace. The person with management or control of laser equipment must ensure that laser equipment intended for use on plant is designed, constructed and installed so as to prevent accidental irradiation. The person must ensure laser equipment on plant is protected so that any operator of the plant or other person is not exposed to the radiation specified in subclause 223 (2) and that the visual equipment used for the observation or adjustment of laser equipment on plant causes no risk to health or safety from laser rays. In addition, the person must ensure that the workers operating the laser equipment are trained in the proper operation of the equipment.

Subclause 223(6) requires the person to ensure that Class 3B and Class 4 lasers (within the meaning of *AS 2397 Safe Use of Lasers in the Building and Construction Industry*) are not used in construction work.

### **Pressure equipment**

*Clause 224* provides for the safe use of pressure equipment at a workplace.

Subclause 224(1) requires the person with management or control of pressure equipment at a workplace to ensure the equipment is inspected regularly by a competent person, and that any gas cylinder inspected is marked with a current inspection mark to show the most recent inspection.

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

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

### **Scaffolds**

*Clause 225* applies to a suspended scaffold, a cantilevered scaffold, a spur scaffold, a hung scaffold and any other scaffold from which a person or thing could fall more than 4m.

The person with management or control of a scaffold at a workplace must ensure:

- that the scaffold is not used unless the person receives written confirmation from a competent person that construction of the scaffold has been completed,
- that the scaffold and its supporting structure are inspected by a competent person at the times specified in the subclause.
- that, if an inspection indicates that a scaffold at a workplace, or its supporting structure, creates a risk to health or safety, any necessary work is carried out, and the scaffold and its supporting structure are inspected by a competent person before the scaffold is used again.
- that unauthorised access to the scaffold while it is incomplete or unattended is prevented, for example, by danger tags.

**Plant with presence-sensing safeguarding system—records**

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

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

The note to part 5.2 states that the person with management or control of plant at a workplace is the PCBU to the extent that the business or undertaking involves the management or control of plant in whole or in part at the workplace. The note also states that part 5.2 applies in addition to part 5.1, and specifies that, in this part, *plant* includes a structure, as in the definition of *plant* in schedule 19.

### **Division 1 Application of Part 5.2**

#### **Application of part 5.2**

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

### **Division 2 Duty of person conducting a business or undertaking who designs plant to record plant design**

#### **Records and information**

*Clause 228* states that, if the design of plant requires registration under part 5.3, the designer of the plant must make a record of the method used to determine the control measures for the plant, and the control measures resulting from that determination, and copies of the information listed in clause 228.

#### **Record of standards or engineering principles used**

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

#### **Records to be available for inspection**

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

### **Division 3 Duties of a person conducting a business or undertaking**

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

*Clause 231* provides that a manufacturer must not supply plant specified in part 1 of schedule 5 unless the design of that plant is registered under part 5.3.

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

*Clause 232* states that an importer must not supply plant specified in part 1 of schedule 5 unless the design of that plant is registered under part 5.3.

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

*Clause 233* states that a supplier must not supply plant specified in part 1 of schedule 5 unless the design of that plant is registered under part 5.3.

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

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

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

## **Division 4 Duties of a person conducting a business or undertaking involving the management or control of plant**

### **Subdivision 1 Control measures for registered plant**

#### **Major inspection of registered mobile cranes and tower cranes**

*Clause 235* provides for a major inspection of registered mobile cranes and tower cranes.

Subclause 235(2) requires the person with management or control of a registered mobile crane or tower crane at a workplace to ensure that a competent person carries out the maintenance, repair, inspection and, if necessary, testing of the crane.

Subclause 235(3) requires that the crane must be inspected:

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

Subclause 235(4) defines 'competent person' for the purposes of clause 235.

### **Lifts**

*Clause 236* provides for the safety of lifts at a workplace.

Subclause 236(2) provides that the person with management or control of a lift at a workplace (including maintenance of a lift) must ensure, if there is a risk that people could fall down the lift well, that secure barriers are in place to prevent people falling, and secure working platforms or equivalent arrangements are provided to prevent a person working in the lift well from falling.

Subclause 236 (3) requires the person with management or control of a lift to ensure there is a safe means of entry to and exit from the base of the lift well. In addition, subclause 236(4) requires the person with management or control of a lift to ensure a sign is fixed prominently in the lift stating the safe working load specified in the design of the lift.

### **Records of plant**

*Clause 237* applies to plant that is required to be registered under part 5.3. The clause requires the person with management or control of the plant at the workplace to keep a record of all tests, inspections, maintenance, commissioning, decommissioning, dismantling and alterations of the plant for the period specified in the clause. The clause specifies that the person must keep the record available for inspection under the Act and to any person to whom the person relinquishes control of the plant.

## **Subdivision 2 Control measures for amusement devices**

### **Operation of amusement devices**

*Clause 238* provides for the safe operation of amusement devices.

Subclause 238(1) requires the person with management or control of an amusement device at a workplace to ensure that the amusement device is operated only by a person who has been provided with instruction and training in the proper operation of the device.

Subclause 238(2) requires the person to ensure that:

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

### **Storage of amusement devices**

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

### **Maintenance, inspection and testing of amusement device**

*Clause 240* provides for the maintenance, inspection and testing of amusement devices.

Subclause 240(1) provides that the person with management or control of an amusement device at a workplace must ensure that a competent person carries out the maintenance, inspection and, if necessary, testing of the amusement device in accordance with the designer's and/or the manufacturer's recommendations, or in accordance with the maintenance manual if a competent person has prepared a manual for the amusement device.

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

### **Annual inspection of amusement device**

*Clause 241* requires the person with management or control of an amusement device at a workplace to ensure that a detailed inspection of the device is carried out at least once every 12 months by a competent person.

Subclause 241 (2) lists the checks that must be carried out at the annual inspection, and includes a requirement for a detailed inspection of the amusement device to ensure compliance with the Act and the regulation.

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

Subclause 241(5) defines 'competent person' for the purpose of this clause.



### **Log book and manuals for amusement device**

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

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

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

The note to part 5.3 states that, in this part, 'plant' includes a structure, and refers to the definition of 'plant' in schedule 19.

### **Division 1 Plant designs to be registered**

#### **Plant design to be registered**

Clause 243 states that the design of plant specified in part 1 of schedule 5 must be registered under this part. Designs of plant already registered under the repealed regulation will continue to be registered under the WHS regulation (see Clause 718). Applications made, but not determined under the repealed regulation will be considered under the provisions of the repealed regulation and recognised under the WHS regulation (see Clause 719).

The items of plant that require design registration are the same as those requiring design registration under the repealed regulation except for the following new items:

- (i) concrete placement booms with delivery arms – design registration requirement commences 1 January 2013 (see Clause 779); and
- (ii) prefabricated formwork – design registration requirement commences 1 January 2013 (see Clause 779).

#### **Altered plant designs to be registered**

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

#### **Recognition of designs registered by corresponding regulator**

Clause 245 relates to the recognition of designs registered elsewhere in Australia. It specifies that a design of plant, or an altered design of plant, registered by a corresponding regulator under a corresponding work health and safety law, is not required to be registered under this part.

### **Division 2 Items of plant to be registered**

#### **Items of plant to be registered**

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

Items of plant already registered under the repealed regulation will continue to be registered under the WHS regulation (see Clause 718). Applications made, but not determined under the repealed regulation will be considered under the provisions of the repealed regulation and recognised under the WHS regulation (see Clause 719).

The items of plant that are required to be registered are the same as those requiring registration under the repealed regulation with the following changes:

- (i) air conditioning units and cooling towers do not need to be registered (see Clause 720); and
- (ii) lifts in domestic premises will be required to be registered from 1 January 2013 (see Clause 780).

### **Recognition of plant registered by corresponding regulator**

*Clause 247* states that an item of plant registered by a corresponding regulator under a corresponding work health and safety law is not required to be registered under this part.

## **Division 3 Registration process for plant designs**

### **Application of Division 3**

*Clause 248* states that this division applies to the registration of a plant design specified in schedule 5, part 1.

### **Who can apply to register a plant design**

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

### **Application for registration**

*Clause 250* sets out the requirements for an application for the registration of a plant design and the information required. The clause also provides that the application must be accompanied by the relevant fee.

### **Design verification statement**

*Clause 251* specifies the content and the inclusions required in the design verification statement for a design of plant.

### **Who can be the design verifier**

*Clause 252* specifies who is eligible to be a design verifier for a design of plant. The clause states that a person is not eligible to be the design verifier if the person was involved in the production of the design, or engaged by the PCBU that produced the design at the time the design was produced, unless the PCBU uses the quality system specified in the clause.

### **Duty of design verifier**

*Clause 253* states that a design verifier of a design of plant specified in schedule 5, part 1 must document the design verification process and the results of that process.

### **Design verification statements not to be made in particular circumstances**

*Clause 254* specifies that a person must not make design verification statements for a design of plant specified in part 1 of schedule 5 if the person is not eligible to be a design verifier for that design, or if the person has not carried out a verification of the design.

### **Additional information**

*Clause 255* enables the regulator to ask an applicant to provide additional information to enable the regulator to make a decision on whether or not to grant the registration. The clause also provides that if the applicant does not provide the additional information by the date specified, the application is taken to be withdrawn.

### **Decision on application**

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

A refusal to grant a registration under this clause is a reviewable decision under clause 676.

### **Refusal of registration—process**

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

A refusal to grant a registration is a reviewable decision under clause 676.

### **Conditions of registration**

*Clause 258* enables the regulator to impose conditions on the registration of plant design when granting the registration. A note states that a person must comply with the conditions of registration.

A decision to impose a condition on a registration is a reviewable decision under clause 676.

### **Registration of plant design granted for unlimited duration**

*Clause 259* provides that a registration of a plant design is granted for an unlimited duration.

### **Plant design registration number**

*Clause 260* sets out the obligations to be met by the applicant if the regulator registers a plant design and issues a plant design registration number.

### **Registration document**

*Clause 261* sets out the requirements for the content of the registration document issued by the regulator when registering plant design.

### **Registration document to be available**

*Clause 262* requires a registration holder to keep the registration document available for inspection under the Act, other than when the registration document is not in the registration holder's possession as provided under clauses 287 or 288.

### **Disclosure of design information**

*Clause 263* prohibits the regulator from disclosing any confidential information provided by an applicant registering a design of an item of plant to any person, except in the circumstances set out in this clause. The clause also provides that the regulator may provide a copy of the design verification statement to the people specified in the clause.

Subclause 263(4) provides that, if the registration holder for the design of the plant cannot be located or no longer exists, the regulator may provide the person with management or control of plant with the minimum information about the plant design necessary for the safe operation of the plant.

## **Division 4 Registration process for an item of plant**

### **Application of division 4**

*Clause 264* provides that this division applies to the registration of an item of plant specified in part 2 of schedule 5.

### **Who can apply to register an item of plant**

*Clause 265* provides that a person with management or control of an item of plant may apply to the regulator for the registration of that item of plant.

### **Application for registration**

*Clause 266* sets out the requirements for an application for registration of an item of plant. The clause also provides that the application must be accompanied by the relevant fee.

### **When is a person competent to inspect plant**

*Clause 267* sets out the qualifications required for a person to be competent to inspect an item of plant.

### **Additional information**

*Clause 268* enables the regulator to ask an applicant to provide additional information so that the regulator can make a decision on whether or not to grant the registration. This clause also provides that if the applicant does not provide the additional information by the date specified, the application is taken to be withdrawn.

### **Decision on application**

*Clause 269* specifies the circumstances in which the regulator must grant or refuse to grant the registration. The clause requires the regulator to refuse to grant a registration if the regulator is satisfied that the applicant has given information that is false or misleading, or failed to give any material information. If the regulator decides to grant the registration, it must notify the applicant within 14 days after making the decision.

The clause also provides that if the regulator does not make a decision within 120 days after receiving the application, or additional information requested under clause 268, the regulator is taken to have refused the application.

A refusal to grant a registration is a reviewable decision under clause 676.

### **Refusal of registration—process**

*Clause 270* sets out the process the regulator must follow if the regulator proposes to refuse to grant an application for registration.

A refusal to grant a registration is a reviewable decision under clause 676.

### **Conditions of registration**

*Clause 271* enables the regulator to impose conditions on the registration of an item of plant. The person must comply with the conditions of registration.

A decision to impose a condition on a registration is a reviewable decision under clause 676.

### **Duration of registration**

*Clause 272* provides that a registration of an item of plant takes effect on the day it is granted and expires 5 years after that day.

*Clause 272* commences on 1 January 2013 (see Clause 2). In the meantime, the provisions of the repealed regulation relating to plant registration continue to apply until 31 January 2013 (see Clause 272A).

### **Duration of registration on commencement**

*Clause 272A* states that a registration of an item of plant granted before 1 January 2013 is valid from the day registration was granted until 31 January 2013.

### **Plant registration number**

*Clause 273* provides that, if the regulator registers an item of plant, the regulator must issue a plant registration number to the registration holder within 14 days after the registration, to give to the person with management or control of the plant at a workplace. The person with management or control of the plant must ensure that the registration number is marked on the item of plant.

### **Registration document**

*Clause 274* sets out the contents required in the registration document to be issued by the regulator if the regulator registers an item of plant. The clause provides that the registration document must be issued to the applicant within 14 days after the regulator makes the decision.

### **Registration document to be available**

*Clause 275* requires a registration holder of an item of plant to keep the registration document available for inspection under the Act, except when the registration document is not in the registration holder's possession, in the circumstances set out in clauses 287 and 288.

### **Regulator may renew registration**

*Clause 276* enables the regulator to renew the registration of an item of plant.

### **Application for renewal**

*Clause 277* sets out the information to be provided in an application for renewal of registration of an item of plant. The clause also provides that the application must be accompanied by the relevant fee.

### **Registration continues in force until application is decided**

*Clause 278* states that, if a registration holder applies under clause 277 for the renewal of a registration, the registration is taken to continue in force from the day it would have expired until the registration holder is given notice of the decision on the application.

### **Decision on application**

*Clause 279* requires the regulator to renew the registration of an item of plant, provided the regulator is satisfied that the application for renewal has been made in accordance with this division and the plant has been maintained and inspected in accordance with clause 213.

A refusal to grant a registration is a reviewable decision under clause 676.

### **Duration of renewal on commencement**

*Clause 279A* states that a renewal of the registration of an item of plant, granted before 1 January 2013, is valid from 1 February until 31 January in the following year. Subclause 279A states that this clause expires on 31 January 2013.

### **Status of registration during review**

*Clause 280* provides for the status of a registration of an item of plant during an internal review, if the regulator gives a registration holder written notice before the registration of the plant expires, that it proposes to refuse to renew the registration, and the registration holder seeks an internal review.

## **Division 5 Changes to registration and registration documents**

### **Application of Division**

*Clause 281* provides that this division applies to the registration of a plant design and the registration of an item of plant.

### **Changes to information**

*Clause 282* requires a registration holder to give the regulator written notice of any change to specified information within 14 days after the registration holder becomes aware of the change.

The clause also requires a registration holder for an item of plant to give written notice to the regulator if:

- the item of plant is altered such that the plant requires new control measures; or
- the plant is usually fixed and is relocated; or
- the registration holder no longer has management or control of the item of plant.

#### **Amendment of registration imposed by regulator**

*Clause 283* enables the regulator, on its own initiative, to amend a registration, including by varying or deleting a condition, or imposing a new condition on the registration. The clause also specifies the process to be followed by the regulator before amending a registration.

A decision to amend a registration is a reviewable decision under clause 676.

#### **Amendment on application by registration holder**

*Clause 284* enables the regulator to amend a registration at the request of the registration holder. The clause also specifies the process the regulator must follow if the regulator proposes to refuse to amend the registration.

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

#### **Minor corrections to registration**

*Clause 285* enables the regulator to make minor amendments to a registration, including correcting an obvious error, or changing an address.

#### **Regulator to provide amended registration document**

*Clause 286* requires the regulator, if it amends a registration and considers that the registration document requires amendment, to give the registration holder an amended registration document within 14 days of making the decision.

#### **Registration holder to return registration document**

*Clause 287* requires a registration holder to return the registration document to the regulator for amendment at the written request of the regulator within the time specified in the request.

#### **Replacement registration document**

*Clause 288* requires a registration holder to give written notice to the regulator if the registration document is lost, stolen or destroyed. The clause also sets out the requirements for an application for a replacement document, and provides that the regulator may issue a replacement registration document if satisfied that it has been lost, stolen, or destroyed. If the regulator refuses to issue a replacement document, it must give the registration holder written notice of the decision with reasons within 14 days of making the decision.

A refusal to issue a replacement registration document is a reviewable decision under clause 676.

## Chapter 6 Construction work

Chapter 6 imposes additional duties on PCBUs who undertake construction work within the meaning of clause 289, and high risk construction work within the meaning of clause 291. It requires PCBUs that commission construction work in relation to a structure to consult with the designer, and requires designers of structures to provide a written report regarding health and safety. It requires PCBUs to control risks associated with construction work and high risk construction work and imposes duties in respect of safe work method statements, excavation work and trenches. It also imposes duties upon principal contractors including preparation of a written WHS management plan, signage obligations and obligations to ensure compliance with other regulations at the workplace. It imposes duties upon PCBUs, workers and persons about general induction training.

### Part 6.1 Preliminary

Part 6.1 sets out the meaning of terms used in this part.

#### Meaning of *construction work*

Clause 289 sets out the meaning of *construction work*. The clause also lists the areas excluded from construction work.

#### Meaning of *structure*

Clause 290 states that the meaning of *structure* has the same meaning as it has in the Act. However, chapter 6 does not apply to plant unless the conditions stated in the clause exist.

#### Meaning of *high risk construction work*

Clause 291 provides the meaning of *high risk construction work*.

#### Meaning of *construction project*

Clause 292 explains that a *construction project* is a project that involves construction work where the cost of the construction work is \$250,000 or above.

#### Meaning of *principal contractor*

Clause 293 provides that the principal contractor for a construction project is:

- the PCBU that commissions the construction project; or
- a person engaged by the PCBU to have management or control of the workplace and to discharge the duties of a principal contractor.

The clause also states that the principal contractor for a construction project in relation to residential premises is the PCBU directly or indirectly engaged by the owner of the premises to undertake a construction project and who has management or control of the workplace.

There is only one principal contractor for a construction project at any specific time.



## **Part 6.2 Duties of designer of structure and person who commissions construction work**

Part 6.2 clarifies the duties of designers of structures and of a PCBU who commissions construction work in relation to that structure.

### **Person who commissions work must consult with designer**

*Clause 294* sets out the consultation requirements between a PCBU who commissions construction work in relation to a structure and the designer of the structure, or part of the structure, to ensure that risks to health and safety arising from the design during construction are eliminated or minimised, so far as is reasonably practicable.

### **Designer must give safety report to person who commissions design**

*Clause 295* requires the designer of a structure or part of a structure to give a written safety report to the PCBU who commissioned the design. The report must address the matters specified in the clause.

If the PCBU who commissions a construction project did not commission the design of the project, the PCBU must take all reasonable steps to obtain a copy of the written report in relation to that design.

### **Person who commissions project must give information to principal contractor**

*Clause 296* provides that if a PCBU that commissions a construction project engages a principal contractor for the construction project, the PCBU must give the principal contractor relevant information about hazards and risks at or in the vicinity of the workplace where the construction work is to be carried out.

## **Part 6.3 Duties of person conducting business or undertaking**

Part 6.3 sets out the duties of a PCBU carrying out construction work. As a principal contractor is also a PCBU, this part also applies to a principal contractor. It specifies the requirements for safe work method statements and excavation work.

### **Division 1 General**

#### **Management of risks to health and safety**

*Clause 297* requires a PCBU to manage risks associated with carrying out construction work.

#### **Security of workplace**

*Clause 298* provides that a person with management or control of a workplace at which construction work is carried out must have regard to certain matters to ensure, so far as is reasonably practicable, that the workplace is secured from unauthorised access.

### **Division 2 High risk construction work—safe work method statements**

#### **Safe work method statement required for high risk construction work**

*Clause 299* provides that a PCBU for high risk construction work must prepare, or ensure that another person has prepared, a safe work method statement for the high risk construction work

before the work is carried out. The safe work method statement must state certain information, and be written in a way that can be accessed and understood by the people who will use it.

Subclause 299(4) requires a safe work method statement for high risk construction work that involves a risk of a person falling more than 2m and, where the only control measures to be implemented will be administrative controls or the provision of personal protective equipment, to describe in the safe work method statement all control measures considered in determining which control measures to implement (including by addressing the general fall protection requirements in section 79(3)).

A work method statement prepared under the repealed regulation for high risk work commenced prior to 1 January 2012 is taken to be a safe work method statement under the WHS regulation (see Clause 764).

### **Compliance with safe work method statement**

*Clause 300* states that a PCBU for high risk construction work must have arrangements in place to ensure that the high risk construction work is carried out in accordance with the relevant safe work method statement. The clause also specifies what the PCBU must do if the high risk construction work is not being carried out in accordance with the safe work method statement.

### **Safe work method statement—copy to be given to principal contractor**

*Clause 301* requires a PCBU for high risk construction work in connection with a construction project to ensure that a safe work method statement is given to the principal contractor before the high risk construction work starts.

### **Review of safe work method statement**

*Clause 302* provides that a PCBU must ensure a safe work method statement is reviewed and revised as necessary if relevant control measures under clause 38 are revised.

### **Safe work method statement must be kept**

*Clause 303* states that a PCBU must keep a copy of the safe work method statement until the high risk construction work to which it relates is completed. The copy of the statement must be readily accessible to any worker engaged by the PCBU to carry out the high risk construction work and be available for inspection under the Act.

However, the PCBU must keep the statement for a period of two years if a notifiable incident occurs in connection with the high risk construction work to which the statement relates.

## **Division 3 Excavation work**

### **Excavation work—underground essential services information**

*Clause 304* applies to a part of a workplace where excavation work is being carried out and any adjacent areas. It sets out what a person with management or control of the workplace must do in relation to obtaining and providing to other people current underground essential services information before directing or allowing excavation work to start.

The clause states how the information is to be used, and when the information is to be made available for inspections.

The clause also provides the meaning of *underground essential services* and *underground essential services information* in this clause.

### **Management of risks to health and safety associated with excavation work**

*Clause 305* prescribes that a PCBU must manage the risks to health and safety stated in this clause before directing or allowing excavation work to start. The clause specifies some of the matters that the PCBU must consider when managing risks to health and safety associated with excavation work.

#### **Additional controls—barricade or hoarding**

*Clause 305A* provides that a person with management or control of the workplace must erect a barricade or hoarding at least 900mm high to restrict access by persons to the excavation unless the erection of the barricade or hoarding is impracticable or no person is likely to be in the vicinity of the excavation. This clause provides definitions of a *barricade* and a *hoarding*.

#### **Additional controls—ladders to trenches more than 1.5m deep**

*Clause 305B* applies if access to and from a trench more than 1.5m deep is by ladders. The clause requires that a PCBU must ensure that at least one ladder giving access to and from the trench is installed in every 9m of the length of the trench in the part of the trench where the person will be.

#### **Additional controls—trenches**

*Clause 306* specifies the additional control measures a PCBU who proposes to excavate a trench at least 1.5m deep must put in place. This includes:

- ensuring the work area is secured to prevent unauthorised access; and
- ensuring all sides of the trench are adequately supported by shoring, benching or battering to minimise the risk to any person from the collapse of the trench, unless a geotechnical engineer has provided written advice that all sides of the trench are safe from collapse.

## **Division 4 Additional controls – construction work**

This division covers instructions provided in relation to excavation work, falls, ladders and scaffolding.

### **Subdivision 1 - Definitions**

#### **Definitions**

*Clause 306A* provides a list of definitions of systems preventing falls in construction work.

### **Subdivision 2 – Falls**

#### **Definition for sdiv 2**

*Clause 306B* states that in this subdivision, *ladder* does not include a fixed ladder.

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

*Clause 306C* applies to:

- construction work that is housing construction work during which a person could fall less than 3m; or
- construction work that is not housing construction work during which a person could fall less than 2m; or
- construction work on a roof, or partly completed roof, surface with a slope not over 26°.

However, the clause does not apply to construction work if a person could fall from:

- a ladder or fixed ladder; or
- a platform supported by trestle ladders; or
- scaffolding which the person is erecting or dismantling; or
- an area near a ladder that the person needs to use to get on or off the ladder.

The clause requires the PCBU who carries out construction work to ensure that each hazard that may result in a fall or cause death or injury if a person were to fall is identified and assessed and that control measures are implemented to prevent or minimise the exposure to risk. The control measures must comply with this subdivision and comply with 306H if a fall arresting platform is used. Examples of hazards that may result in a fall or cause death or injury in the event of a fall are provided in this clause.

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

*Clause 306D* applies to:

- construction work that is housing construction work during which a person could fall at least 3m; or
- construction work that is not housing construction work during which a person could fall at least 2m; or
- construction work on a roof, or partly completed roof, surface with a slope over 26°.

However, the clause does not apply to work if a person could fall from:

- a ladder or fixed ladder; or
- a platform supported by trestle ladders; or
- scaffolding which the person is erecting or dismantling; or
- an area near a ladder that the person needs to use to get on or off the ladder.

This clause requires that a PCBU who carries out construction work must, before work commences, use control measures to prevent a person falling any distance or if prevention is not practicable, to arrest the person's fall and to prevent or minimise the risk of death or injury to the person when the fall is arrested. If a control measure mentioned in this subdivision is used the control measure and its use must comply with this subdivision and comply with 306H if a fall arresting platform is used. Examples of control measures to prevent or arrest a person's fall are provided in this clause.

**Edge protection as control measure**

*Clause 306E* applies to a PCBU carrying out construction work who provides edge protection as a control measure. This clause provides that the edge protection must be erected in accordance with instructions of the manufacturer or supplier or otherwise an engineer or competent person. This clause sets out the criteria for the design and use of the edge protection and a definition of *toe board*.

### **Fall protection cover as control measure**

*Clause 306F* states the technical specifications that a fall protection cover must meet to be used as a control measure.

### **Travel restraint system as control measure**

*Clause 306G* applies to a PCBU carrying out construction work who provides a fall arrest system as a control measure that includes a travel restraint system. This clause provides that the travel restraint system must be installed by a competent person. This clause sets out the criteria for the use and maintenance of a travel restraint system. The PCBU must ensure that the system is inspected every 6 months by a competent person and keeps a written record of inspection for the life of the system or for 4 years whichever is the lesser.

### **Fall arresting platform as control measure**

*Clause 306H* provides that a fall arresting platform used as a control measure must be able to withstand the impact of a fall onto it of any person who may reasonably be expected to fall onto it. The clause states the technical specifications that a fall arresting platform must meet if it is to be used as a control measure.

### **Fall arrest harness system as control measure**

*Clause 306I* provides that each anchorage point of a fall-arrest harness system used as a control measure must be designed by an engineer for the purpose for which it is intended to be used, or inspected and approved by a competent person before the anchorage point is first used by any person. The clause states the technical specifications and other conditions that a fall-arrest harness system must meet if it is to be used as a control measure.

The clause requires a PCBU carrying out construction work must ensure there is enough distance available for a person using the system to fall to prevent the person hitting an object, the ground or another surface, other than a vertical surface. The clause outlines the factors that must be considered when determining whether there is enough distance available. The clause also provides that the PCBU must meet certain requirements for inspecting the components of the fall-arrest harness system, including keeping the associated inspection records.

If the system has been used to arrest a fall, it must not be used again unless its manufacturer or a competent person has inspected it and decided that it is safe for use. A PCBU must not use, or allow another person to use the system unless it is in accordance with the instructions of the manufacturer or supplier, or an engineer or competent person. Also, a PCBU must not use, or allow another person to use, the system while the person is using the system alone. The clause provides a definition of *free fall* and *limited free fall*.

### **Safety net as control measure**

*Clause 306J* states the technical specifications that a safety net must meet if it is to be used as a control measure to arrest a fall. The clause provides that a PCBU carrying out construction work must not use, or allow another person to use, the net unless it is used in accordance with the instructions of the net's manufacturer or supplier, or an engineer or competent person. A PCBU must ensure the net is inspected and maintained in accordance with the instructions of an engineer or competent person or the net's manufacturer or supplier.

### **Subdivision 3 Ladders and platforms supported by ladders**

#### **What work may be done from single or extension ladder**

*Clause 306K* applies if a PCBU intends to perform construction work that involves a single or extension ladder. The clause requires a PCBU not to use, or to allow another person to use, the ladder in the circumstances prescribed in this clause.

#### **Work on a ladder**

*Clause 306L* applies if a PCBU intends to perform construction work that involves a ladder. The PCBU must ensure:

- each hazard that may result in a fall by the person who is to use the ladder, or cause death or injury if the person were to fall from the ladder, is identified;
- that the risk of death or injury that may result because of the hazard is assessed; and
- that any control measures required to prevent, or minimise the level of, exposure to the risk are used.

The clause specifies how the PCBU must use, or allow another person to use, a single or extension ladder if:

- the construction work being performed is permitted work; and
- in doing the work, a person could fall at least 3m for housing construction work, or at least 2m for other work.

The clause also requires a PCBU to ensure that a single or extension ladder used against a pole to do construction work has a device that is fitted at or near the top of the ladder between its sides, and helps to ensure the ladder's stability. The clause provides examples of control measures for working on a ladder securely.

#### **Ladders generally**

*Clause 306M* requires a PCBU performing construction work to ensure that a ladder, other than a trestle ladder, used for the work meets the technical specifications stated in this clause.

The clause states that the PCBU must:

- ensure that the bottom of the ladder is on a stable surface and the rungs of the ladder are approximately level;
- not use, or allow another person to use, the ladder to support a platform;
- not use, or allow another person to use a single or extension ladder unless it is used in accordance with the requirements of this clause.

#### **Work on platform supported by trestle ladders**

*Clause 306N* applies if a PCBU intends to perform construction work that involves a platform supported by trestle ladders. The clause requires a PCBU to do certain things before the work starts to ensure:

- each hazard that may result in a fall by the person who is to use the platform, or cause death or injury if the person who is to use the platform were to fall from the platform, is identified;
- that the risk of death or injury that may result because of the hazard is assessed; and
- that any control measures required to prevent, or minimise the level of, exposure to the risk are used.

The clause states that a PCBU must ensure that the technical specifications stated in this clause for work on a platform are complied with before work starts, if the work is:

- housing construction work and the person could fall at least 3m from the platform; or

- not housing construction work and the person could fall at least 2m from the platform

#### **Platform supported by trestle ladders**

*Clause 306O* applies if a PCBU is performing construction work on a platform supported by trestle ladders. The clause requires a PCBU to ensure that the platform meets the technical specifications stated in this clause if the construction work:

- is housing construction work and a person doing the work could fall less than 3m from the platform; or
- is not housing construction work and a person doing the work could fall less than 2m from the platform.

The clause states that a PCBU must ensure that the platform meets the technical specifications stated in this clause if the construction work:

- is housing construction work and a person doing the work could fall at least 3m from the platform; or
- is not housing construction work and a person doing the work could fall at least 2m from the platform.

The clause provides a definition of *light work* and examples of light work.

### **Subdivision 4 Scaffolding**

#### **Erecting scaffolding**

*Clause 306P* applies if a PCBU intends to perform construction work that is the erecting or dismantling of scaffolding. The clause prevents a PCBU from erecting, or from allowing another person to erect, the scaffolding if the erection of the scaffolding is:

- housing construction work and a person could fall at least 3m in erecting the scaffolding; or
- not housing construction work and a person could fall at least 2m in erecting the scaffolding.

However, the above requirement does not apply if:

- the person erecting the scaffolding is prevented from falling by a control measure or is using a fall-arrest harness system; or
- the installation of the scaffolding components meets the technical specifications stated in this clause.

#### **Dismantling scaffolding**

*Clause 306Q* applies if a PCBU intends to perform construction work that is the dismantling of scaffolding. The clause prevents a PCBU from dismantling, or from allowing another person to dismantle, the scaffolding if the dismantling of the scaffolding is:

- housing construction work and a person could fall at least 3m in erecting the scaffolding; or
- not housing construction work and a person could fall at least 2m in erecting the scaffolding.

However, the above requirement does not apply if:

- the person dismantling the scaffolding is prevented from falling by a control measure or is using a fall-arrest harness system; or
- the dismantling of the scaffolding components meets the technical specifications stated in this clause.

## **Part 6.4 Additional duties of principal contractor**

Part 6.4 imposes additional duties on a principal contractor for a construction project. These duties are in addition to those imposed by the Act and the Regulation on a person with management or control of a workplace.

### **Application of part 6.4**

*Clause 307* applies in relation to a construction project and imposes duties on the principal contractor for the project that are additional to the duties imposed under part 6.3.

## **Division 2 General duties**

### **Specific control measure—signage identifying principal contractor**

*Clause 308* provides that the principal for a construction project must install signs that display certain information and are clearly visible from outside the workplace.

### **WHS management plan—preparation**

*Clause 309* requires the principal for a construction project to prepare a written WHS management plan for the workplace before work on the project starts. The WHS management plan must include the information stated in this clause.

A construction safety plan prepared under the repealed regulation for construction work commenced prior to 1 January 2012 is taken to be a WHS management plan under the WHS regulation (see *Clause 765*).

### **WHS management plan—duty to inform**

*Clause 310* sets out the requirements for the principal contractor for a construction project to inform each person who is to carry out construction work in connection with the project about the content of the WHS management plan and the person's right to inspect the WHS management plan under clause 313.

### **WHS management plan—review**

*Clause 311* sets out the requirements for a principal contractor for a construction project to:

- review and revise the WHS management plan to ensure it remains current; and
- ensure, so far as is reasonably practicable, that each person carrying out construction work in connection with the project is made aware of any changes to the WHS management plan.

### **High risk construction work—safe work method statements**

*Clause 312* requires the principal contractor for a construction project to take all reasonable steps to obtain a copy of the safe work method statement relating to high risk construction work before the work starts. A note to clause 312 states that 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 section 309(2)(b) and (e)).



### **Copy of WHS management plan must be kept**

*Clause 313* states that a principal contractor for a construction project must keep a copy of the WHS management plan until the project to which it relates is completed. The copy of the plan must be readily accessible to any person who is to carry out construction work in connection with the project and available for inspection under the Act.

However, the principal contractor must keep the WHS management plan for a period of two years if a notifiable incident occurs in connection with the construction project to which the plan relates.

### **Further health and safety duties—specific sections**

*Clause 314* specifies that the principal contractor for a construction project must put in place arrangements for ensuring compliance at the workplace with the provisions in the Regulation about:

- the general working environment (division 2 of part 3.2)
- first aid (division 3 of part 3.2)
- emergency plans (division 4 of part 3.2)
- personal protective equipment (division 5 of part 3.2)
- managing risks from airborne contaminants (division 7 of part 3.2)
- hazardous atmospheres (division 8 of part 3.2)
- storage of flammable or combustible substances (division 9 of part 2.2)
- falling objects (division 10 of part 3.2)
- falls (part 4.4)

A note to clause 314 states that all PCBUs at the construction project workplace have these same duties (see part 3.2 of this regulation and section 19(3)(e) of the Act). Section 16 of the Act provides for situations in which more than one person has the same duty.

### **Further health and safety duties—specific risks**

*Clause 315* provides that the principal contractor for a construction project must manage risks to health and safety in relation to the matters stated in this clause.

### **315A Amenities**

*Clause 315A* requires a principal contractor to ensure that an amenity provided under schedule 5A is maintained in a hygienic, safe and serviceable condition and provides a system for inspecting and cleaning the amenity and adequate and hygienic disposal of sanitary items if required.

### **Division 3 Duties relating to falling objects**

#### **Application of div 3**

*Clause 315B* applies to construction work if an object could fall on or otherwise hit persons during the work.

#### **Definitions for div 3**

*Clause 315C* sets out the definitions for this division.

### **What is *mesh* for div 3**

Clause 315D provides the meaning of *mesh* for division 3, and lists the technical specifications that mesh must meet.

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

Clause 315E applies to construction work that is *civil construction work* or *housing construction work*. The clause requires the principal contractor, before construction work starts, to:

- assess the risk of death or injury to persons that may result from objects that could fall on or otherwise hit persons during the work; and
- ensure control measures are used to prevent to minimise the level of exposure to the risk.

The clause also highlights that a hoarding, gantry, closure of the adjoining area, perimeter containment screening or a catch platform must comply with certain technical specifications if any one of these is chosen as a control measure. The clause provides examples of objects that could fall and of control measures to eliminate or minimise the risk of objects falling.

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

Clause 315F applies to construction work that is not civil construction work or housing construction work. The clause requires a principal contractor to ensure that a relevant person erects a barricade or hoarding as a control measure for falling objects in the manner specified in this clause. The clause provides the technical specifications for a barricade or hoarding, and specifies where the barricade or hoarding is to be erected under certain circumstances.

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

Clause 315G applies if the angle measured under clause 315F(2)(b) is 75° or more. However, it does not apply to demolition work or work erecting or dismantling formwork on or for a structure.

A principal contractor must ensure that at least one of the control measures prescribed in this clause is used before construction work starts.

### **Control measures for demolition work or work erecting or dismantling formwork**

Clause 315H applies to construction work that is demolition work or work erecting or dismantling formwork. The clause requires a principal contractor to ensure that either the adjoining area is closed or perimeter screening is erected before construction work starts. The use of either of these control measures must comply with the requirements stated in this clause.

However, if the work is demolition work and neither closing the adjoining area nor erecting perimeter screening can be done, the clause requires the principal contractor to ensure that a different control measure is used to prevent objects falling on or hitting persons. The clause also states that a principal contractor must ensure that where perimeter screening is being erected, extended or reduced as per the requirements stated in this clause, control measures are used to prevent a component of the screening from falling onto persons while this work is being done.

The definition of formwork includes a structure installed to support formwork.

### **Perimeter containment screening as control measure**

*Clause 315I* provides the technical specifications that each screen of perimeter containment screening must meet in order for it to be used as a control measure for falling objects.

### **Catch platform as control measure**

*Clause 315J* requires a principal contractor to ensure that if a catch platform used or to be used as a control measure is installed, extended or reduced, control measures are used to prevent a component of the platform falling on persons while this work is being done.

### **Gantry as control measure**

*Clause 315K* provides the technical specifications that a gantry must meet in order for it to be used as a control measure for falling objects.

### **Load lifted over adjoining area**

*Clause 315L* applies to construction work that involves lifting a load over an adjoining area.

However, it does not apply to construction work that is housing construction work. The clause requires a principal contractor to ensure that the adjoining area is closed or a gantry is erected before the work starts. The use of either of these control measures must meet the requirements stated in this clause. The clause provides examples of loads lifted by a gantry.

### **Closure of part or all of adjoining area**

*Clause 315M* requires a principal contractor to do certain things if an adjoining area is to be closed. The principal contractor must, before construction work starts:

- ensure written approval is obtained to close the area is obtained from the authority or other person who controls the area; and
- use any measures for the closure as required by the authority.

## **Part 6.5 General construction induction training**

Part 6.5 sets out the requirements for general construction induction training.

### **Division 1 General construction induction training requirements**

#### **Duty to provide general construction induction training**

*Clause 316* sets out the duty of a PCBU about general construction induction training. The PCBU must ensure general induction training is provided to a worker engaged by the PCBU to carry out construction work in line with the circumstances stated in this clause.

#### **Duty to ensure worker has been trained**

*Clause 317* provides that a PCBU must not allow or direct a worker to carry out construction work unless the worker has met the training and working requirements specified in this clause. The

PCBU must ensure that the worker holds a general construction induction training card or the appropriate certification that was issued within the preceding 60 days.

However, a general induction card issued under the repealed WHS regulation is taken to be a general construction induction card (see Clause 763).

### **Recognition of general construction induction training cards issued in other jurisdictions**

*Clause 318* allows a person to use a general construction induction card issued by another jurisdiction.

## **Division 2 General construction induction training cards**

### **Issue of card**

*Clause 319* allows a person who has successfully completed general construction induction training in Queensland to apply to the regulator for a general construction induction card.

The application must be made in the manner and form required by the regulator, and includes certain information and the relevant fee.

The clause also sets out the decision making process for the regulator. The regulator must issue a general construction induction training card to the applicant if the regulator is satisfied with certain things. If the regulator has not made a decision on the application within 60 days then the applicant is taken to hold a general construction induction training card until a decision is made.

### **Content of card**

*Clause 320* sets out the information that must be included on a general construction induction training card.

### **Replacement card**

*Clause 321* sets out the requirements for a card holder to apply to the regulator for a replacement general construction induction training card if the original card is lost, stolen or destroyed.

If the regulator is satisfied that the circumstances listed in the clause are met, the regulator may issue a replacement card.

### **Refusal to issue or replace card**

*Clause 322* states the circumstances in which the regulator may refuse to issue a general construction induction training card or a replacement general construction induction training card.

A decision to refuse to issue or replace a general construction induction training card is a reviewable decision under clause 676.

### **Cancellation of card—grounds**

*Clause 323* identifies the grounds in which the regulator may cancel a general construction induction training card that was issued by the regulator.

A decision to cancel a general construction induction training card is a reviewable decision under clause 676.

### **Cancellation of card—process**

*Clause 324* sets out the process that the regulator must follow before cancelling a general construction induction training card.

The clause also states the information to be provided to the card holder in writing if the regulator has made a decision to cancel a general construction induction training card.

### **RTO may enter agreement to issue cards**

*Clause 325* allows the regulator to enter into an agreement with an RTO that empowers the RTO to exercise the powers of the regulator under clauses 319, 321 and 322. Under such an agreement, the exercise of the powers and functions by an RTO has the same effect as if they had been exercised by the regulator. The regulator is still entitled to exercise its functions and powers under division 2, part 6 for general construction induction training cards, regardless of what is included in an agreement.

## **Division 3 Duties of workers**

### **Duties of workers**

*Clause 326* sets out the duties of workers to:

- keep general construction induction training cards or the appropriate certification as set out in subclause 319(5) available for inspection under the Act; and
- return the general construction induction training card to the regulator on receiving a cancellation notice under subclause 324(2).

### **Alteration of general construction induction training card**

*Clause 327* provides that a person who holds a general construction induction training card must not intentionally or recklessly alter the card.

## **Chapter 7 Hazardous chemicals**

Chapter 7 imposes duties upon importers and manufacturers of hazardous chemicals about classification, packing and labelling, safety data sheets and disclosure of chemical identities. It imposes complimentary duties upon suppliers of hazardous chemicals about packing, labelling and safety data sheets and prohibits supply of certain carcinogenic substances. It imposes duties upon PCBUs at a workplace about the use, handling and storage of hazardous chemicals, control of risk and information, training and supervision for workers. It requires health monitoring by a PCBU in respect of workers carrying out specified work for the business or undertaking. It imposes duties upon owners, builders and operators of certain pipelines.

Schedules 7-14 of the Regulation apply to this part.

Classification of chemicals and labelling requirements under the Australian Dangerous Goods (ADG) Code will apply concurrently with the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) until 31 December 2016, after which classification and labelling will be required only in accordance with the GHS (see Clause 773D).

## **Part 7.1 Hazardous chemicals**

### **Division 1 Application of Part 7.1**

#### **Application of Part 7.1**

Clause 328 indicates that part 7.1 applies to:

- (i) the use, handling and storage of hazardous chemicals at a workplace and the generation of hazardous substances at a workplace;
- (ii) pipelines which convey hazardous chemicals, but not pipelines regulated under the *Petroleum and Gas (Production and Safety) Act 2004*; and
- (iii) the handling or storage of those dangerous goods listed in column 2 of Table 328 at places other than a workplace if the quantity of the dangerous goods is more than the relevant threshold mentioned in column 3 of the table.

Clause 328 also exempts from the operation of part 7.1:

- (i) the transport of hazardous chemicals and explosives by road, rail, sea or air which are regulated under the *Explosives Act 1999*, *Transport Operations (Road Use Management Act) 1995*, the *Transport (Rail Safety) Act 2010* and the *Transport Operations (Marine Safety Act) 1994*;
- (ii) fuels, oils and coolants, hazardous chemicals used in batteries, portable firefighting equipment, portable medical equipment, refrigeration systems and portable fluids that are consumer products at retail premises;
- (iii) food, beverages, tobacco and tobacco products.

In addition, articles, substances and mixtures categorised as explosives under the GHS are exempt from the application of certain provisions of Part 7.1.

Despite reference in this part to the GHS, a person is taken to comply with the provision to the extent it requires compliance with the GHS until 31 December 2016 (see Clause 781), if the person complies with one of the following standards:

- (i) the ADG Code;
- (ii) the Approved Criteria for Classifying Hazardous Substances [NOHSC: 1008(2004)];
- (iii) another system approved by the regulator by gazette notice.

### **Division 2 Obligations relating to safety data sheets and other matters**

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

#### **Subdivision 1 Obligations of manufacturers and importers**

##### **Classification of hazardous chemicals**

Clause 329 requires a manufacturer or importer to determine whether a substance, mixture or article manufactured or imported is a hazardous chemical and, if so, to correctly classify the hazardous chemical as required under part 1 of schedule 9 before supplying it to a workplace.

### **Manufacturer or importer to prepare and provide safety data sheets**

*Clause 330* provides that a manufacturer or importer of a hazardous chemical must prepare a safety data sheet before manufacturing or importing the hazardous chemical or, as soon as practicable before supplying it to a workplace. The safety data sheet must include the information outlined in clause 1 of schedule 7 unless the hazardous chemical is a research chemical, waste product or sample for analysis when clause 331 applies. The manufacturer or importer is responsible for reviewing the safety data sheet every 5 years and amending it as required under this clause.

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

*Clause 331* requires the manufacturer or importer of a hazardous chemical which is a research chemical, waste product or sample for analysis to prepare a safety data sheet that complies with clause 2 of schedule 7 if it is not reasonably practicable to comply with clause 1 of schedule 7.

### **Emergency disclosure of chemical identities to registered medical practitioner**

*Clause 332* places a responsibility on the manufacturer or importer of a hazardous chemical to provide specific information on the hazardous chemical to a registered medical practitioner as soon as practicable if the medical practitioner believes a patient has been exposed to a hazardous chemical in the workplace and requests information in writing for the purpose of treating the patient.

### **Emergency disclosure of chemical identities to emergency service worker**

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

### **Packing hazardous chemicals**

*Clause 334* provides that the manufacturer or importer of a hazardous chemical must ensure that it is correctly packed in accordance with part 2 of schedule 9 on classification, packaging and labelling requirements as soon as practicable after the hazardous chemical is manufactured or imported.

### **Labelling hazardous chemicals**

*Clause 335* requires the manufacturer or importer of a hazardous chemical to ensure that the hazardous chemical is correctly labelled in accordance with the GHS and complies with part 3 of schedule 9.

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

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

## **Subdivision 2      Obligations of suppliers**

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

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

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

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

### **Supplier labelling hazardous chemicals**

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

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

*Clause 339* requires that the supplier of a hazardous chemical to a workplace ensure that the current safety data sheet for the hazardous chemical is provided at the time the hazardous chemical is first supplied to the workplace. If the safety data sheet is amended, it must be provided at the time when the hazardous chemical is first supplied to the workplace after the amendment. A hazardous chemical is taken to be first supplied to a workplace if it is the first supply of the hazardous chemical for 5 years. In addition, a supplier of a hazardous chemical must provide a current safety data sheet to a person at the workplace on request. A supplier of a hazardous chemical is exempt from this regulation if the hazardous chemical is a consumer product or the supplier is a retailer.

### **Supply of prohibited and restricted carcinogens**

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

Subclause 340(2) prevents the supplier of a prohibited or restricted carcinogenic substance from supplying the substance for a restricted use defined in Schedule 10 (Table 10.2, column 3) unless evidence is provided that the person has applied to and received from the regulator authorisation to use, handle or store the substance under clause 384 or the regulator has granted an exemption to the person under part 11.2 for this purpose.

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



### **Subdivision 3      Obligations of persons conducting businesses or undertakings**

#### **Labelling hazardous chemicals—general requirement**

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

#### **Labelling hazardous chemicals—containers**

*Clause 342* provides that a PCBU at a workplace must ensure that a hazardous chemical is correctly labelled if the hazardous chemical is manufactured at the workplace or transferred or decanted from its original container at the workplace. The hazardous chemical container must be correctly labelled and provided only for the use, handling or storage of the hazardous chemical. However this regulation does not apply if the hazardous chemical in the container is used immediately after it is put into the container and the container is thoroughly cleaned immediately after use to remove any trace of the hazardous chemical.

#### **Labelling hazardous chemicals—pipe work**

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

*Clause 343* commences on 1 January 2013.

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

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

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

This clause does not apply to a hazardous chemical in transit or where the PCBU is a retailer and the hazardous chemical is a consumer product intended for supply to other premises only or to be used in the workplace in quantities and methods that are consistent with domestic use. In this case, information about the safe use, handling and storage of the hazardous chemical including the current safety data sheet must be accessible to a worker in the workplace and to an emergency service worker or to anyone likely to be exposed to the hazardous chemical in the workplace.

#### **Changes to safety data sheets**

*Clause 345* prevents a PCBU from changing a safety data sheet for a hazardous chemical unless the person is an importer or manufacturer and amends the safety data sheet as permitted under clause 330.

## **Division 3 Register and manifest of hazardous chemicals**

### **Subdivision 1 Hazardous chemicals register**

#### **Hazardous chemicals register**

*Clause 346* requires a PCBU to prepare, keep and update a register of hazardous chemicals used, handled or stored at the workplace. The register must include the current safety data sheet for each hazardous chemical listed and be made available to a worker involved in using, handling or storing a hazardous chemical and to anyone else likely to be affected by a hazardous chemical at the workplace.

Subclause 346(4) exempts hazardous chemicals in transit from this regulation and hazardous chemicals that are consumer products which do not require a safety data sheet under regulation 344.

### **Subdivision 2 Manifest of Schedule 11 hazardous chemicals**

#### **Manifest of hazardous chemicals**

*Clause 347* states that a PCBU must prepare a manifest of hazardous chemicals if the hazardous chemicals used, handled or stored at the workplace are identified as schedule 11 chemicals or group of chemicals that exceed the manifest quantity threshold in schedule 11. The manifest must be amended to reflect any change in the type or quantity of schedule 11 chemicals and must comply with schedule 12 and be available for inspection and kept in a place acceptable to the emergency service organisation for ready access.

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

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

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

This clause also requires notice to be given as soon as practicable if a schedule 11 chemical or group of chemicals is no longer used, handled or stored at the workplace and is unlikely to be used, handled or stored at the workplace in the future. The clause outlines the details required for written notice and requires the PCBU to provide further information to the regulator on request.

A notice given under the repealed *Dangerous Goods Safety Management Act 2001* is taken to be a notice under this section, but only for until 31 December 2012 (see Clause 776).

## **Division 4 Placards**

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

*Clause 349* states that a PCBU must ensure that an outer warning placard is displayed prominently at a workplace if the total quantity of a schedule 11 chemical or group of chemicals exceeds the placard quantity for schedule 11 hazardous chemicals. The outer warning placard must comply with schedule 13 covering placard requirements. However, this regulation does not apply to a workplace that is a retail outlet and where the schedule 11 hazardous chemical is used to refuel a vehicle and is either a flammable gas or flammable liquid.

### **Placard—requirement to display**

*Clause 350* requires a PCBU to ensure that a placard is displayed prominently at a workplace if the total quantity of a schedule 11 chemical or group of chemicals exceeds the placard quantity for schedule 11 hazardous chemicals. The placard must comply with schedule 13 covering placard requirements. This regulation does not apply where schedule 11 hazardous chemicals are in bulk in a container intended for transport or where schedule 11 hazardous chemical is a flammable liquid stored in an underground tank at a retail outlet and used to refuel a vehicle.

## **Division 5 Control of risk—obligations of persons conducting businesses or undertakings**

### **Subdivision 1 General obligations relating to management of risk**

#### **Management of risks to health and safety**

*Clause 351* requires a PCBU to manage the risks to health and safety associated with using, handling, generating or storing a hazardous chemical at a workplace. In managing risks, a PCBU must take account of the hazardous properties of the chemicals, any potential chemical or physical reaction between the chemical and another substance or mixture, or any other matter set out in this clause.

#### **Review of control measures**

*Clause 352* states that a PCBU must ensure that measures implemented to control risks in relation to hazardous chemicals in the workplace are reviewed and, as necessary, revised as required under clause 38. Control measures should be reviewed and revised in response to the circumstances set out in this clause. Control measures should also be reviewed and revised if monitoring carried out under clause 50 determines that the airborne concentration of hazardous chemicals at the workplace exceeds the relevant exposure standard. Otherwise control measures should be reviewed and revised every 5 years.

#### **Safety signs**

*Clause 353* requires a PCBU to display a safety sign at a workplace to warn of a particular hazard associated with hazardous chemicals at the workplace or to indicate the responsibilities of a particular person in relation to the hazardous chemicals. The safety sign must be located next to the

hazard and be clearly visible to a person approaching the hazard. A safety sign does not include a placard.

### **Identification of risk of physical or chemical reaction**

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

Subclause 354(3) requires a PCBU to take reasonable steps to ensure that a hazardous chemical is used, stored or handled to prevent contamination of food, food packaging or personal use products such as cosmetics or a face washer.

### **Specific control—fire and explosion**

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

### **Keeping hazardous chemicals stable**

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

Subclause 356(2) means that, where the stability of a hazardous chemical at a workplace is dependent on the maintenance of the proportions of ingredients of the hazardous chemical, the PCBU must maintain the proportions as stated in the safety data sheet or as required by the manufacturer of the hazardous chemical. Where a hazardous chemical is known to be unstable above a particular temperature, the PCBU must ensure that the hazardous chemical is used, handled or stored at the workplace below that temperature. However, this regulation does not apply if the hazardous chemical is allowed to change or become unstable without risk to health and safety as part of a deliberate process or activity at the workplace or undergoes a chemical reaction in a manufacturing process.

## **Subdivision 2      Spills and damage**

### **Containing and managing spills**

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

### **Protecting hazardous chemicals from damage**

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

## **Subdivision 3      Emergency plans and safety equipment**

### **Fire protection and firefighting equipment**

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

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

### **Emergency equipment**

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

### **Emergency plans**

*Clause 361* states that, where the quantity of a schedule 11 hazardous chemical at a workplace exceeds the manifest quantity, the PCBU must give a copy of an emergency plan prepared under division 4 of part 3.2 to the primary emergency services organisation and revise the plan in response to a written recommendation from the organisation about the content or effectiveness of the plan. In Queensland, the primary emergency services organisation is the Queensland Fire and Rescue Service (QFRS) in the Department of Community Safety.

### **Safety equipment**

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

## **Subdivision 4      Storage and handling systems**

### **Control of risks from storage or handling systems**

*Clause 363* requires a PCBU to ensure that a system used at the workplace for the use, handling or storage of hazardous chemicals is used only for the purpose for which it was designed, manufactured, modified, supplied or installed. Furthermore, the system must be operated, tested, maintained, installed, repaired and decommissioned having regard to the health and safety of workers and other people at the workplace. In addition, sufficient information, training and

instruction must be given to the person who operates, tests, maintains or decommissions a system used for hazardous chemicals at a workplace in order to ensure that the activity is carried out safely.

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

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

### **Stopping use and disposing of handling systems**

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

### **Stopping use of underground storage and handling systems**

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

### **Notification of abandoned tank**

*Clause 367* states that a tank used to store flammable gases and flammable liquids at a workplace, is deemed to be abandoned if the tank has not been used for this purpose for 2 years or it is not intended that the tank be used in this way again. The PCBU must notify the regulator of the abandonment of the tank as soon as is practicable. A tank includes fittings, closures and other equipment attached to the container.

*Clause 367* commences on 1 January 2013 (see Clause 782).

## **Subdivision 5 Spray painting**

### **Definitions for sdiv 5**

*Clause 367A* states that a *spray painting booth* means a room or enclosure designed solely for the purpose of spray painting.

### **Manufacturing or importing a spray painting booth**

*Clause 367B* applies to a manufacturer or importer of a spray painting booth for use at a workplace, in which a hazardous chemical is likely to be used. The manufacturer or importer must ensure the construction of the spray painting booth meets certain requirements as specified in this clause.

### **Supplying a spray painting booth**

*Clause 367C* applies to a supplier of a spray painting booth for use at a workplace, in which a

hazardous chemical is likely to be used. The clause provides that the supplier must take all reasonable steps to ensure the person who is supplied with the booth is given information on the use for which the booth has been designed and tested, how the booth is to be used safely and without risk to health, and the maintenance procedures for the booth and any associated filters.

### **Protecting persons from spray painting**

*Clause 367D* provides that a PCBU must ensure that the risk of a person's exposure to a hazardous chemical used in or for spray painting is prevented. If prevention is not practicable, the risk of exposure must be minimised to as low a level as is practicable, ensuring that the exposure is not more than the relevant national exposure standard for the relevant period for the substance.

### **Spray painting to be done in spray painting booth**

*Clause 367E* requires a PCBU to ensure any spray painting using a hazardous chemical is done in a spray painting booth. However, a spray painting booth is not required in the circumstances specified in this clause.

### **Controlling exposure from spray painting**

*Clause 367F* applies if a PCBU can not prevent or reduce someone's exposure to a hazardous chemical used in or for spray painting other than by using personal protective equipment. The clause provides that the PCBU must ensure that anyone who may be exposed is given the appropriate personal protective equipment, is properly instructed in how to use the equipment, and uses the equipment when there is a risk of being exposed to the substance. The relevant person must also ensure that the personal protective equipment given to someone is effectively maintained.

### **Maintaining a spray painting booth**

*Clause 367G* applies if a spray painting booth is used by a PCBU for spray painting a hazardous chemical. The clause provides that the PCBU must ensure the booth is regularly inspected by a competent person to ascertain whether the booth can be used safely and without risk to health, and appropriately maintained by a competent person. The PCBU must consider certain things in determining how often to inspect the booth.

### **Minimum air movement for booths**

*Clause 367H* applies if a spray painting booth is used by a PCBU for spray painting a hazardous chemical. The PCBU must ensure the booth's ventilation system meets the requirements specified in this clause.

## **Division 6 Health monitoring**

### **Duty to provide health monitoring**

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

### **Duty to inform of health monitoring**

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

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

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

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

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

*Clause 371* requires a PCBU to ensure that the health monitoring of a worker referred to in clause 368 is carried out under the supervision of a registered medical practitioner with experience in health monitoring. The PCBU must consult the worker in relation to the selection of the medical practitioner.

**Duty to pay costs of health monitoring**

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

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

*Clause 373* states that a PCBU commissioning health monitoring for a worker must provide the information outlined in this clause to the registered medical practitioner supervising the health monitoring.

**Duty to obtain health monitoring report**

*Clause 374* states that a PCBU who commissioned health monitoring referred to in clause 368 is responsible for obtaining a health monitoring report from the registered medical practitioner who supervised the monitoring as soon as practicable after the monitoring has been carried out. This clause also specifies the information to be provided in the health monitoring report.

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

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

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

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

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

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



### **Health monitoring records**

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

## **Division 7 Induction, information, training and supervision**

### **Duty to provide supervision**

*Clause 379* requires a PCBU to provide any supervision to a worker necessary to protect them from risks to health and safety arising from circumstances set out in this clause. The PCBU must ensure that the supervision of the worker is suitable and adequate in terms of the nature of the risks associated with the hazardous chemical and that the information, training and instruction provided is compliant with clause 39 and subsection 19(3)(f) of the Act.

## **Division 8 Prohibition, authorisation and restricted use**

### **Using, handling and storing prohibited carcinogens**

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

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

*Clause 380* commences on 1 January 2013 in relation to new use of a prohibited carcinogen (see Clause 783).

### **Using, handling and storing restricted carcinogens**

*Clause 381* prevents a PCBU from using, handling or storing or directing or allowing a worker to use, handle or store a prohibited carcinogen referred to in schedule 10 unless the prohibited carcinogen is used, handled or stored for genuine research and analysis and the regulator has authorised the use, handling or storing of the prohibited carcinogen under clause 384.

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

*Clause 381* commences on 1 January 2013 in relation to new use of a prohibited carcinogen (see Clause 783).

### **Using, handling and storing restricted hazardous chemicals**

*Clause 382* prevents a PCBU from using, handling or storing or directing or allowing a worker to use, handle or store a restricted hazardous chemical referred to in schedule 10 for the purposes prohibited in that schedule. Subclause 382(2) prevents a PCBU from using, handling or storing or directing or allowing a worker to use, handle or store polychlorinated biphenyls (PCBs) unless the use, handling or storing is in relation to specific circumstances set out in the subclause.

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

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

*Clause 383* outlines the requirements for the PCBU to apply in writing to the regulator for authorisation to use, handle or store a prohibited or restricted carcinogen referred to in schedule 10 at the workplace.

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

*Clause 384* states that a regulator may grant an authorisation to a PCBU who applies under clause 383 to use, handle or store a prohibited or restricted carcinogen at the workplace only if the carcinogen will be used, handled or stored for genuine research or analysis. In addition the regulator may authorise a PCBU to use, handle or store a restricted carcinogen at the workplace if the carcinogen will be used for the purpose referred to in schedule 10.

Subclauses 384(2) and (5) allow the regulator to refuse to authorise the use, handling or storage of the carcinogen for a use not referred to in the regulation or to impose any conditions necessary to achieve the objectives of the Act or the Regulation.

The decision to refuse an authorisation is a reviewable decision under clause 676.

### **Changes to information in application to be reported**

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

### **Regulator may cancel authorisation**

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

The decision to cancel an authorisation is a reviewable decision under clause 676.

### **Statement of exposure to be provided to workers**

*Clause 387* provides that a PCBU, authorised under clause 384 to use, handle or store a prohibited or restricted carcinogen at the workplace, must provide the worker using, handling or storing the carcinogen a written statement at the end of their engagement containing the information required under this clause.

### **Records to be kept**

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

## **Division 9 Pipelines**

### **Management of risk by pipeline owner**

*Clause 389* requires the owner of a pipeline used to transfer hazardous chemicals to manage the risks associated with the transfer of the hazardous chemical through the pipeline. This includes risks associated with the testing, installation, commissioning, operation, maintenance and decommissioning of the pipeline. The owner of a pipeline used to transfer hazardous chemicals must ensure, so far as is reasonably practicable, that an activity, structure, equipment or substance that is not part of the pipeline does not affect the hazardous chemicals or the pipeline in a way that increases risk. General risk management requirements are outlined in part 3.1 of the regulations.

### **Pipeline builder's duties**

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

Clause 390 commences on 1 January 2013 (see Clause 784).

### **Management of risks to health and safety by pipeline operator**

*Clause 391* requires a PCBU, who operates a pipeline used to transfer hazardous chemicals, to manage risks to health and safety arising from the activity as outlined under general risk management requirements in part 3.1. The PCBU operating the pipeline must ensure that the hazardous chemical is identified by a label, sign or another method on or near the pipeline.

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

## **Part 7.2 Lead**

Part 7.2 applies where lead processes, within the meaning of clause 392 are carried out at a workplace. It imposes duties upon a PCBU at a workplace to provide information to workers about a lead process, to control risk of lead contamination using specified measures, to identify and notify the regulator of lead risk work, within the meaning of clause 394, and to provide health monitoring of workers in respect of lead risk work.

## **Division 1 Lead process**

### **Meaning of lead process**

*Clause 392* outlines the activities in a workplace which are defined as a lead process.

### **Regulator may decide lead process**

*Clause 393* allows the regulator to decide that a process at a workplace is a lead process if the regulator decides on reasonable grounds that the process creates a risk to the health of a worker in relation to blood lead levels of workers or airborne lead levels at the workplace.

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

### **Meaning of lead risk work**

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

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

*Clause 395* requires a PCBU carrying out a lead process to give information about the lead process to a person before being engaged as a worker to carry out the lead process or to a worker in the circumstances set out in this clause. The information must contain the health risks and toxic effects of exposure to lead and the need for and details of health monitoring under division 4 of part 7.2.

## **Division 2 Control of risk**

### **Containment of lead contamination**

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

### **Cleaning methods**

*Clause 397* states that the PCBU must ensure that a lead process area at the workplace is kept clean and that the cleaning methods do not create a risk to the health of persons in the immediate vicinity of the area and do not have the potential to spread the contamination of lead.

### **Prohibition on eating, drinking and smoking**

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

### **Provision of changing and washing facilities**

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

### **Laundering, disposal and removal of personal protective equipment**

*Clause 400* provides that a PCBU must ensure that personal protective equipment likely to be contaminated with lead dust must be sealed in a container and disposed of at the completion of the lead process work at a site equipped to accept lead-contaminated equipment. If it is not reasonably practicable to dispose of the personal protective equipment that is clothing, the clothing should be

laundered at a laundry equipped to launder lead-contaminated clothing or be kept in a sealed container until it is re-used for lead process work. If it is not reasonably practicable to dispose of the personal protective equipment that is not clothing, such as work boots, the personal protective equipment should be decontaminated before it is removed from the lead process area or be kept in a sealed container until it is re-used for lead process work.

Subclause 400(2) states that the PCBU must ensure that the sealed container referred to in subclause 400(1) is decontaminated before being removed from the lead process area. Under clause 335, the container must also be labelled to indicate the presence of lead. The PCBU must take all reasonable steps to ensure that clothing contaminated with lead-dust is not removed from the workplace unless it is to be laundered in accordance with this clause or disposed of.

### **Review of control measures**

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

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

## **Division 3 Lead risk work**

### **Identifying lead risk work**

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

### **Notification of lead risk work**

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

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

### **Changes to information in notification of lead risk work**

*Clause 404* states that a PCBU must give the regulator written notice of any change in the information provided in the original notice under clause 403 before the change or as soon as practicable after the PCBU is aware of the change. The PCBU must keep a copy of the notice

given to the regulator while the lead risk work is carried out and ensure a copy is readily accessible to a worker likely to be exposed to lead and to the worker's health and safety representative

## **Division 4 Health monitoring**

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

*Clause 405* requires a PCBU to ensure that health monitoring is provided to a worker before the worker first commences lead risk work with the PCBU and 1 month after the worker commences work. If work is identified as lead risk work after a worker commences work, the PCBU must ensure that health monitoring of the worker is provided as soon as practicable after the lead risk work is identified and 1 month after the first monitoring of the worker.

### **Duty to ensure that appropriate health monitoring is provided**

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

### **Frequency of biological monitoring**

*Clause 407* requires a PCBU to arrange biological monitoring of each worker carrying out lead risk work over specific periods. The frequency of biological monitoring and the measurement of blood lead threshold levels for different categories of workers are outlined in this clause. Subclause 407(2) states that the PCBU must increase the frequency of biological monitoring of a worker who carries out lead risk work if that activity is likely to significantly change the nature or increase the duration or frequency of the worker's lead exposure.

Subclause 407(3) allows the regulator to determine a different frequency for biological monitoring of workers carrying out lead risk work under the circumstances set out in this clause. The regulator must give the PCBU written notice of this determination under subclause 407 (3) within 14 days after making the determination. The PCBU must arrange biological monitoring to be carried out at the frequency stated in the determination from the regulator under subclause 407(4).

A determination of a different frequency for biological monitoring is a reviewable decision under clause 676.

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

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

### **Duty to pay costs of health monitoring**

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

### **Information that must be provided to registered medical practitioner**

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

### **Duty to obtain health monitoring report**

*Clause 411* states that a PCBU who commissioned health monitoring referred to in this Division is responsible for obtaining a health monitoring report from the registered medical practitioner who supervised the monitoring as soon as practicable after the monitoring has been carried out. The information to be included in the health monitoring report is outlined in this clause.

### **Duty to provide health monitoring report to worker**

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

### **Duty to provide health monitoring report to regulator**

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

Where the health monitoring was commissioned prior to 1 January 2012, the person must give a copy of the report to the regulator within 6 months (see Clause 762).

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

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

### **Removal of worker from lead risk work**

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

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

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

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

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

### **Return to lead risk work after removal**

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

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

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

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

### **Health monitoring records**

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

## **Chapter 8 Asbestos**

Chapter 8 prohibits a PCBU from carrying out, or directing or allowing a worker to carry out, work involving asbestos, other than in circumstances permitted under the Regulation. It imposes a general duty on PCBUs at a workplace to eliminate or minimise exposure to airborne asbestos at the workplace so far as is reasonably practicable. It imposes duties on a person with management or control of a workplace to identify asbestos or asbestos containing material (ACM) at the workplace, to prepare and keep an asbestos register and an asbestos management plan and, prior to demolition or refurbishment of certain structures and plant, to identify and remove asbestos so far as is reasonably practicable. It imposes duties on a PCBU about training workers and ensuring that health monitoring is provided to certain workers. It requires notification to the regulator about licensed asbestos removal work, and requires licensed asbestos removal work to be carried out by.

### **Part 8.1 Prohibitions and authorised conduct**

This part gives effect to the national prohibition on the use of asbestos or asbestos containing material (ACM) unless it is in circumstances covered by one of the exceptions.

### **Work involving asbestos or ACM—prohibitions and exceptions**

*Clause 419* sets out the prohibition on work involving asbestos and exceptions where the prohibition does not apply. PCBUs and their workers must not carry out work involving asbestos unless it is in circumstances permitted by one or more of the exceptions.

### **Part 8.2 General duty**

This part provides a general duty to ensure the exposure standard for asbestos is not exceeded at a workplace.



### **Exposure to airborne asbestos at workplace**

*Clause 420* requires a PCBU to ensure that exposure of persons at a workplace to airborne asbestos is eliminated or minimised so far as is reasonably practicable. In any case, the PCBU must ensure the exposure standard for asbestos is not exceeded at the workplace. The exposure standard is contained in the *Workplace Exposure Standard for Airborne Contaminants* published by Safe Work Australia.

### **Part 8.3 Management of asbestos and associated risks**

This part sets out requirements for duty holders to manage the risk associated with any asbestos at a workplace other than naturally occurring asbestos. This part has requirements for identifying asbestos, indicating the presence of asbestos in the workplace, and maintaining asbestos registers and asbestos management plans for workplaces.

#### **Application of part 8.3**

*Clause 421* specifies that this part does not apply to naturally occurring asbestos. Specific provisions dealing with naturally occurring asbestos are contained in part 8.4.

#### **Asbestos to be identified or assumed at workplace**

*Clause 422* requires a person with management or control of a workplace to ensure, so far as is reasonably practicable, that all asbestos or ACM at the workplace is identified by a competent person. In this provision, a 'competent person' means a person who has acquired the knowledge and skills to carry out the task through training, qualification or experience. This clause also provides that if the material cannot be identified but the competent person reasonably believes the material is asbestos or ACM, the duty holder must assume the material is asbestos. Inaccessible parts of the workplace likely to contain asbestos or ACM must also be assumed to have asbestos present. Subclause 422(3) provides that the requirement to identify asbestos set out in subclause 422(1) does not apply if the person with management or control of the workplace assumes that asbestos or ACM is present or has reasonable grounds to believe that asbestos or ACM is not present.

*A person with management or control of a workplace* has the same meaning as section 20 of the Act.

#### **Analysis of sample**

*Clause 423* provides that asbestos may be identified by analysing a sample. Where a sample is analysed, this can only be performed by laboratories specified in subclause 423(2).

#### **Presence and location of asbestos to be indicated**

*Clause 424* sets out requirements for a person with management or control of a workplace to ensure the presence and location of asbestos at the workplace is clearly indicated, and if it is reasonably practicable, to indicate the presence and location of asbestos or ACM by a label.

### **Asbestos register**

*Clause 425* sets out the requirements for a person with management or control of a workplace to ensure an asbestos register is prepared and kept up to date at the workplace. This clause also specifies what must be recorded in the asbestos register. The duty holder is not required to prepare an asbestos register for a workplace if a register has already been prepared for that workplace. Subclause 425(6) specifies that these requirements do not apply to a workplace if:

- (a) the workplace is a building that was constructed after 31 December 2003; and
- (b) no asbestos has been identified at the workplace; and
- (c) no asbestos is likely to be present at the workplace from time to time.

*Clause 425* commences on 1 July 2013 for those persons not currently covered (see Clause 758).

### **Review of asbestos register**

*Clause 426* requires a person with management or control of a workplace where an asbestos register is kept to ensure the register is reviewed and updated in specified circumstances.

### **Access to asbestos register**

*Clause 427* provides for a person with management or control of a workplace where an asbestos register is kept to ensure that the register is readily accessible to certain persons identified in subclause 427(1). In addition, subclause 427(2) requires the person with management or control of the workplace to give a copy of the asbestos register to a PCBU carrying out, or intending to carry out, work at a workplace that involves a risk of exposure to airborne asbestos.

### **Transfer of asbestos register by person relinquishing management or control**

*Clause 428* requires that if a person with management or control of a workplace plans to relinquish management or control, the person must ensure, so far as is reasonably practicable, that the asbestos register is given to any new person assuming management or control of the workplace.

### **Asbestos management plan**

*Clause 429* specifies when an asbestos management plan is required, what the person with management or control of the workplace must ensure is included in the plan and the persons who must have ready access to the plan.

*Clause 429* commences on 1 July 2013 for those persons not currently covered (see Clause 759).

### **Review of asbestos management plan**

*Clause 430* requires a person with management or control of a workplace that has an asbestos management plan to ensure that the plan is reviewed and updated in specified circumstances.

## **Part 8.4 Management of naturally occurring asbestos**

This part sets out the requirements for duty holders at workplaces where naturally occurring asbestos is likely to be encountered. This part provides for asbestos management plans and training for workers in these circumstances.

### **Naturally occurring asbestos**

*Clause 431* provides for a person with management or control of a workplace to manage the risks associated with naturally occurring asbestos at the workplace. 'Naturally occurring asbestos' is defined in schedule 19.

### **Asbestos management plan**

*Clause 432* specifies the requirements for an asbestos management plan to be prepared if naturally occurring asbestos is identified at a workplace or is likely to be present at a workplace. The person with management or control of the workplace must ensure the asbestos management plan is kept up to date, covers the matters outlined in subclause 432(4) and is readily accessible to persons specified in subclause 432(5).

Clause 432 commences on 1 January 2013 (see Clause 2).

### **Review of asbestos management plan**

*Clause 433* requires a person with management or control of a workplace that has an asbestos management plan about naturally occurring asbestos to ensure that the plan is reviewed and revised if the plan is no longer adequate for managing naturally occurring asbestos at the workplace.

Clause 433 commences on 1 January 2013 (see Clause 2).

### **Training in relation to naturally occurring asbestos**

*Clause 434* provides for a PCBU to ensure that training required under clause 445 also includes training in the hazards and risks associated with naturally occurring asbestos for workers who carry out work where naturally occurring asbestos is likely to be found.

## **Part 8.5 Asbestos at the workplace**

This part sets out requirements for duty holders in relation to health monitoring for certain workers. This part also provides for training for workers who are performing asbestos removal work or asbestos-related work not covered within training requirements for licensed asbestos removal work. This part also places prohibitions and limitations on use of certain equipment on asbestos or ACM.

### **Division 1 Health monitoring**

This division commences on 1 January 2013 (see Clause 2).

### **Duty to provide health monitoring**

*Clause 435* specifies the circumstances when a PCBU must ensure that health monitoring is provided to certain workers carrying out licensed asbestos removal work, other ongoing asbestos removal work or asbestos-related work. The PCBU is also required to ensure the worker is informed of any health monitoring requirements before the worker carries out any work that may expose the worker to asbestos.

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

*Clause 436* sets out the matters that the PCBU must ensure are included in health monitoring provided to the worker.

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

*Clause 437* requires the PCBU to ensure the health monitoring referred to in clause 435 is carried out under the supervision of a registered medical practitioner with experience in health monitoring. This clause also requires the PCBU to consult the worker in relation to selecting the registered medical practitioner.

**Duty to pay costs of health monitoring**

*Clause 438* provides for a PCBU to pay all expenses relating to health monitoring mentioned in clause 435. This clause also provides for an agreement to be made about sharing costs where more than one PCBU has a duty to provide health monitoring for a worker.

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

*Clause 439* requires the PCBU commissioning health monitoring for a worker to provide certain information to the registered medical practitioner supervising the health monitoring.

**Duty to obtain health monitoring report**

*Clause 440* provides for the PCBU commissioning health monitoring for a worker to take all reasonable steps to obtain a health monitoring report from the registered medical practitioner as soon as practicable after the monitoring is carried out. This clause also specifies the information to be included in the health monitoring report.

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

*Clause 441* requires the PCBU who commissioned the health monitoring for a worker to give a copy of the health monitoring report to the worker as soon as practicable after the person obtains the report.

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

*Clause 442* sets out the circumstances in which a PCBU who commissioned health monitoring for a worker must give a copy of the health monitoring report to the regulator.

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

*Clause 443* requires the PCBU who commissioned health monitoring for a worker to give a copy of the health monitoring report to all other PCBUs who have a duty to provide health monitoring for the worker as soon as practicable after obtaining the report.

### **Health monitoring records**

*Clause 444* places requirements on the PCBU in relation to confidentiality of health monitoring reports and keeping records for a specified period.

## **Division 2 Training**

### **Duty to train workers about asbestos**

*Clause 445* places specific requirements on PCBUs regarding training for certain workers about identification, safe handling and suitable control measures for asbestos and ACM. This training is required for workers who may be involved in asbestos removal work or carrying out asbestos-related work outside the scope of licensed asbestos removal work. Training requirements for workers carrying out licensed asbestos removal work are specified in clause 460. Clause 445 also specifies record keeping requirements in relation to the training undertaken by the worker.

## **Division 3 Control on use of particular equipment**

### **Duty to limit use of equipment**

*Clause 446* prohibits PCBUs and their workers from using either high-pressure water spray or compressed air on asbestos or ACM. This clause also places limitations on the use of power tools, brooms and other implements that cause the release of airborne asbestos. A PCBU must not use, or direct or allow a worker to use this equipment on asbestos or ACM unless the equipment is controlled in a way specified in subclause 446(4).

## **Part 8.6 Demolition and refurbishment**

This part sets out requirements for duty holders in relation to the demolition or refurbishment of pre-31 December 2003 structures and plant at a workplace.

### **Application—part 8.6**

*Clause 447* provides that this part applies to the demolition or refurbishment of a structure or plant constructed before 31 December 2003. It also specifies that demolition or refurbishment does not include minor or routine maintenance work, or other minor work.

### **Review of asbestos register**

*Clause 448* sets out the requirements for the person with management or control of a workplace to review and revise an asbestos register for the workplace before demolition or refurbishment is carried out.

### **Duty to provide asbestos register**

*Clause 449* requires the person with management or control of a workplace to ensure the PCBU who is carrying out demolition or refurbishment is given a copy of the asbestos register before demolition or refurbishment work starts.

### **Duty to obtain asbestos register**

*Clause 450* requires the PCBU who is carrying out demolition or refurbishment work at a workplace to obtain a copy of the asbestos register before the work starts.

### **Determining presence of asbestos or ACM**

*Clause 451* provides for circumstances where there is no asbestos register for a structure or plant to be demolished or refurbished at a workplace. Demolition or refurbishment must not start until the structure or plant has been inspected to determine whether asbestos or ACM is fixed or installed in the structure or plant. If asbestos is determined or assumed to be fixed or installed in the structure or plant, the PCBU who is to carry out the demolition or refurbishment must inform the person with management or control of the workplace. If the workplace is domestic premises, the PCBU must inform the occupier and owner of the domestic premises.

### **Identification and removal of asbestos before demolition**

*Clause 452* sets out the requirements for identifying and, as far as is reasonably practicable, removing asbestos before demolition starts. This provision does not apply to an emergency to which clause 454 applies or demolition of domestic premises, which is dealt with in clauses 453 and 455.

### **Identification and removal of asbestos before demolition of domestic premises**

*Clause 453* provides that a PCBU carrying out demolition of domestic premises must ensure that asbestos that is likely to be disturbed by the demolition is identified, and so far as is reasonably practicable, removed before demolition starts.

### **Emergency procedure**

*Clause 454* specifies what must happen if a structure or plant is structurally unsound or its collapse is imminent. This provision does not apply to domestic premises as demolition of domestic premises in an emergency is dealt with in clause 455. Clause 454 specifies the responsibilities of the person with management or control of the workplace, which includes notifying the regulator before demolition starts.

### **Emergency procedure—domestic premises**

*Clause 455* specifies what must happen if a structure or plant at domestic premises is structurally unsound or its collapse is imminent. This clause sets out the responsibilities of the PCBU who is to carry out the demolition, which includes notifying the regulator before demolition starts.

### **Identification and removal of asbestos before refurbishment**

*Clause 456* sets out the requirements for a person with management or control of a workplace, or structure or plant, if the structure or plant is to be refurbished. The person must ensure all asbestos likely to be disturbed by the refurbishment is identified, and so far as is reasonably practicable, removed before refurbishment starts. This clause does not apply to domestic premises, which are dealt with in clause 457.

### **Refurbishment of domestic premises**

*Clause 457* requires a PCBU who is to carry out refurbishment of domestic premises to ensure that all asbestos likely to be disturbed by the refurbishment is identified, and so far as is reasonably practicable, removed before refurbishment starts.

### **Part 8.7 Asbestos removal work**

This part sets out requirements for duty holders in relation to carrying out asbestos removal work at a workplace.

#### **Duty to ensure asbestos removalist is licensed**

*Clause 458* sets out the requirements for a PCBU commissioning the removal of asbestos to ensure that certain asbestos removal work is carried out by a licensed asbestos removalist. Where the asbestos is not required to be removed by a licensed asbestos removalist, the PCBU must ensure the work is carried out by a competent person who has been trained in accordance with clause 445.

#### **Asbestos removal supervisor must be present or readily available**

*Clause 459* sets out the requirements for a licensed asbestos removalist to ensure asbestos removal work is supervised by a nominated asbestos removal supervisor. For asbestos removal work requiring a Class A licence, the supervisor must be present at the asbestos removal area whenever the asbestos removal work is being carried out. For asbestos removal work requiring a Class B licence, the supervisor must be readily available to a worker carrying out the asbestos removal work whenever the work is being carried out.

#### **Asbestos removal worker must be trained**

*Clause 460* specifies the requirements for licensed asbestos removalists to ensure workers do not carry out licensed asbestos removal work unless the worker holds a certification in relation to the specified VET course for asbestos removal relevant to the class of licensed asbestos removal work being carried out. In addition, this clause requires a licensed asbestos removalist to provide appropriate training to a worker carrying out licensed asbestos removal work to ensure it is carried out in accordance with the asbestos removal control plan.

#### **Licensed asbestos removalist must keep training records**

*Clause 461* requires a licensed asbestos removalist to keep records of a worker's training and ensure training records are readily accessible at the asbestos removal area.

#### **Duty to give information about health risks of licensed asbestos removal work**

*Clause 462* provides for licensed asbestos removalists to give information about health risks and health monitoring to a person before the person is engaged to carry out licensed asbestos removal work.

### **Asbestos removalist must obtain register**

*Clause 463* requires an asbestos removalist to obtain a copy of an asbestos register for a workplace before the removalist carries out asbestos removal work. This clause does not apply if the asbestos removal work is to be carried out at domestic premises.

### **Asbestos removal control plan**

*Clause 464* specifies the requirements for a licensed asbestos removalist to prepare an asbestos removal control plan for licensed asbestos removal work. This clause sets out what an asbestos control plan must include and also requires the licensed asbestos removalist to give a copy of the plan to the person who commissioned the licensed asbestos removal work.

### **Asbestos removal control plan to be kept and available**

*Clause 465* sets out the requirements regarding keeping an asbestos removal control plan and to whom a copy of the plan must be made readily accessible.

### **Regulator must be notified of asbestos removal**

*Clause 466* specifies the requirements for licensed asbestos removalists to notify the regulator at least 5 days before starting licensed asbestos removal work. Provision is made for licensed asbestos removal work to start immediately if there is a sudden and unexpected event that may cause persons to be exposed to respirable asbestos fibres or an unexpected breakdown of an essential service that requires immediate rectification. If asbestos must be removed in either of these circumstances, the licensed asbestos removalist must give notice to the regulator immediately by telephone and in writing within 24 hours after notification by telephone. This clause specifies what information the licensed asbestos removalist must provide when notifying the regulator of licensed asbestos removal work.

### **Licensed asbestos removalist must tell particular persons about intended asbestos removal work**

*Clause 467* identifies the persons who must be informed about intended asbestos removal work by the licensed asbestos removalist and the information that must be provided.

### **Person with management or control of workplace must tell persons about asbestos removal work**

*Clause 468* specifies if a person with management or control of a workplace has been informed about intended asbestos removal work, the person must advise certain persons about the asbestos removal work and when it will start. In addition, the person must take reasonable steps to ensure the same information is provided to anyone conducting a business or undertaking, at or in the immediate vicinity of the workplace or to anyone occupying premises in the immediate vicinity of the workplace.

### **Signage and barricades for asbestos removal work**

*Clause 469* sets out the responsibilities of an asbestos removalist in relation to signs and barricades when asbestos removal work is being carried out.



### **Limiting access to asbestos removal area**

*Clause 470* places requirements on certain duty holders to ensure, so far as is reasonably practicable, that only certain persons have access to an asbestos removal area. This clause also requires persons who have access to an asbestos removal area to comply with directions by the licensed asbestos removalist carrying out the asbestos removal work.

### **Decontamination facilities**

*Clause 471* places requirements on an asbestos removalist to ensure facilities are available to decontaminate the asbestos removal area, plant used in that area, workers carrying out asbestos removal work and any other persons who have authorised access to the asbestos removal area. This clause also requires an asbestos removalist to ensure that anything which is likely to be contaminated with asbestos is not removed from the asbestos removal area unless it is decontaminated first or properly sealed in a container that has been decontaminated and labelled.

### **Disposing of asbestos waste and contaminated personal protective equipment**

*Clause 472* sets out requirements for an asbestos removalist to dispose of asbestos waste properly. It also specifies the requirements for an asbestos removalist in relation to the disposal of personal protective equipment, and in certain circumstances, the storage of personal protective equipment in sealed containers until it is re-used for asbestos removal work.

### **Clearance inspection**

*Clause 473* sets out requirements for a clearance inspection of an asbestos removal area. For licensed asbestos removal work at a workplace, responsibility for ensuring a clearance inspection is carried out rests with the person who commissioned the licensed asbestos removal work. However, for licensed asbestos removal work at domestic premises, this responsibility is placed on the licensed asbestos removalist.

For Class A asbestos removal work, the clearance inspection must be carried out by an independent licensed asbestos assessor. For Class B asbestos removal work, the clearance inspection must be carried out by an independent competent person.

A person who is competent to undertake clearance inspections is a person who has acquired through training or experience the knowledge and skills of relevant asbestos removal industry practice and holds:

- (i) a certification in relation to the specified VET course for asbestos assessor work; or
- (ii) a tertiary qualification in occupational health and safety, occupational hygiene, science, building, construction or environmental health (see schedule 19).

However, until the end of 31 December 2013, the reference to a competent person is taken to include a person who has acquired through training, qualifications and experience the knowledge and skills to carry out the task the person is required to perform (see Clause 761).

If it is not reasonably practicable for the licensed asbestos assessor or competent person to be independent, an application may be made to the regulator for an exemption from the requirement that the assessor or competent person be independent.

### **Clearance certificates**

*Clause 474* sets out requirements in relation to clearance certificates following a clearance inspection carried out under *clause 473*. These requirements are placed on the licensed asbestos assessor or competent person who carried out the clearance inspection.

Until the end of 31 December 2013, the reference to a competent person is taken to include a person who has acquired through training, qualifications and experience the knowledge and skills to carry out the task the person is required to perform (see *Clauses 473 and 761*).

### **Part 8.8 Asbestos removal requiring Class A licence**

This part has specific requirements for asbestos removal work requiring a Class A asbestos removal licence. These include air monitoring requirements and the action that duty holders must take if air monitoring shows specified levels are exceeded.

#### **Air monitoring—asbestos removal requiring Class A licence**

*Clause 475* sets out the air monitoring requirements associated with asbestos removal work requiring a Class A asbestos removal licence. This includes when air monitoring must be carried out and to whom results of air monitoring must be given. This clause also specifies that the independent licensed assessor must undertake air monitoring using the membrane filter method, which is defined..

#### **Action if respirable asbestos fibre level too high**

*Clause 476* specifies the action that must be taken by the licensed asbestos removalist if respirable asbestos fibre levels exceed specified levels during asbestos removal work requiring a Class A asbestos removal licence.

#### **Removing friable asbestos**

*Clause 477* provides for a licensed asbestos removalist to take specific measures, so far as is reasonably practicable, when removing friable asbestos. This clause also sets out requirements regarding any enclosures used in removing friable asbestos.

### **Part 8.9 Asbestos-related work**

This part sets out requirements for duty holders in relation to asbestos-related work carried out at a workplace.

#### **Application of part 8.9**

*Clause 478* provides that this part applies to asbestos-related work, which is defined in Schedule 19.

#### **Uncertainty as to presence of asbestos**

*Clause 479* requires a PCBU who is unsure whether work to be carried out is asbestos-related work to assume either that asbestos is present or ensure a sample is analysed to determine if asbestos is present.

### **Duty to give information about health risks of asbestos-related work**

*Clause 480* places responsibilities on a PCBU to give information about health risks and health monitoring to a person before the person is engaged to carry out asbestos-related work for the business or undertaking.

### **Asbestos-related work to be in separate area**

*Clause 481* sets out requirements for the PCBU involved in carrying out asbestos-related work to ensure the asbestos-related work area is separated from other work areas, and that signs and barricades are used to indicate where the asbestos-related work is being carried out.

### **Air monitoring**

*Clause 482* specifies the requirements for air monitoring of an asbestos-related work area if there is uncertainty as to whether the exposure standard is likely to be exceeded. This clause also provides for the PCBU to take action in providing specific information to workers, and so far as is reasonably practicable, to other persons who were in the work area at the time if it is determined that the exposure standard has been exceeded.

### **Decontamination facilities**

*Clause 483* requires a PCBU carrying out asbestos-related work to ensure facilities are available to decontaminate the asbestos-related work area, the plant used in that area, and workers carrying out asbestos-related work. This clause also requires the PCBU to ensure that anything likely to be contaminated with asbestos is not removed from the asbestos-related work area unless it is decontaminated first or properly sealed in a container that has been decontaminated and labelled.

### **Disposing of asbestos waste and contaminated personal protective equipment**

*Clause 484* sets out the requirements for a PCBU carrying out asbestos-related work to dispose of asbestos waste properly. It also specifies the requirements for the PCBU in relation to the disposal of personal protective equipment, and in certain circumstances, the storage of personal protective equipment in sealed containers until it is re-used for asbestos removal work.

## **Part 8.10 Licensing of asbestos removalists and asbestos assessors**

This part provides for licences for carrying out certain asbestos removal work and specific functions required to be performed by asbestos assessors. This part outlines how to apply for a licence and places certain requirements on the regulator relating to granting or refusing an application. This part also contains provisions covering the replacement, surrender, renewal and suspension of licences. .

### **Division 1 Asbestos removalists—requirement to be licensed**

#### **Requirement to hold Class A asbestos removal licence**

*Clause 485* provides that a person must not carry out certain friable asbestos removal work at a workplace unless authorised by a Class A asbestos removal licence. The clause also provides that a PCBU must not direct or allow a worker to carry out certain friable asbestos removal work unless the PCBU holds a Class A asbestos removal licence.

Existing friable asbestos removal certificates will continue as transitional class A asbestos removal licences under the WHS regulation till 31 December 2013 (see Clause 745) under existing terms and conditions (see Clauses 746, 747, 748 and 749).

If an applicant applies for a class A asbestos removal licence and the specified VET course for a supervisor is not available, then it is sufficient to support the application if each named supervisor is a competent person as specified in Information Paper AR2. However, it is a condition of approval of the licence that each named supervisor undertake the VET course by 31 December 2013 (see Clause 756).

### **Exception to requirement to hold Class A asbestos removal licence**

*Clause 486* provides an exception permitting removal of asbestos-contaminated dust or debris in specific circumstances without holding a Class A asbestos removal licence.

### **Requirement to hold Class B asbestos removal licence**

*Clause 487* provides that a person must not carry out certain non-friable asbestos removal work at a workplace unless authorised by either a Class A or Class B asbestos removal licence. The clause also provides that a PCBU must not direct or allow a worker to carry out certain non-friable asbestos removal work unless the PCBU holds a Class A or Class B asbestos removal licence.

Existing bonded asbestos removal certificates will continue as transitional class B asbestos removal licences under the WHS regulation till 31 December 2013 (see Clause 750) under existing terms and conditions (see Clauses 751, 752, 753 and 754).

If an applicant applies for a class B asbestos removal licence and the specified VET course for a supervisor is not available, then it is sufficient compliance if each person named as a supervisor holds a transitional class B asbestos removal licence. However, it is a condition of approval of the licence that each named supervisor undertake the VET course by 31 December 2013 (see Clause 757).

In addition, if the specified VET course for workers is not available, then it is sufficient to support the application if each worker holds a transitional class B asbestos removal licence or an assessment summary outlining the worker's competence to perform work to remove bonded asbestos containing material that was issued within 60 days before the day on which the work is to be performed (see Clause 755).

### **Recognition of asbestos removal licences in other jurisdictions**

*Clause 488* specifies when equivalent asbestos removal licences issued by corresponding regulators under a corresponding WHS law are recognised as asbestos removal licences under this regulation.

## **Division 2 Asbestos assessors—requirement to be licensed**

### **Requirement to hold asbestos assessor licence**

*Clause 489* provides that certain functions associated with Class A asbestos removal work can only be carried out by a person who holds an asbestos assessor licence. These functions are air monitoring, clearance inspections and clearance certificates in relation to Class A asbestos removal work.

Until the end of 31 December 2013, a reference to a licensed asbestos assessor includes a person who is not licensed but who:

- (a) has acquired through training or experience the knowledge and skills of relevant asbestos removal industry practice; and
- (b) either:
  - a. holds a certification in relation to the specified VET course for asbestos assessor work; or
  - b. holds a tertiary qualification in occupational health and safety, industrial hygiene, science, building construction or environmental health (see Clause 760),

### **Recognition of asbestos assessor licences in other jurisdictions**

*Clause 490* specifies when equivalent asbestos assessor licences issued by corresponding regulators under a corresponding WHS law are recognised as asbestos assessor licences under this regulation.

## **Division 3 Licensing process**

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

*Clause 491* specifies that only a PCBU may apply for an asbestos removal licence. This clause also provides that only an individual who holds the qualifications set out in clauses 493, 394 or 495 may apply for an asbestos assessor licence.

### **Application for asbestos removal licence or asbestos assessor licence**

*Clause 492* sets out the requirements for a person to apply for an asbestos removal licence or an asbestos assessor licence.

### **Content of application—Class A asbestos removal licence**

*Clause 493* specifies additional information required for an application for a Class A asbestos removal licence.

### **Content of application—Class B asbestos removal licence**

*Clause 494* specifies additional information required for an application for a Class B asbestos removal licence.

### **Content of application—asbestos assessor licence**

*Clause 495* specifies additional information required for an application for an asbestos assessor licence.

### **Additional information**

*Clause 496* enables the regulator to ask applicants to provide additional information so that the regulator is able to make a decision on whether or not to grant a licence. This clause also provides

that if the applicant does not provide the additional information by the date specified, the application is taken to be withdrawn.

### **Decision on application**

*Clause 497* specifies the circumstances in which the regulator must grant or refuse an asbestos removal licence or asbestos assessor licence.

A refusal to grant a licence is a reviewable decision under clause 676.

### **Class A asbestos removal licence—regulator to be satisfied about additional matters**

*Clause 498* sets out the additional matters the regulator must be satisfied about in relation to an application for a Class A asbestos removal licence.

### **Class B asbestos removal licence—regulator to be satisfied about additional matters**

*Clause 499* sets out the additional matters the regulator must be satisfied about in relation to an application for a Class B asbestos removal licence.

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

*Clause 500* specifies matters the regulator must take into account in determining if the applicant is able to ensure that work or other activities to which the licence relates are carried out safely and competently, and if the applicant is able to ensure compliance with any conditions that will apply to the licence. These include whether the applicant has been convicted or found guilty of any offence under the Act or a corresponding WHS law and whether any equivalent licence held under a corresponding WHS has been suspended or cancelled.

### **Refusal to grant licence—process**

*Clause 501* sets out what the regulator must do if an application for an asbestos removal licence or asbestos assessor licence is to be refused.

A refusal to grant a licence is a reviewable decision under clause 676.

### **Conditions of licence**

*Clause 502* provides for the regulator to impose conditions on an asbestos removal licence or asbestos assessor licence when granting or renewing the licence.

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

### **Duration of licence**

*Clause 503* provides that an asbestos removal licence or asbestos assessor licence takes effect on the day it is granted and, unless cancelled earlier, expires 5 years after that day.

### **Licence document**

*Clause 504* sets out requirements for the licence document to be issued by the regulator when granting an asbestos removal licence or asbestos assessor licence.

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

*Clause 505* requires a licence holder to keep the licence document available for inspection under the *Act* other than when the licence has been returned to the regulator in accordance with clause 512 or if the licence holder has applied for, but not received a replacement licence document under clause 513.

## **Division 4 Amendment of licence document**

### **Changes to information**

*Clause 506* requires a licence holder to notify the regulator in writing about a change to any information given by the licence holder to the regulator within 14 days of the licence holder becoming aware of the change.

### **Change to nominated supervisor**

*Clause 507* sets out the requirements for an asbestos removal licence holder to notify the regulator regarding a change in nominated supervisors.

### **Amendment imposed by regulator**

*Clause 508* enables the regulator, on its own initiative, to amend an asbestos removal licence or an asbestos assessor licence, including varying, deleting or imposing a condition on a licence. This clause also specifies the process to be followed by the regulator.

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

### **Amendment on application by licence holder**

*Clause 509* provides for the regulator to amend an asbestos removal licence or an asbestos assessor licence on request from the licence holder. This clause also specifies the process to be followed by the regulator.

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

### **Minor corrections to licence**

*Clause 510* allows the regulator to make minor amendments to a licence, for example, correcting an obvious error or a change of address.

### **Regulator to provide amended licence**

*Clause 511* requires the regulator to give the licence holder an amended licence document if the regulator considers a change to a licence requires the licence document to be amended.

### **Licence holder to return licence**

*Clause 512* requires the licence holder of an asbestos removal or an asbestos assessor licence that has been amended to return the licence document to the regulator for amendment when requested by the regulator in writing.

### **Replacement licence document**

*Clause 513* sets out the requirements for notifying the regulator if an asbestos removal or an asbestos assessor licence document is lost, stolen or destroyed. This clause also allows the regulator to issue or refuse to issue a replacement licence.

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

### **Voluntary surrender of licence**

*Clause 514* provides that a licence holder may voluntarily surrender the licence document to the regulator.

## **Division 5 Renewal of licence**

### **Regulator may renew licence**

*Clause 515* enables the regulator to renew an asbestos removal licence or an asbestos assessor licence on application by the licence holder.

### **Application for renewal**

*Clause 516* sets out the requirements for renewing an asbestos removal licence or an asbestos assessor licence.

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

*Clause 517* allows other clauses in this part to apply to an application, renewal or refusal of an asbestos removal licence or an asbestos assessor licence. The clause also prevents the regulator from renewing a licence granted to a person under a corresponding WHS law if the licence has not been renewed under that law.

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

### **Renewal of asbestos removal licence—regulator to be satisfied about particular matters**

*Clause 518* requires the regulator to be satisfied about certain matters before renewing an asbestos removal licence. These matters relate to the qualifications and experience of supervisors and whether authorised asbestos removal work has been carried out during the term of the licence.

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

*Clause 519* provides for the status of an asbestos removal licence or an asbestos assessor licence if the regulator notifies the licence holder that it proposes to refuse to renew the licence.



## **Division 6 Suspension and cancellation of licence**

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

*Clause 520* sets out the requirements enabling the regulator to suspend or cancel an asbestos removal licence or an asbestos assessor licence, including disqualifying the licence holder from applying for a further licence.

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 under clause 676.

### **Matters taken into account**

*Clause 521* specifies the matters a regulator must take into account when making a decision to suspend or cancel an asbestos removal licence or an asbestos assessor licence.

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

*Clause 522* sets out the requirements for the regulator to give written notice to the licence holder before suspending or cancelling an asbestos removal licence or an asbestos assessor licence. This clause also requires the regulator to give the licence holder not less than 28 days to make submissions to the regulator in relation to the proposed suspension or cancellation and any proposed disqualification.

### **Notice of decision**

*Clause 523* sets out the requirements for the regulator to follow when giving notice of a decision to cancel or suspend an asbestos removal licence or an asbestos assessor licence.

### **Immediate suspension**

*Clause 524* provides for circumstances when the regulator may suspend an asbestos removal licence or an asbestos assessor licence without giving the notice required under clause 522. A process for the regulator to follow is also specified in this clause.

### **Licence holder to return licence document**

*Clause 525* provides that a licence holder, when given notice under clause 523, must return the licence to the regulator.

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

*Clause 526* requires the regulator to return the licence document to the licence holder within 14 days after the suspension of a licence ends.

## **Division 7 General**

### **Asbestos removal licence register**

*Clause 527* requires the regulator to keep a register of persons holding an asbestos removal licence and the supervisors named to the regulator for each asbestos removal licence.

### **Asbestos assessors register**

*Clause 528* requires the regulator to keep a publicly available register of each person holding an asbestos assessor licence.

### **Work must be supervised by named supervisor**

*Clause 529* requires a person who holds an asbestos removal licence to ensure that asbestos removal work permitted under the licence is supervised by a supervisor named to the regulator by the licence holder.

## **Chapter 9 Major hazard facilities**

Chapter 9 regulates the operation of major hazard facilities, as defined in schedule 19. It requires the operator of a facility or proposed facility at which specified quantities of schedule 15 chemicals are present to notify the regulator. It imposes duties upon operators of a determined major hazard facility during the determination period about preparation of safety case outlines, hazard identification and risk control, emergency plans, safety management systems, consultation with workers and determination of a safety role for workers. It requires major hazard facilities to be licensed, other than in the determination period. It imposes complimentary duties upon operators of a licensed major hazard facility about safety case outlines, hazard identification and risk control, emergency plans and safety management systems, and additional duties to provide information to visitors and to the local community. It imposes duties upon workers at licensed major hazard facilities.

Schedules 15 – 18 of the Regulation apply to this chapter.

### **Part 9.1 Preliminary**

#### **Division 1 Application and interpretation**

##### **This Chapter does not apply to certain facilities**

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

*Clause 530(2)* states that this chapter does not apply to a facility that is a magazine under the *Explosives Act 1999* at which no processing activity involving dangerous goods, including explosives, is carried out.

### **Meaning of major incident**

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

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

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

*Clause 532* refers to the quantity of hazardous chemicals including schedule 15 chemicals that would meet the maximum capacity of the facility including the maximum capacity of the items listed in the clause. This clause refers to the maximum quantity of hazardous chemicals which could escape into the facility in the event of a failure of a pipeline located off the premises but connected to the facility and the maximum quantity of hazardous chemicals loaded or unloaded into or from vehicles, trailers, rolling stock and ships that are present at the facility from time to time.

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

### **Meaning of operator of a facility or proposed facility**

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

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

### **Meaning of modification of a facility**

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

Subclause 534(2) means that a change or proposed change at the facility includes a change to any plant, structure, process, chemical or other substance used in a process including the introduction of new plant, a new structure, a new process or a new chemical. It includes a change in the quantity of schedule 15 chemicals at the facility or a change in its operation or nature of its operation. In addition, it includes a change in the workers' safety role, a change to the facility's safety management system or an organisational change at the facility including a change in senior management.

## **Division 2 Requirement to be licensed**

### **A major hazard facility must be licensed**

Clause 535 states that a facility in which schedule 15 chemicals are present or likely to be present in the quantity that exceeds their threshold quantity must be licensed under part 9.7 and a facility that is determined to be a major hazard facility under clause 541 must be licensed under part 9.7.

Section 41 of the Act does not permit a workplace which must be licensed under the regulations to operate without a licence. The operator of a licensed major hazard facility must hold the licence for the facility.

Subclauses 535(3) and (5) allow a determined major hazard facility to operate during the exemption period without a licence if the operator of the facility is considered to be a suitable person to operate the facility. The exemption period means the period between the determination of the facility as a major hazard facility and the licensing process as set out in this clause.

The licensing period is provided for in part 9.7. Under part 9.2, an operator of a determined major hazard facility is taken to be a suitable person if no determination is made under clause 543. Part 9.2 provides for the notification and determination of facilities and operators of facilities. The purpose of notification is to enable the regulator to determine whether a facility or proposed facility is a major hazard facility and whether the operator of a determined major hazard facility is a suitable person to operate the facility while the determination period is in force and to apply for a licence for the facility. Under Part 9.3 the operator of a determined major hazard facility is given a limited time to prepare the major hazard facility to be licensed, including by preparing a safety case.

### **Part 9.2 Determinations about major hazard facilities**

Facilities which were major hazard facilities under the repealed *Dangerous Goods Safety Management Act 2001* are taken to be determined major hazard facilities under the WHS regulation (see Clause 769). Where the facility's safety report has been validated a license is taken to be granted on the application of the operator (see Clause 771). However, a licence will be taken to be granted for 6 months only where:

- (i) the facility's safety report has not been validated (see Clause 772); or
- (ii) the facility was issued with a directive under the repealed *Dangerous Goods Safety Management Act 2001* which has not been complied with (see Clause 774).

Facilities must full comply with parts 9.3 to 9.6 by 31 December 2012 (see Clause 775).

### **Operators of certain facilities must notify regulator**

Clause 536 requires the operator of a facility at which schedule 15 chemicals are present or likely to be present in a quantity that exceeds 10 per cent of their threshold quantity to notify the regulator. For example, a facility that is being designed and likely to be constructed should notify the regulator under this clause.

Subclause 536(2) states that notification should occur as soon as practicable but no more than three months after the operator becomes aware of the circumstances in which the regulator must be notified or a longer period if the regulator is satisfied on application by the operator of a reasonable excuse for the delayed notification.

Where a notification was given by a facility operator, but not determined, under the repealed *Dangerous Goods Safety Management Act 2001*, the notification is taken to have been given under this section (see Clause 770).

### **Notification—proposed facilities**

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

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

Facility operators are required to notify the regulator by 1 July 2012 (see Clause 785).

### **Content of notification**

*Clause 538* provides information on the content of the notification required under clause 536. The notification must contain information about the facility and the operator of the facility as outlined in the clause and whether the operator is an individual or a body corporate.

### **When regulator may conduct inquiry**

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

### **Inquiry procedure**

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

### **Determination in relation to facility, on inquiry**

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

Subclause 541(2) allows the determination to be made if the regulator considers there is a potential for a major incident to occur due to the quantity or combination of schedule 15 chemicals present or likely to be present and the type of activity involving schedule 15 chemicals at the facility and the land use and other activities in the surrounding area. If an inquiry discloses that the quantity of schedule 15 chemicals present or likely to be present at a facility exceeds their threshold quantity, the facility is a major hazard facility.

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

### **Determination in relation to over-threshold facility**

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

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

### **Suitability of facility operator**

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

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

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

### **Conditions on determination of major hazard facility**

*Clause 544* allows the regulator to impose conditions on a determination made under clauses 541 or 542. The conditions which the regulator may impose on the determined major hazard facility are outlined in this clause and the operator of a determined major hazard facility is required to ensure that the conditions imposed by the regulator under this clause are complied with. An example of conditions that may be imposed include:

- a requirement for a safety management system to be compliant with clause 558; or
- limitation on the amount of schedule 15 chemicals present a facility until the safety management system is compliant with clause 558.

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

### **Notice and effect of determinations**

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

Subclause 545(3) states that the effect of a determination under clause 543 means that the operator is not taken to be a suitable person to operate the determined major hazard facility and the exemption provided by clause 535(3) does not apply to the determined major hazard facility. The effect of a determination under clauses 541 or 542, is outlined in the definition of *determined major hazard facility*.

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

### **When regulator may revoke a determination**

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

### **Re-notification if quantity of schedule 15 chemicals increases**

*Clause 547* applies to a facility which notified under clauses 536 or 537 that schedule 15 chemicals present or likely to be present exceeded 10 per cent of their threshold quantity but did not exceed their threshold quantity and was determined not to be a major hazard facility under clause 541.

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

### **Notification by new operator**

*Clause 548* applies to a new operator of a facility, determined to be a major hazard facility by the regulator under clause 543 under a previous operator. The new operator is required to notify the regulator with information specified in clause 538(2). Clauses 539, 540 and 543 apply in relation to the suitability of the operator as if the notification were made under clause 536.

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

*Clause 549* provides that the operator of a determined major hazard facility must apply for a major hazard facility licence within 24 months after the determination of the facility. The regulator may extend the time in which the operator of a determined major hazard facility must apply for a licence if satisfied, on application by the operator, that there has not been sufficient time to comply with part 9.3. The exemption from the requirement to be licensed is conditional on an application for a licence being made within the time specified by subclauses 535(3) and (5).

## **Part 9.3 Duties of operators of determined major hazard facilities**

The operator of a determined major hazard facility is required to comply with this part for a specified period and to prepare a safety case in order to apply for a major hazard facility licence.

### **Division 1 Application of part 9.3**

#### **Application of part 9.3**

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

### **Division 2 Safety case outline**

#### **Safety case outline must be provided**

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

#### **Content**

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

## **Alteration**

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

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

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

## **Division 3 Management of risk**

### **Identification of major incidents and major incident hazards**

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

Subclause 554(2) states that, in complying with clause 554, the operator must have regard to any advice and recommendations given by the relevant emergency service organisations and any government department or agency with a regulatory role in relation to major hazard facilities.

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

### **Safety assessment**

*Clause 555* requires the operator of a determined major hazard facility to conduct a safety assessment in relation to operation of the major hazard facility.

Subclause 555(2) outlines the detail that must be contained in the safety assessment including the requirement to analyse all aspects of risks to health and safety associated with major incidents and the range of control measures to be implemented in response to the identified risks.

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

### **Control of risk**

*Clause 556* requires the operator of a determined major hazard facility to implement control measures that eliminate, as far as is reasonably practicable, the risk of a major incident occurring or, if it is not reasonably practicable to eliminate the risk, to minimise that risk. In addition, the operator of a determined major hazard facility must implement risk control measures designed to



minimise, in the event of a major incident occurring, its magnitude and the severity of its consequences to persons both on-site and off-site.

### **Emergency plan**

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

Subclause 557(2) states that, in preparing an emergency plan, the operator must consult with the relevant emergency service organisations and the local authority in relation to the off-site health and safety consequences of a major incident.

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

Subclauses 557(4) and (5) provide that the operator must have regard to any other recommendation or advice given by a person consulted under this clause. The operator must keep a copy of the plan at the major hazard facility and provide a copy to the emergency service organisations consulted under this clause and any other relevant emergency service organisations.

Subclauses 557(6), (7) and (8) require the operator to test the emergency plan in accordance with recommendations made by the emergency service organisations before applying for a licence for the major hazard facility. The operator must implement the emergency plan as soon as possible if a major incident occurs during the operation of the major hazard facility or an event occurs that could reasonably be expected to lead to a major incident. The operator must notify the emergency service organisations consulted under subclause 557(2) of the occurrence of an incident or event referred to under this clause. This clause applies in addition to clause 43.

### **Safety management system**

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

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

Subclause 558(4) requires the safety management system to be documented and to contain information on the operator's policy, aims and objectives on safety matters specified in schedule 17 and to be accessible to those using it.

### **Review of risk management**

*Clause 559* requires the operator of a determined major hazard facility to review and, if necessary, revise the safety assessment conducted under clause 555 to ensure the adequacy of control measures, the emergency plan and the safety management system. In addition, the operator must conduct a review and revision in the circumstances outlined in subclause 559(2).

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

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

## **Division 4 Safety case**

### **Safety case must be provided**

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

### **Content**

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

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

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

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

### **Coordination for multiple facilities**

*Clause 562* allows the regulator to require the operators of two or more major hazard facilities to coordinate the preparation of the safety cases if the regulator is satisfied on reasonable grounds that such coordination is necessary in the interests of the safe operation and effective safety management of any or all of those major hazard facilities. If the regulator requires the coordinated preparation of safety cases, each operator must provide the other operators with information concerning any circumstances at the operator's facility that could constitute a major incident hazard in relation to any of the other major hazard facilities. In complying with this regulation, the operator is not required to disclose information that may expose the major hazard facility to a major incident hazard in relation to the security of the major hazard facility.

### **Review**

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

#### **Part 9.4 Licensed major hazard facilities—risk management**

Part 9.4 applies to a major hazard facility that is licensed under part 9.7

##### **Identification of major incidents and major incident hazards**

Clause 564 requires the operator of a licensed major hazard facility to identify all major incidents that could occur in the course of the operation of the major hazard facility and all major incident hazards including major incident hazards relating to the security of the major hazard facility.

Subclause 564(2) states that, in complying with clause 564, the operator must have regard to any advice and recommendations given by the relevant emergency service organisations and any government department or agency with a regulatory role in relation to major hazard facilities.

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

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

##### **Safety assessment**

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

##### **Control of risk**

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

##### **Emergency plan**

Clause 567 states that the operator of a licensed major hazard facility must keep a copy of the major hazard facility's emergency plan prepared under clause 557 as revised under part 9.3 and under this part at the facility. This clause requires the operator to test the emergency plan in accordance with recommendations made by the emergency service organisations consulted under clause 557 when the plan was prepared. The operator must implement the emergency plan as soon as possible if a major incident occurs in the course of the operation of the major hazard facility or an event occurs that could reasonably be expected to lead to a major incident. The operator must notify the emergency service organisations consulted under subclause 557(2) of the occurrence of an incident or event referred to in subclause 557(3) as soon as practicable after the incident or event.

### **Safety management system**

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

Subclause 568(2) requires the operator to use the safety management system as the primary means of ensuring the health and safety of workers engaged or at work in the operation of the major hazard facility in the circumstances set out in this clause. In addition, the operator must use the safety management system to ensure that the health and safety of other persons is not put at risk from work carried out as part of the operation of the major hazard facility. The operator of a licensed major hazard facility is required to inform the regulator about any change in relation to certain information about the licence under clause 588.

### **Review of risk management**

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

Subclause 569(4) provides that, in reviewing and revising the emergency plan, the operator must consult with the emergency service organisations with which the operator consulted under clause 557 when the plan was prepared. The health and safety representative may request a review if the representative reasonably believes that the circumstances referred to in subclause 559(2) affects or may affect the health and safety of a member of the work group represented by the health and safety representative and the operator has not adequately conducted a review in response to the circumstance.

### **Safety case—review**

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

### **Information for visitors**

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

### **Information for local community—general**

*Clause 572* sets out the information that the operator of a licensed major hazard facility must provide to the community and the local authority. This clause states that the information must be readily accessible and understandable, reviewed and revised if any modification of the major hazard facility occurs and sent out in writing to any community or public library serving the local

community. In complying with subclause 572(1) the operator is not required to disclose information that may expose the major hazard facility to a major incident hazard in relation to the security of the major hazard facility.

Subclause 572(4) states that the operator of a licensed major hazard facility, after receiving a written request from a person who reasonably believes that the occurrence of a major incident at the major hazard facility may adversely affect his or her health or safety, must provide a copy of the information provided to the local community under this clause to the person.

#### **Information for local community—major incident**

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

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

### **Part 9.5 Consultation and workers' safety role**

#### **Safety role for workers**

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

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

#### **Operator of major hazard facility must consult with workers**

*Clause 575* requires the operator of a determined major hazard facility to consult with workers at the major hazard facility in relation to the areas outlined under this clause. The duty to consult with workers is covered under section 49(f) of the Act.

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

### **Part 9.6 Duties of workers at licensed major hazard facilities**

#### **Duties**

*Clause 576* sets out the duties of a worker at a licensed major hazard facility as outlined under this clause.

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

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

This part provides for licences to operate a major hazard facility. This part outlines how to apply for a licence and places certain requirements on the regulator relating to granting or refusing an application. This part also contains provisions covering the replacement, surrender, renewal and suspension of licences. These are administrative procedures which provide clarity and transparency in the administration of licences for major hazard facilities.

### **Division 1 Licensing process**

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

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

#### **Application for major hazard facility licence**

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

For facilities that were major hazard facilities prior to commencement of the WHS regulation, this information must be provided by 31 March 2012 (see Clause 773).

#### **Additional information**

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

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

#### **Decision on application**

*Clause 580* states that the regulator must grant a major hazard facility licence if satisfied that the application has been made in accordance with the Regulation, that the safety case for the facility has been prepared in accordance with division 3 of part 9.3; that the operator is able to operate the major hazard facility safely and competently and that the operator is able to comply with any conditions that will apply to the licence.

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

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

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

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

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

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

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

### **When decision is to be made**

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

### **Refusal to grant major hazard facility licence—process**

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

### **Conditions of licence—payment of relevant fee**

*Clause 583A* states that it is a condition of the licence or renewal of the licence that the operator of a major hazard facility pay the relevant fee when the licence or renewed licence is granted and annually on the anniversary of the granting of the licence or renewal of the licence.

### **Conditions of licence**

*Clause 584* allows the regulator to impose conditions on a major hazard facility licence when granting or renewing the licence in relation to the matters outlined in sub-clause 584(2). A person must comply with the conditions of a licence under section 45 of the Act.

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

### **Duration of licence**

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

### **Licence document**

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

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

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

### **Division 2 Amendment of licence and licence document**

#### **Changes to information**

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

#### **Amendment imposed by regulator**

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

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

#### **Amendment on application by operator**

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

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

#### **Minor corrections to major hazard facility licence**

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

#### **Regulator to provide amended licence document**

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

#### **Operator to return licence**

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



### **Replacement licence document**

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

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

## **Division 3 Renewal of major hazard facility licence**

### **Regulator may renew licence**

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

### **Application for renewal**

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

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

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

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

*Clause 598* outlines the provisions relating to the application to renew a licence.

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

### **Status of major hazard facility licence during review**

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

## **Division 4 Transfer of major hazard facility licence**

### **Transfer of major hazard facility licence**

*Clause 600* allows the regulator, on the application of the operator of a major hazard facility, to transfer a major hazard facility licence to another person who is to become the operator of the major hazard facility. The regulator must be satisfied that the proposed operator will achieve a standard of

health and safety in the operation of the facility that is at least equivalent to the standard that the current operator has achieved. This could be achieved, for example, by a signed document committing the proposed operator to adopting the safety case and safety management system in use when the original licence was granted or a safety case and safety management system that provides the same or better level of safety. The process for the regulator to transfer the licence is set out in this clause.

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

## **Division 5 Suspension and cancellation of major hazard facility licence**

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

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

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

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

*Clause 602* allows the regulator on its own initiative to suspend or cancel a major hazard facility licence if satisfied on grounds set out in sub-clause 602(1). The regulator may disqualify the operator from applying for a further major hazard facility licence.

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

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

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

### **Notice to and submissions by operator**

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

### **Notice of decision**

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

### **Immediate suspension**

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

#### **Operator to return licence document**

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

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

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

## **Chapter 10**

### **Chapter number and section numbers 609 – 675 not used**

*Clause 609* refers to the note to clause 3 of this regulation

## **Chapter 11      General**

Chapter 11 sets out the requirements for the processes of internal review and external review of reviewable decisions. It also outlines how the regulator may grant an exemption to a person or a class of persons from complying with a provision of the regulation.

### **Part 11.1      Review of decisions**

#### **Division 1      Reviewable decisions**

##### **Which decisions are reviewable**

*Clause 676* sets out all the decisions made under the regulation that are reviewable and who is eligible to apply for a review of each reviewable decision.

#### **Division 2      Internal review**

##### **Application**

*Clause 677* provides that the internal review process does not apply to a reviewable decision made under chapter 9 (Major hazard facilities) or under part 11.2 (Exemptions).

### **Application for internal review**

*Clause 678* sets out the requirements for an application for an internal review of a reviewable decision.

### **Internal reviewer**

*Clause 679* allows the regulator to appoint a person or a body to review decisions on applications about internal review. It clarifies that the person who made the reviewable decision cannot be an internal reviewer in relation to that decision.

### **Decision of internal reviewer**

*Clause 680* specifies the timeframes and processes the internal reviewer must follow when reviewing a reviewable decision. This includes reviewing the reviewable decision and making a decision as soon as practicable and within 14 days after the application is received. The internal reviewer may ask the applicant to provide additional information. The applicant must provide the information within the time specified by the internal reviewer. Once the additional information is received, the internal reviewer must make a decision as soon as practicable and within 14 days. If the additional information is not provided by the applicant, the reviewable decision is taken to have been confirmed at the end of the time period.

If the reviewable decision is not varied or set aside within the 14 day time period, the reviewable decision is taken to have been confirmed by the internal reviewer.

### **Decision on internal review**

*Clause 681* provides that the internal reviewer must give written notice of the decision on the internal review and the reasons for the decision to the applicant within 14 days of making the decision.

### **Internal review—reviewable decision continues**

*Clause 682* clarifies that an application for an internal review does not affect the operation of the reviewable decision or prevent the taking of any lawful action to implement or enforce the decision.

## **Division 3 External review**

### **Application for external review**

*Clause 683* sets out the requirements for an application for an external review of a reviewable decision made by the regulator under chapter 9 (Major hazardous facilities) or under part 11.2 (Exemptions), or a decision made in relation to an internal review.

## **Part 11.2 Exemptions**

### **Division 1 General**

#### **General power to grant exemptions**

*Clause 684* provides that the regulator may exempt a person or class of persons from compliance with any of these regulations either on the regulator's own initiative or on the written application of one or more persons. The exemption may be subject to certain limitations, but does not apply to an exemption from:

- a provision requiring a person to hold a high risk work licence; or
- a provision of chapter 9 (Major hazard facilities) relating to a major hazard facility or proposed major hazard facility.

A decision to refuse to grant an exemption is a reviewable decision under clause 676.

#### **Matters to be considered in granting exemptions**

*Clause 685* specifies the matters that the regulator must consider before granting an exemption under clause 684. This is a non-exhaustive list.

### **Division 2 High risk work licences**

#### **High risk work licence—exemption**

*Clause 686* provides that the regulator may exempt a person or a class of persons from a requirement to hold a high risk work licence. The exemption may be granted on the written application of any person concerned.

A decision to refuse to grant an exemption is a reviewable decision under clause 676.

#### **High risk work licence—regulator to be satisfied about particular matters**

*Clause 687* specifies the matters that the regulator must be satisfied about before granting an exemption in relation to holding a high risk work licence under clause 686.

### **Division 3 Major hazard facilities**

#### **Major hazard facility—exemption**

*Clause 688* provides that the regulator may exempt the operator of a major hazard facility or proposed major hazard facility from any regulatory provision relating to that facility. The exemption may be granted on the written application of the operator of the major hazard facility or proposed major hazard facility.

A decision to refuse to grant an exemption is a reviewable decision under clause 676.

### **Major hazard facility—regulator to be satisfied about particular matters**

*Clause 689* specifies the matters that the regulator must be satisfied about before granting an exemption in relation to a major hazard facility or proposed major hazard facility under clause 688.

## **Division 4 Exemption process**

### **Application for exemption**

*Clause 690* provides that an application for an exemption must be made in the manner and form required by the regulator.

### **Conditions of exemption**

*Clause 691* allows the regulator to impose any conditions it considers appropriate on an exemption granted under part 11.2 (Exemptions). The conditions imposed on the exemption may require the applicant to do certain things as stated in this clause.

A decision to impose a condition is a reviewable decision under clause 676.

### **Form of exemption documents**

*Clause 692* provides that an exemption must be in writing and lists the matters that it must state as set out in this clause.

### **Compliance with conditions of exemption**

*Clause 693* specifies that a person who is granted an exemption must comply with the conditions of the exemption. The person must also ensure that any person under the management or control of that person complies with the conditions of the exemption.

### **Notice of decision in relation to exemption**

*Clause 694* requires the regulator to give the applicant a copy of the exemption within 14 days of making the decision to grant the exemption.

### **Publication of notice of exemption**

*Clause 695* provides that where an exemption relates to a class of persons, the regulator must publish a copy of the exemption in the Queensland Government Gazette.

### **Notice of refusal of exemption**

*Clause 696* requires that if the regulator refuses to grant an exemption, the regulator must notify the applicant in writing about the refusal within 14 days after making that decision. The notice must state the reasons for the refusal.

A refusal to grant an exemption is a reviewable decision under clause 676.

### **Amendment or cancellation of exemption**

*Clause 697* provides that the regulator may amend or cancel an exemption at any time.

A decision to amend or cancel an exemption is a reviewable decision under clause 676.

### **Notice of amendment or cancellation**

*Clause 698* sets out what the regulator must do if the regulator decides to amend or cancel an exemption.

The regulator must notify the applicant in writing about the amendment or cancellation within 14 days after making that decision. The notice must state the reasons for the amendment or cancellation. The amendment or cancellation takes effect either on the giving of the notice to the applicant or on a later date specified in the notice.

If the exemption affects a class of persons, the regulator must publish notice of the amendment or cancellation in the Queensland Government Gazette. The notice must state the reasons for the amendment or cancellation. The amendment or cancellation takes effect either on the publication of the notice or at a later date specified in the notice.

## **Part 11.3 Miscellaneous**

### **Incident notification—prescribed serious illnesses**

*Clause 699* specifies certain conditions to be a serious illness for the purposes of section 36 of the Act.

### **Inspectors' identity cards**

*Clause 700* lists the matters that an identity card given by the regulator to an inspector for the purposes of section 157(1) of the Act must include.

### **Review of decisions under the Act—stay of decision**

*Clause 701* provides that for the purposes of section 228(6)(a) of the Act, the prescribed period for a stay of decision is:

- 28 days for an external review by QCAT; or
- 30 days for an external review by the Commission.

## **Chapter 12 Public health and safety—schedule 1, part 1 of Act**

### **Part 12.1 Preliminary**

#### **Definitions for chapter 12**

*Clause 702* provides the definitions for this chapter.

## **Part 12.2 Primary duty**

### **Primary duty of care**

*Clause 703* requires a relevant person to ensure, so far as is reasonably practicable, the health and safety of all persons who may be affected by the relevant activity of the relevant person. The clause specifies the area of relevant activity.

### **Duty of officers**

*Clause 704* requires the officer of a relevant person who has a primary duty of care under clause 703 to exercise due diligence to ensure the relevant person complies with that duty. The clause states that an officer of a relevant person may be convicted or found guilty of an offence under this part relating to a duty under this clause whether or not the relevant person has been convicted or found guilty of an offence under clause 703. The clause also provides a definition of *due diligence*.

### **Duties of other persons at relevant premises**

*Clause 705* applies to a person at the relevant premises, whether or not the person has another duty under this part. The person must take reasonable care of his or her own health and safety, that acts and omissions do not adversely affect the health and safety of others, and to comply with any reasonable instructions given by the relevant person.

### **Reckless conduct**

*Clause 706* applies to an offence where a person with a health and safety duty, without reasonable excuse, engages in conduct that exposes an individual to whom a duty is owed to a risk of death or serious injury or illness and the person is reckless about the risk to an individual of death or serious injury or illness. The clause states that the prosecution bears the burden of proving that the conduct was engaged in without reasonable excuse.

### **Failure to comply with health and safety duty**

*Clause 707* applies to an offence where a person with a health and safety duty fails to comply with that duty and the failure exposes an individual to a risk of death or serious injury or illness.

### **Failure to comply with health and safety duty**

*Clause 708* applies to an offence where a person with a health and safety duty fails to comply with that duty.

## **Part 12.3 Applied provisions**

### **Application of provisions**

*Clause 709* sets out the provisions under chapter 5 (Plant) which apply to a relevant person's relevant activity. Subclause 709(2) sets out the provisions under chapter 7, part 7.1 (Hazardous chemicals) which apply to a relevant person's relevant activity. Subclause 709(3) states that clause 446(1) (Duty to limit use of equipment) applies in relation to a relevant person's relevant activity.



### **Modification of applied provisions**

*Clause 710* applies the provisions under clause 780 (Application of these provisions) to this clause with the following modifications:

- a reference to a PCBU is taken to be a reference to a relevant person;
- a reference to a workplace is taken to be a reference to relevant premises.

## **Part 12.4 Incident notification**

### **Duty to notify of notifiable incidents**

*Clause 711* requires a relevant person to ensure that the regulator is notified immediately after becoming aware that a notifiable incident arising out of the relevant activity has happened. The clause sets out the detail for the notification to the regulator and the requirement to keep records for each notifiable incident.

### **Duty to preserve incident sites**

*Clause 712* requires the person with management or control of relevant premises at which a notifiable incident has happened to ensure, so far as is reasonably practicable, that the site where the incident happened is not disturbed until an inspector arrives at the site or any earlier time that an inspector directs. This clause does not prevent action to assist an injured person, to remove a deceased person or to make the site safe or to minimise the risk of a further notifiable offence.

## **Part 12.5 Authorisations**

### **Meaning of authorised**

*Clause 713* defines authorised to mean authorised by a licence, permit, registration or other authority, however described, as required under this regulation

### **Requirements for authorisation of plant or substance**

*Clause 714* states that a person must not use unauthorised plant or a substance at relevant premises if the regulation requires the plant or a substance to be authorised. The relevant person must not direct or allow anyone to use unauthorised plant or a substance if the regulation requires the plant or a substance to be authorised.

### **Requirement to comply with conditions of authorisation**

*Clause 715* requires a person to comply with the conditions of any authorisation given to that person under this regulation in relation to a relevant activity carried out by a relevant person at relevant premises.

## **Part 13 Transitional provisions**

### **Part 13.1 Transitional provisions for Work Health and Safety Regulation 2011**

#### Division 1 Emergency plans

##### **Lead in time for s 43 emergency plan**

*Clause 716* allows a PCBU until the end of June 2012 to prepare an emergency plan under clause 43.

#### Division 2 Falls

##### **Staged introduction of s 80 emergency and rescue procedures**

*Clause 717* states that clause 80 does not apply to a fall arrest system implemented for work other than construction work as defined under section 289 until the end of 31 December 2011.

#### Division 3 Plant and plant design

##### **Existing registration—plant and plant design**

*Clause 718* applies to an item of plant or the design of an item of plant which was registered under part 8, division 2 of the repealed WHS regulation. On commencement, the item of plant or design of the item of plant is taken to be registered by the regulator under part 5.3 and any conditions applying to the registration of the item of plant or the design of an item of plant immediately before commencement continue to apply. The clause specifies the matters relating to the certificate of registration, the duration of registration and any change of ownership of item of plant.

##### **Pending applications—plant and plant design**

*Clause 719* applies to an application to register or to renew an application to register an item of plant or the design of an item of plant under part 8, division 2 of the repealed WHS regulation before the commencement. On commencement, the item of plant or design of the item of plant required to be registered is taken to be registered by the regulator under part 5.3. The clause sets out the process for the application to be dealt with after commencement.

##### **Provision for plant that on the commencement is not required to be registered under pt 5.3**

*Clause 720* applies to a person who, before the commencement, held a certificate of registration of registrable plant for plant that is an air-conditioning unit or cooling tower under the repealed WHS regulation. This clause sets out the process for an application for plant that is an air-conditioning unit or cooling tower made before the commencement to be dealt with after the commencement.

#### Division 4 High risk work

##### **Definition for div 4**

*Clause 721* defines *table* for the purpose of this division to mean the table set out in clause 722.

##### **Existing licence—high risk work**

*Clause 722* applies to a person who held a licence issued on or after 1 July 2008 to perform high risk work under the repealed WHS regulation. On commencement, the person is taken to hold a high risk work licence under part 4.5 and any conditions applying to the licence immediately before the commencement continue to apply.

#### **Pending applications—high risk work**

*Clause 723* applies to applications for high risk work licences or a renewal of a high risk work licence, mentioned in the table, which have been made to the chief executive before commencement. The clause sets out the process by which the application is dealt with after commencement.

#### **Applications for high risk work licence until 31 December 2012 if no VET course available**

*Clause 724* provides for a person applying for a high risk work licence for a class of high risk work mentioned in column 2 of the table where the VET course is unavailable and the person has:

- an assessment summary under section 18(5) of the repealed WHS regulations for a unit of competency; or
- a statement of attainment issued by an RTO within 60 days before the application for a high risk work licence is made.

Subclause 722(2) states that, despite clause 86 and schedule 4, the person may apply for the high risk work licence until the end of 31 December 2012.

#### **Applications for high risk work licence if statement of attainment and assessment summary held under repealed WHS regulation**

*Clause 725* sets out the procedure for the chief executive to process the application of a person until the end of 31 December 2012 where the person holds both:

- an assessment summary under section 18(5) of the repealed WHS regulation;
- a statement of attainment from an RTO for the unit of competency stated in schedule 5 of the repealed WHS regulation within 14 days before an application is made

#### **Particular licence classes to include other licence classes until 31 December 2012**

*Clause 726* applies where, despite clauses 81 and 86 and schedule 4, a person who holds a high risk work licence for the licence class non-slewing mobile crane may carry out high risk work for the licence class reach stacker until the end of 31 December 2012. Subclauses 724 (3) and (4) set out the categories of non-slewing and slewing mobile cranes of different tonnage referred to under this clause. Subclause 724(6) allows the holder of a licence for high risk work for the licence class intermediate boiler operator under the repealed WHS regulation to carry out high risk work for the intermediate boiler operator licence class until the end of 31 December 2012.

#### **Existing exemption—high risk work**

*Clause 727* applies where, before the commencement, the chief executive had granted an exemption from holding a licence to perform a class of high risk work under section 21 of the repealed WHS regulation, the exemption continues under section 686 of this regulation until it ceases or until 31 December 2012, whichever is the earlier. The clause refers to arrangements relating to any exemptions from holding a licence for boiler operator.

**Pending exemption applications—high risk work**

*Clause 728* applies to applications for an exemption from holding a high risk work licence under section 21 of the repealed WHS regulation made to the chief executive before commencement. The clause sets out the process by which the application is dealt with after commencement.

**Revival of authority—applications under s 43 of the repealed WHS regulation**

*Clause 729* provides the procedure for processing applications under subsection 43(4) of the repealed WHS regulation after the commencement.

**Existing licence issued before 1 July 2008—high risk work**

*Clause 730* states that the process for converting an existing licence for high risk work issued before 1 July 2008 to a renewable licence under section 43 of the repealed WHS regulation will continue after the commencement. The clause sets out the arrangement for converting a licence for boiler operator to a renewable licence. Despite its repeal, the fee in schedule 1, section 5 of the repealed WHS regulation continues to apply to an application under section 43 of the repealed WHS regulation to convert a licence to perform a class of high risk work to a renewable licence under the repealed WHS regulation.

Division 5 Earthmoving and particular crane work

**Cancellation of earthmoving or particular crane work certificate and withdrawal of applications**

*Clause 731* states that an earthmoving or particular crane work certificate or an exemption from holding a certificate issued before the commencement is cancelled on commencement. This clause applies also to an application for an earthmoving or particular crane work certificate. The clause sets out the arrangements for notice of withdrawal of the application and the refund of any fees.

Division 6 Certificate for prescribed activity that is demolition work

**Existing certificate to perform demolition work continues as a transitional demolition work licence**

*Clause 732* applies to a certificate issued to perform demolition work before the commencement, or the regulator grants the certificate after commencement under clause 735, the certificate continues in effect unless cancelled, surrendered or replaced or unless the regulator grants the holder of a certificate a licence to carry out demolition work. The certificate is valid for 2 years after the date it was granted under clause 735 of this regulation.

**Transitional demolition work licence and requirement for nominated supervisor**

*Clause 733* applies to a competent person under the repealed WHS regulation named to the chief executive under that regulation before the commencement, and whose name has not been withdrawn before the commencement, is taken from the commencement to be a person named to the regulator under clause 789.

**Transitional demolition work licence and requirement to train worker**

*Clause 734* states that a PCBU who employs, or otherwise allows, a worker to carry out demolition work under a transitional demolition work licence must ensure the worker has received appropriate training in safe working methods for the carrying out of the work.

**Existing provisions about certificate process continue to apply for a transitional demolition work licence**

*Clause 735* states that part 8, division 2 of the repealed WHS regulation (Applications for certificates, licences and variations of licences), despite its repeal, continues to apply to an application for the grant of a certificate to perform demolition work made before the commencement but not decided by the chief executive before the commencement. This clause also specifies the circumstances in which part 8, division 4 (Replacement and surrender of certificates and licences) and division 5 (Suspension and cancellation of certificates and licences) of the repealed WHS regulation applies after commencement.

**Conditions for transitional demolition work licence**

*Clause 736* sets out the conditions under which a transitional demolition work licence applies.

Division 7 Accredited providers and approvals

**Existing appointment—accredited provider**

*Clause 737* cancels all appointments as an accredited provider made under the repealed regulation.

**Training and assessment in high risk work under repealed WHS regulation**

*Clause 738* applies to a registered training organisation which, before commencement, provided training or performed an assessment in a unit of competency under part 3 of the repealed WHS regulation. The clause states that registered training organisation will continue to perform its functions until the end of 31 December 2012.

**Existing approval—providing training and assessment for high risk work**

*Clause 739* states that an approval to provide training and assessment for a unit of competency for a class of high risk work under section 70 of the repealed WHS regulation which was granted before commencement continues to be valid until the end of 31 December 2012.

**Pending applications—providing training and assessment for high risk work**

*Clause 740* sets out the procedure for an application to provide training and assessment for a unit of competency for a class of high risk work under section 70 of the repealed WHS regulation which is made before commencement is processed after commencement.

**Cancellation of approval to provide training and assessment for earthmoving and particular crane occupation and withdrawal of applications**

*Clause 741* states that an approval to provide training and assessment for a unit of competency for an earthmoving or particular crane occupation under section 70 of the repealed WHS regulation granted immediately before the commencement is cancelled on commencement. This clause applies also to an application to provide training and assessment for a unit of competency for an earthmoving or particular crane occupation under section 70 of the repealed WHS regulation. The clause sets out the arrangements for notice of withdrawal of the application and the refund of any fees.

## Division 8 Certificates and licences

### **Replacement of existing certificates and licences**

*Clause 742* sets out the procedure by which applications for the replacement of registration or licences specified in this clause and made before the commencement are processed after the commencement.

### **Suspension and cancellation of existing certificates and licences**

*Clause 743* applies to the suspension or cancellation of an existing certificate or licence specified in this clause and determined by the chief executive before the commencement under part 8, division 5 of the repealed WHS regulation. The clause sets out the arrangement for the suspension or cancellation to be processed after the commencement.

## Division 9 Asbestos related provisions

### **Definitions for this div 9**

*Clause 744* sets out definitions for particular terms used in the asbestos transitional provisions.

### **Existing friable asbestos certificate continues as a transitional class A asbestos removal licence**

*Clause 745* provides that a friable asbestos removal certificate issued under the repealed WHS regulation continues to have effect until 31 December 2013 unless it is cancelled, suspended, surrendered or replaced, or the holder is granted a new class A asbestos removal licence. A certificate preserved under this clause is a transitional class A asbestos removal licence. This clause also provides that these preserved certificates authorise the carrying out of licensed asbestos removal work under parts 8.7, 8.8 and 8.10 of the regulation and that references to a 'licensed asbestos removalist' and 'licensed asbestos removal work' include these preserved certificates. In effect, the holder of a friable asbestos removal certificate issued under the repealed WHS regulation will be able to carry out class A asbestos removal work and class B asbestos removal work under the new regulation until 31 December 2013.

### **Transitional class A asbestos removal licence and requirement for nominated asbestos removal supervisor**

*Clause 746* enables the holder of a transitional class A licence to rely on a competent person under the repealed WHS regulation to be a nominated asbestos removal supervisor for the purpose of clause 459 of the regulation. Clause 459 requires a licensed asbestos removalist to ensure a nominated asbestos removal supervisor is present when class A asbestos removal work is being

carried out. A competent person under the repealed WHS regulation means a person who is competent under Information Paper AR2 (Requirements for a competent person to supervise work to remove friable asbestos containing material) as provided in s.50 of the repealed WHS regulation.

#### **Transitional class A asbestos removal licence and requirement to train worker**

*Clause 747* requires a person conducting a business or undertaking who employs, or otherwise allows, a worker to carry out class A asbestos removal work under a transitional class A asbestos removal licence to ensure the worker has received appropriate training in safe working methods for carrying out the asbestos removal work. This preserves the effect of the training requirement in section 49 of the repealed WHS regulation for the period in which class A asbestos removal work may be done under a transitional class A asbestos removal licence, that is, up until 31 December 2013.

#### **Existing provisions about licence process continue to apply for a transitional class A asbestos removal licence**

*Clause 748* provides for provisions about applying for certificates in the repealed WHS regulation to continue to apply to any applications for a friable asbestos certificate made before the commencement of the new regulation but not yet decided by the chief executive before the commencement. This clause also provides for provisions regarding replacement, surrender, suspension and cancellation of certificates under the repealed WHS regulation to continue to apply to a friable asbestos certificate issued under the repealed WHS regulation. This clause also provides for circumstances when references to the chief executive are taken to be a reference to the regulator. This clause clarifies that part 8.10, divisions 3 to 6 of the new regulation do not apply to a transitional class A asbestos removal licence unless otherwise provided.

#### **Conditions for transitional class A asbestos removal licence**

*Clause 749* specifies the conditions that apply to a transitional class A asbestos removal licence.

#### **Existing bonded asbestos removal certificate continues as transitional class B asbestos removal licence**

*Clause 750* provides for a bonded asbestos removal certificate issued under the repealed WHS regulation to continue to have effect until 31 December 2013 unless it is cancelled, suspended, surrendered or replaced, or the holder is granted a new class B asbestos removal licence. A certificate preserved under this clause is a transitional class B asbestos removal licence. This clause also provides that these preserved certificates authorise the carrying out of Class B asbestos removal work under parts 8.7 and 8.10 of the regulation by the licence holder as a worker or by or on behalf of the licence holder as a person conducting a business or undertaking. References to a 'licensed asbestos removalist' and 'licensed asbestos removal work' are taken to include these preserved certificates, however references to a licensed asbestos removalist only apply to a person conducting a business or undertaking who holds a transitional class B licence.

#### **Holder of transitional class B asbestos removal licence to notify change of address**

*Clause 751* requires the holder of a transitional class B asbestos removal licence to notify the regulator of a change of residential or postal address within 14 days of the change. This preserves

the effect of section 55 in the repealed WHS regulation which required notification of a certificate holder's change of address.

### **Existing provisions about certificate process continue to apply for a transitional class B asbestos removal licence**

*Clause 752* provides for provisions about applying for certificates in the repealed WHS regulation to continue to apply to any applications for a bonded asbestos removal certificate made before the commencement of the new regulation but not yet decided by the chief executive before the commencement. This clause also provides for provisions regarding replacement, surrender, suspension and cancellation of certificates under the repealed WHS regulation to continue to apply to a bonded asbestos removal certificate issued under the repealed WHS regulation. This clause also provides for circumstances when references to the chief executive are taken to be a reference to the regulator. This clause clarifies that part 8.10, divisions 3 to 6 of the new regulation do not apply to a transitional class B asbestos removal licence.

### **Conditions for transitional class B asbestos removal licence**

*Clause 753* specifies the conditions that apply to a transitional class B asbestos removal licence.

### **Application of references to nominated asbestos removal supervisor to transitional class B asbestos removal licence holders for particular sections**

*Clause 754* enables the holder of a transitional class B licence performing the function of supervising asbestos removal work to be a nominated asbestos removal supervisor for the purpose of clause 459 of the regulation. Clause 459 requires a licensed asbestos removalist to ensure a nominated asbestos removal supervisor is readily available to a worker when class B asbestos removal work is being carried out. This clause also provides that clause 466(4)(b) of the new regulation does not apply if the class B asbestos removal work is being carried out under a transitional class B asbestos removal licence. Clause 466(4)(b) requires the licensed asbestos removalist, when notifying the regulator of proposed licensed asbestos removal work, to include the name and business contact details of the asbestos removal supervisor. This clause also provides that clause 529 of the new regulation does not apply to a person carrying out class B asbestos removal work if the person holds a transitional class B asbestos removal licence. Clause 529 requires a person who holds an asbestos removal licence to ensure that asbestos removal work is supervised by a supervisor named to the regulator by the licence holder.

### **Training requirement for worker under section 460(1) satisfied by alternative to certification**

*Clause 755* provides a transitional provision in relation to training requirements for workers carrying out asbestos removal work. Clause 460 of the regulation requires a licensed asbestos removalist to be satisfied that their workers hold certification for the specified VET course for asbestos removal relevant to the class of asbestos removal work being carried out. These are new courses developed nationally in 2011 and a transitional period is required to enable the new courses to be delivered by registered training organisations in the state. This clause provides that the requirement in section 460 to hold certification in the specified VET course does not apply to asbestos removal work carried out under a transitional class A asbestos removal licence or a transitional class B asbestos removal licence. In effect, this permits those authorised to carry out licensed asbestos removal work under the repealed WHS regulation to carry out licensed asbestos removal work under the new regulation while the transitional licences are in effect.



**Application for class A asbestos removal licence when specified VET course unavailable for named supervisors**

*Clause 756* enables a person to apply for a class A asbestos removal licence if the applicant satisfies the regulator that the specified VET course for an asbestos removal supervisor is not reasonably available within the state. In this circumstance, it is sufficient for the person named as a supervisor to be a competent person under Information Paper AR2 (Requirements for a competent person to supervise work to remove friable asbestos containing material) issued under the repealed WHS regulation. However, if the regulator grants the licence, it is a condition of the licence that the supervisor(s) obtain certification in the specified VET course for supervision of asbestos removal work as soon as practicable after the course becomes available, and in no case later than 31 December 2013. It is also a condition of the licence that the licence holder give a copy of the certificate for the supervisor's specified VET course to the regulator as soon as practicable after the certificate is issued.

**Application for class B asbestos removal licence when specified VET course unavailable for named supervisors**

*Clause 757* enables a person to apply for a class B asbestos removal licence if the applicant satisfies the regulator that the specified VET course for an asbestos removal supervisor is not reasonably available within the state. In this circumstance, it is sufficient for the person named as supervisor to hold a transitional class B asbestos removal licence. However, if the regulator grants the licence, it is a condition of the licence that the supervisor(s) obtain certification in the specified VET course for supervision of asbestos removal work as soon as practicable after the course becomes available, and in no case later than 31 December 2013. It is also a condition of the licence that the licence holder give a copy of the certificate for the supervisor's specified VET course to the regulator as soon as practicable after the certificate is issued.

**No need for asbestos register in particular transitional circumstances**

*Clause 758* provides a transitional period in relation to requirements in parts 8.3 and 8.6 regarding asbestos registers. A person does not have to comply with the asbestos register requirements until after 30 June 2013 if the register was not required to be kept under the repealed WHS regulation, part 13, division 3.

**No need for asbestos management plan in particular transitional circumstances**

*Clause 759* provides a transitional period in relation to requirements under clause 429 that a person with management or control of a workplace must ensure that an asbestos management plan is prepared and maintained at the workplace. A person does not have to comply with the requirements until after 30 June 2013 if the asbestos management plan was not required to be kept under the repealed WHS regulation, part 13, division 3.

**Transitional licensed asbestos assessor**

*Clause 760* provides a transitional period in relation to requirements for licensed asbestos assessors in the regulation. Until the end of 31 December 2013, a reference in the regulation to a licensed asbestos assessor includes a person who is not licensed but who meets the criteria set out in this clause.

**Transitional competent person for ss 473 and 474 clearance inspection and certificates**

*Clause 761* provides a transitional period in relation to requirements for a competent person in relation to clearance inspections and clearance certificates under sections 473 and 474. Until 31 December 2013, a competent person is taken to include a person who has acquired through training, qualifications and experience the knowledge and skills to carry out the task the person is required to perform under the sections.

## Division 10 Lead

### **Results of health surveillance**

*Clause 762* provides that, if a person has arranged for health surveillance of the person or a worker of the person under section 237 of the repealed WHS regulation and the person has not given the chief executive notice of the results of health surveillance under section 237(4)(d), on commencement the person must give the health surveillance report to the regulator within 6 months of receiving the report.

## Division 11 Construction work

### **General induction card**

*Clause 763* applies if a person has completed a general induction training course and held a general induction card under the repealed WHS regulation immediately before commencement, the person is taken to have successfully completed general construction induction training and to hold a general construction induction training card under part 6.5 of these regulations.

### **Work method statement taken to be safe work method statement**

*Clause 764* states that a work method statement for a high risk construction activity prepared under section 294 of the repealed WHS regulation before the commencement continues to apply if the high risk construction activity commences or continues after commencement. The clause sets out how the work method statement applies after commencement.

### **Construction safety plan taken to be WHS management plan**

*Clause 765* sets out the arrangements by which a construction safety plan prepared under section 263 of the repealed WHS regulation before the commencement continues to apply after commencement.

## Division 12 Miscellaneous

### **Keeping of documents**

*Clause 766* states that if a provision of the repealed WHS regulation requires a document or information to be kept for a particular period, that provision continues to apply to the keeping of the document until the period ends.

### **References to repealed WHS regulation**

*Clause 767* states that, in subordinate legislation or another document, a reference to the repealed WHS regulation may, if the context permits, be taken to be a reference to this regulation.

## **Part 13.2 Transitional provisions for Dangerous Goods Safety Management Regulation 2001**

### **Division 1 Preliminary**

#### **Definitions for part 13.2**

*Clause 768* sets out the definitions for this part.

### **Division 2 Major hazard facilities**

#### **Existing major hazard facility**

*Clause 769* states that a facility that is an existing major hazard facility under the repealed DGSM Act is taken to be a determined major hazard facility under this regulation unless schedule 15 chemicals are not present or likely to be present in a quantity that exceeds 10% of their threshold quantity in which case the facility does not become a determined major hazard facility.

#### **Existing notification of facility awaiting chief executive decision**

*Clause 770* provides the procedure by which an existing notification awaiting the decision by the chief executive to classify the facility as a major hazard facility under the repealed DGSM Act before commencement is processed after commencement.

#### **Existing major hazard facility with validated safety report**

*Clause 771* outlines the procedure by which an existing major hazard facility, classified under section 47 of the repealed DGSM Act, becomes a licensed major hazard facility under part 9.7 of this regulation. The clause also provides for the regulator to impose conditions on the licence under clause 584(2) of this regulation.

A decision to impose a condition on the grant of a licence is a reviewable decision under regulation 676.

#### **Existing major hazard facility with safety report not yet validated**

*Clause 772* sets out the procedure by which a safety report from an existing major hazard facility submitted under section 47 of the repealed DGSM Act which has not been validated by the chief executive before commencement, is processed after commencement. The clause specifies the arrangements for issuing a licence in this circumstance and for providing for the regulator to impose conditions on the licence under clause 584(2) of this regulation.

A decision to impose a condition on the grant of a licence is a reviewable decision under regulation 676.

### **Operator must provide information within 3 months**

*Clause 773* states that the operator of a major hazard facility taken to be licensed under subclauses 771 (3) or 772(2) must give to the regulator in writing the information mentioned in subclauses 578(2)(e) and (f) within 3 months of commencement. The clause sets out the information required and provides that the regulator may cancel the licence if the information is not provided.

A decision to cancel a licence is a reviewable decision under regulation 676.

### **Existing major hazard facility with directive not yet satisfied**

*Clause 774* sets out the procedure by which a directive to review a safety report issued to an existing major hazard facility under section 95 of the repealed DGSM Act is processed by the regulator after the commencement, if the chief executive has not validated the reviewed safety report before commencement. The clause specifies the arrangements for issuing a licence in this circumstance and for providing for the regulator to impose conditions on the licence under clause 584(2) of this regulation.

A failure to issue a licence or to impose conditions on a licence is a reviewable decision under regulation 676.

### **Operator given 12 months to be fully compliant**

*Clause 775* provides that a major hazard facility, licensed under these regulations will be allowed up to 12 months to comply with parts 9.3 to 9.6 of these regulations,

## **Division 3 Large dangerous goods location**

### **Existing notification of large dangerous goods location**

*Clause 776* provides that a facility which has notified as a large dangerous goods location under section 49 of the repealed DGSM Act, will continue to be notified under clause 348 of this regulation. The clause sets out the requirement for the information under this clause and the period provided to comply with the notice requirements.

## **Part 13.3 Other transitional provisions**

### **Particular provision for audiometric testing**

*Clause 777* applies to a PCBU required to provide audiometric testing for a worker under clause 58(2)(a) within 3 months of the commencement of this section. This clause allows the PCBU 12 months to comply with this part.

### **Requirements for dive supervisors of high risk diving work until 31 December 2012**

*Clause 778* outlines the requirements for a person to carry out high risk diving work as a dive supervisor until 31 December 2012, despite clauses 183 and 184.

### **Registration of design of particular item of plant not needed until end of 31 December 2012**

Clause 779 states that, despite part 5.3, the design of concrete placement units with delivery booms and prefabricated formwork need not be registered until the end of 31 December 2012.

### **Introductory period for registration of domestic lifts**

Clause 780 states that clause 246 (Items of plant to be registered) does not apply to a lift in domestic premises until the end of 31 December 2012.

### **Introductory period for GHS**

Clause 781 provides that, despite the reference to the GHS, a person is taken to comply with the provision to the extent it requires compliance with the GHS, if the person complies with a transitional standard for the matter. This clause defines *transitional standard*. This clause applies until the end of 31 December 2016.

### **Existing abandoned tank used to store flammable gases and flammable liquids**

Clause 782 applies if, on the commencement of this section, clause 367 of this regulation applies to a PCBU in relation to a tank which has not been used to store flammable gases or flammable liquids for the 2 years before the commencement and which the PCBU does not intend to use for this purpose again. The PCBU must notify the regulator of the abandonment of the tank within 12 months after the commencement.

### **Existing use, handling or storing of prohibited or restricted carcinogens**

Clause 783 applies if on the commencement of this section a PCBU at a workplace is using, handling or storing a prohibited or restricted carcinogen to which clauses 380 and 381 apply. The clause sets out the arrangements by which an application must be made to the regulator under clause 383 of this regulation for an authorisation for use, handling or storage within 12 months after the commencement of this clause.

### **Existing pipeline builder's duties (clause 390)**

Clause 784 sets out the arrangements by which a pipeline builder who commences to build or has built a pipeline which transfers schedule 11 hazardous chemicals into a public place must notify the regulator under clause 390 of these regulations.

### **Existing facility with schedule 15 chemicals exceeding 10% of threshold quantity—additional 3 months to give notice (clause 536)**

Clause 785 sets out the arrangements by which an existing facility with schedule 15 chemicals exceeding 10 per cent of threshold quantities must notify the regulator under clause 536(1) of these regulations. The clause states that the notification must be given before the end of 6 months after commencement.

### **Postponed commencement of uncommenced provisions**

Clause 786 states that the period before automatic commencement, under the Acts Interpretation Act 1954, section 15DA(2), of the postponed law is extended to the end of 6 June 2013. Under this clause, postponed law means the Act, schedule 1, section 2(2) to (4).



## **Chapter 14 Amendment of other regulations**

### **Part 14.1 Amendment of Building Fire Safety Regulation 2008**

#### **Regulation amended**

*Clause 787* states that this part amends the *Building Fire Safety Regulation 2008*.

#### **Amendment of sch 3 (Dictionary)**

*Clause 788* amends the definition of *high occupancy building* in schedule 3 paragraph (b), subparagraphs (i) and (ii).

### **Part 14.2 Amendment of Child Employment Regulation 2006**

#### **Regulation amended**

*Clause 789* states that this part amends the *Child Employment Regulation 2006*.

#### **Amendment of s 22 (Employer's duty about facilities for dressing and undressing)**

*Clause 790* inserts a note to refer to the *Work Health and Safety Regulation 2011* part 3.2, division 2 for an employer's duties relating to workplace facilities.

### **Part 14.1 Amendment of Coal Mining Safety and Health Regulation 2001**

#### **Regulation amended**

*Clause 791* states that this part amends Coal Mining Safety and Health Regulation 2001.

#### **Amendment of s 55 (Hazardous substance register)**

*Clause 792* amends section 55 to enable a safety data sheet to be an alternative to a material safety data sheet.

### **Part 14.3 Amendment of Explosives Regulation 2003**

#### **Regulation amended**

*Clause 793* states that this part amends the *Explosives Regulation 2003*.

#### **Amendment of s 11 (Definitions for pt 2)**

*Clause 794* amends the definition of *prescribed information* in section 11 of the regulation.

#### **Amendment of s 49 (Condition of explosives)**

*Clause 795* amends section 49(f) of the regulation.

**Amendment of section 72 Documents to be kept**

*Clause 796* amends section 72(a) of the regulation.

**Amendment of sch 3 (Matters to be included in safety management system)**

*Clause 797* amends Schedule 3, part 2, item 10(b) of the regulation.

**Amendment of sch 7 (Dictionary)**

*Clause 798* amends the definition of *material safety data sheet* to refer to safety data sheet as defined in the Work Health and Safety Regulation 2011, schedule 19.

**Part 14.4 Amendment of Forensic Disability Regulation 2011**

**Regulation amended**

*Clause 799* amends the *Forensic Disability Regulation 2011*.

**Amendment of s 3 (Register of use of regulated behaviour controls—Act, s 74)**

*Clause 800* amends sections 3(1)(c)(iii) and 3(5) to refer to a notifiable incident as defined in the Work Health and Safety Act 2011, section 35.’

**Part 14.5 Amendment of Health Regulation 1996**

**Regulation amended**

*Clause 790* states that this part amends the *Health Regulation 1996*.

**Amendment of s 170 (Specifications for places)**

*Clause 791* amends section 170(2)(c) of this regulation.

**14.6 Amendment of Mining and Quarrying Safety and Health Regulation 2001**

**Regulation amended**

*Clause 803* states that this part amends the Mining and Quarrying Safety and Health Regulation 2001.

**Amendment of s 52 (MSDS and NICNAS summary report)**

*Clause 804* amends section 52 to enable a safety data sheet (SDS) to be an alternative to a material safety data sheet (MSDS).



**Amendment of s 53 (Marking, labelling and giving information about hazardous substances and dangerous goods)**

*Clause 5* amends s53 (3) (a) and (b) to enable a mark, label or notice to alternatively comply with the GHS.

**Amendment of s 55 (Standard work instructions for storing, handling and using hazardous substances and dangerous goods)**

*Clause 806* amends section 55 to allow regard to be had alternatively to a SDS.

**Amendment of s 60 (Meaning of *major hazard facility*)**

*Clause 807* amends the definition of hazardous materials emergency in section 60(2)

**Amendment of s 62 (Resources for complying with MSDS)**

*Clause 808* amends section 62 to allow a SDS to be an alternative to a MSDS.

**Amendment of sch 7 (Dictionary)**

*Clause 809* inserts the definition of SDS in the dictionary.

**Part 14.7 Amendment of Petroleum and Gas (Production and Safety) Regulation 2004**

**Regulation amended**

*Clause 810* states that this part amends the Petroleum and Gas (Production and Safety) Regulation 2004.

**Amendment of sch 2 (Prescribed incidents)**

*Clause 811* replaces the reference to the Dangerous Goods Act with the Work Health and Safety Regulation 2011.

**Part 14.8 Amendment of Public Health Regulation 2005**

**Regulation amended**

*Clause 812* states that this part amends the *Public Health Regulation 2005*.

**Amendment of s 2B (Definitions for div 1)**

*Clause 813* replaces the definition of a *non-workplace area* in clause 2B to mean a place, or part of a place, that is not a workplace under the Work Health and Safety Act 2011.

**Replacement of ss 2D and 2E**

*Clause 814* replaces sections 2D and 2E. The new clause 2D provides that a person must not remove friable ACM unless the person holds a class A asbestos removal licence under the *Work Health and Safety Regulation 2011*. As the *Work Health and Safety Regulation 2011* no longer provides homeowners and the general public with the ability to apply for an asbestos removal licence to remove 10m<sup>2</sup> or more of bonded ACM, the new clause 2E provides a new mechanism that continues to allow homeowners and the general public to remove quantities of bonded ACM of

more than 10m<sup>2</sup> subject to holding a certificate obtained under arrangements approved or established by the chief executive of Queensland Health.

#### **Insertion of new pt 8**

*Clause 815* inserts provisions at part 8 that allow an asbestos removal certificate issued under the repealed WHS Regulation to be regarded as transitional Class A or transitional Class B asbestos removal licences within the meaning of the *Work Health and Safety Regulation 2011*. In effect, a homeowner or a member of the public holding a current bonded asbestos removal certificate may rely on this certificate being valid until 31 December 2013 unless it is otherwise suspended or cancelled.

### **Part 14.9 Amendment of Queensland Building Services Authority Regulation 2003**

#### **Regulation amended**

*Clause 816* states that this part amends the *Queensland Building Services Authority Regulation 2003*.

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

*Clause 817* amends clause 5 (1) of the regulation to refer to ‘work done under the Work Health and Safety Regulation 2011, part 8.3.’

### **Part 14.10 Amendment of Queensland Civil and Administrative Tribunal Regulation 2009**

#### **Regulation amended**

*Clause 818* states that this part amends the *Queensland Civil and Administrative Tribunal Regulation 2009*.

#### **Amendment of sch 1 (Enabling Acts and provisions)**

*Clause 819* amends entries in schedule 1, part 3 of the *Dangerous Goods Safety Management Act 2001* and the *Dangerous Goods Safety Management Regulation 2001*.

### **Part 14.11 Amendment of the Sustainable Planning Regulation 2009**

#### **Regulation amended**

*Clause 820* states that this part amends the Sustainable Planning Regulation 2009.

**Amendment of sch 3 (Assessable development, self-assessable development and type of assessment)**

*Clause 821* amends schedule 3 part 1, table 2, columns 2 and 3, item 5 by replacing ‘possible major hazard facility’ with ‘proposed major hazard facility’ and by replacing ‘chief executive administering’ with ‘regulator under’.

**Amendment of sch 6 (Assessment manager for development applications)**

*Clause 822* amends schedule 6, table 3, columns 1 and 2, item 4 by replacing ‘possible major hazard facility’ with ‘proposed major hazard facility’ and by replacing ‘chief executive administering’ with ‘regulator under’.

**Amendment of sch 7 (Referral agencies and their jurisdictions)**

*Clause 823* amends schedule 7, tables 1 and 2, columns 1 and 2, item 4, 7 and 8 by replacing ‘possible major hazard facility’ with ‘proposed major hazard facility’ and by replacing ‘chief executive administering’ with ‘regulator under’.

**Amendment of sch 26 (Dictionary)**

*Clause 824* amends the definition of *major hazard facility* and *possible major hazard facility* in schedule 26 of the regulation.

**Part 14.12 Amendment of Transport Operations (Road Use Management—Driver Licensing) Regulation 2010**

**Regulation amended**

*Clause 825* states that this part amends the Transport Operations (Road Use Management—Driver Licensing) Regulation 2010.

**Amendment of s 10 (Tests)**

*Clause 826* inserts an amendment to s10(7)(a) to include a class UD licence for a vehicle in relation to which a WHS certificate is issued or for earthmoving equipment where the person has successfully completed a training course, in driving the earthmoving equipment, approved by the chief executive.

**Amendment of sch 9 (Dictionary)**

*Clause 827* inserts definitions for *earthmoving equipment*, *WHS certificate* and *corresponding WHS law*.

**Schedule 1 Schedule number not used**

See note to section 3.

## **Schedule 2 Fees**

Schedule 2 sets out the relevant fees in relation to the following:

- Licences to perform a class of high risk work;
- Licences for asbestos removal and asbestos assessor;
- Licence for major hazard facility;
- Registration or renewal of registration of plant and plant design;
- Application or renewal of general construction induction card;

## **Schedule 3 High risk work licences and classes of high risk work**

Schedule 3 sets out the high risk work licences and the classes of high risk work that are within the scope of each licence.

## **Schedule 4 High risk work licences—competency requirements**

Schedule 4 sets out the qualifications required for a high risk work licence.

## **Schedule 5 Registration of plant and plant designs**

Schedule 5 lists the items of plant that are required to be design registered under clause 243. It also lists the items of plant that are required to be registered under clause 246.

### **Part 1 Plant requiring registration of design**

#### **Items of plant requiring registration of design**

*Clause 1* identifies the items of plant that are required to be design registered under clause 243.

#### **Exceptions**

*Clause 2* clarifies that certain items of plant and class 1 structures are not included in the plant design registration requirements.

### **Part 2 Items of plant requiring registration**

#### **Items of plant requiring registration**

*Clause 3* identifies the items of plant that are required to be registered under clause 246.

#### **Exceptions**

*Clause 4* clarifies that certain items of plant and class 1 structures are not included in the items of plant requiring registration.

## **Schedule 5A Principal contractors—particular amenities for construction work**

### **Part 1 Definitions for schedule 5A**

#### **Definition**

*Clause 1* provides the definition for this schedule

### **Part 2 Toilets**

#### **Toilets**

*Clause 2* sets out the requirements for the principal contractor in construction work to ensure that toilets are reasonably available to each construction worker. Examples are provided in this clause.

The clause also prescribes the number of toilets required for construction workers and the availability of toilets on different levels of a building.

#### **When toilet must be connected toilet or portable toilet**

*Clause 3* applies to the requirement to provide connected or portable toilets at a construction workplace with less than 15 construction workers. The clause sets out the specific requirements in relation to the provision of these toilets and provides a definition of *connected toilet* and *portable toilet*.

#### **Privacy, ventilation and toilet paper**

*Clause 4* sets out the arrangements for the location, privacy and hygiene requirements for toilets and the provision of facilities to dispose of sanitary items for females.

### **Part 3 Other amenities**

#### **Room, or sheltered area, to eat meals in**

*Clause 5* requires the principal contractor for construction work to ensure that a room, or sheltered area, to eat meals and take breaks in is reasonably available to each construction person.

#### **Hands and face washing facilities**

*Clause 6* sets out the obligations on the principal contractor for construction work to provide washing facilities.

#### **Drinking water**

*Clause 7* requires the principal contractor for construction work to ensure that an adequate supply of potable, clean and cool drinking water is reasonably available to each construction person.

## **Schedule 6 Classification of mixtures**

### **Purpose of this schedule**

*Clause 1* states that the tables in this schedule replace some of the tables in the GHS.

### **Classification of mixtures containing respiratory or skin sensitisers**

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

### **Classification of mixtures containing carcinogens**

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

### **Classification of mixtures containing reproductive toxicants**

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

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

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

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

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

## **Schedule 7      Safety data sheets**

### **Safety data sheets—content**

*Clause 1* outlines the information to be contained in a safety data sheet. This clause sets out the information about the chemical to be contained in a safety data sheet and states that the safety data sheet must be in English.

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

*Clause 2* outlines the information to be contained in a safety data sheet for a hazardous chemical that is a research chemical, waste product or sample for analysis for the purpose of clause 331.

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

### **Purpose of this schedule**

*Clause 1* states that the purpose of the schedule is to set out the way in which the ingredients of a hazardous chemical must be disclosed in Section 3 of a safety data sheet prepared under this regulation.

#### **Identity of ingredients to be disclosed**

*Clause 2* applies if an ingredient in a hazardous chemical causes the correct classification of the chemical to include a hazard class and hazard category referred to in table 8.1. The identity of the ingredient must be disclosed in English on the label and safety data sheet of the hazardous chemical.

#### **Generic names used to disclose identity of ingredients**

*Clause 3* applies if an ingredient of a hazardous chemical must be disclosed under clause 2 and this clause sets out the grounds on which the ingredient may be disclosed by its generic name.

#### **Disclosing proportions of ingredients**

*Clause 4* sets out the grounds on which the proportions of the ingredients to the hazardous chemical must be disclosed.

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

### **Part 1 Correct classification**

#### **Correct classification of a substance, mixture or article**

*Clause 1* states that a substance or mixture (other than a research chemical, sample for analysis or waste product) is *correctly classified* if a determination is made about whether the substance or mixture can be classified into a hazard class under the GHS including a mixture classification referred to in schedule 6.

Subclause 1(2) states that a substance or mixture that is a research chemical, sample for analysis or waste product is *correctly classified* if, so far as is reasonably practicable having regard to the known or suspected properties of the substance or mixture, a determination is made about the identity of the substance or mixture; and a determination is made about whether the substance or mixture can be classified into a hazard class under the GHS.

### **Part 2 Correct packing**

#### **Correctly packing hazardous chemicals**

*Clause 2* outlines the requirements for a hazardous chemical to be correctly packed in a container.

### **Part 3 Correct labelling**

#### **Labelling hazardous chemicals—general**

*Clause 3* sets out the requirements for a hazardous chemical to be correctly labelled if the chemical is packed in a container that has a label in English.

### **Labelling hazardous chemicals—small container**

*Clause 4* applies if a hazardous chemical is packed in a container that is too small for a label attached to it to include all the information referred to in clause 1.

### **Labelling hazardous chemicals—research chemicals or samples for analysis**

*Clause 5* applies to a hazardous chemical that is a research chemical or sample for analysis. The hazardous chemical is *correctly labelled* if the chemical is packed in a container that has a label in English including the product identifier and a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

### **Labelling hazardous chemicals—decanted or transferred chemicals**

*Clause 6* applies if a hazardous chemical is decanted or transferred from the container in which it is packed and either will not be used immediately or is supplied to someone else. The hazardous chemical is *correctly labelled* if the chemical is packed in a container that has a label in English including the product identifier and a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

### **Labelling hazardous chemicals—known hazards**

*Clause 7* applies to a hazardous chemical if the chemical is not being supplied to another workplace and the hazards relating to the chemical are known to the workers involved in using, handling or storing the chemical. The hazardous chemical is *correctly labelled* if the chemical is packed in a container that has a label in English including the product identifier and a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

### **Labelling hazardous chemicals—waste products**

*Clause 8* applies to a waste product if it is reasonably likely that the waste product is a hazardous chemical.

### **Labelling hazardous chemicals—explosives**

*Clause 9* applies to a hazardous chemical that may be classified in the explosives hazard class.

### **Labelling hazardous chemicals—agricultural and veterinary chemicals**

*Clause 10* applies to an agricultural or veterinary chemical which is *correctly labelled* if the chemical is labelled in accordance with the requirements of the Australian Pesticides and Veterinary Medicines Authority.

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

### **Prohibited carcinogens**

*Table 10.1* lists prohibited carcinogens

### **Restricted carcinogens**

*Table 10.2* itemises restricted carcinogens and their restricted use.



**Restricted hazardous chemicals**

*Table 10.3* itemises restricted hazardous chemicals and their restricted use.

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

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

### **Determination of classification of flammable liquids**

*Clause 1* sets out how the classification of flammable liquids must be determined.

## **Schedule 12 Manifest requirements**

### **Manifest—general information**

*Clause 1* outlines the general information required in a manifest of hazardous chemicals.

### **Manifest—bulk storage and containers**

*Clause 2* sets out the information required in a manifest for a hazardous chemical stored at a workplace in bulk or in a container.

### **Manifest—identification of hazardous chemical**

*Clause 3* requires the manifest of hazardous chemicals to include the shipping name, the UN number, the class and division as stated in Table 3.2.3 of the ADG Code and specific information required for a flammable liquid category 4, an unstable explosive, organic peroxide type A or self-reactive substance type A.

### **Manifest—storage area for packaged hazardous chemicals**

*Clause 4* applies to a manifest for a storage area for packaged hazardous chemicals if the storage area contains a packaged hazardous chemical or a hazardous chemical in an intermediate bulk container and is required under these regulations to have a placard and the hazardous chemicals are dangerous goods under the ADG Code.

Subclauses 4(2) and (3) set out the content of the manifest of hazardous chemicals and *specified hazardous chemicals*.

### **Manifest—hazardous chemicals being manufactured**

*Clause 5* sets out the content for the manifest for each area where hazardous chemicals are being manufactured.

### **Manifest—hazardous chemicals in transit**

*Clause 6* applies to information required in a manifest where hazardous chemicals are in transit.

### **Manifest—plan of workplace**

*Clause 7* applies to the scale plan required in a manifest of hazardous chemicals in a workplace.

## **Schedule 13 Placard requirements**

### **Displaying placards**

*Clause 1* sets out the requirements for a PCBU to display placards at a workplace in relation to a hazardous chemical.

### **Maintaining placards**

*Clause 2* outlines the requirements for a PCBU, who must display a placard, to maintain and amend the placard.

### **Outer warning placards—requirements**

*Clause 3* applies to a PCBU who must display an outer warning placard at the workplace in relation to a hazardous chemical and the format of the outer warning placard.

### **Placards for particular hazardous chemicals stored in bulk**

*Clause 4* outlines the specific hazardous chemicals that are stored in bulk requiring a placard which must comply with a specific format.

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

*Clause 5* applies to placards displayed for unstable explosives, organic peroxides type A or self-reactive substances type A that are stored in bulk.

### **Placards for packaged schedule 11 hazardous chemicals (other than flammable liquids category 4) and IBCs**

*Clause 6* relates to placards displayed at a workplace for packaged Schedule 11 hazardous chemicals (other than flammable liquids category 4) and intermediate bulk containers (IBCs).

### **Placards for flammable liquids category 4 packaged or in bulk**

*Clause 7* applies to placards to be displayed for flammable liquids category 4 packaged or in bulk.

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

### **Hazardous chemicals (other than lead) requiring health monitoring**

*Table 14.1* itemises the hazardous chemicals other than lead requiring health monitoring and the type of health monitoring for each chemical.

### **Lead requiring health monitoring**

*Table 14.2* outlines the type of health monitoring required for lead.

## **Schedule 15 Hazardous chemicals at major hazard facilities (and their threshold quantity)**

### **Definitions**

*Clause 1* provides the definitions for this schedule.

### **Relevant hazardous chemicals**

*Clause 2* states that the hazardous chemicals that characterise a workplace as a facility for the purposes of the regulation are the chemicals specifically referred to in table 15.1 and chemicals that belong to the types, classes and categories referred to in table 15.2.

### **Threshold quantity of one hazardous chemical**

*Clause 3* sets out how the threshold quantity of a hazardous chemical is determined under this schedule.

### **Threshold quantity of more than one hazardous chemical**

*Clause 4* provides the formula to be applied to calculate the threshold where there is more than one hazardous chemical.

### **How table 15.1 must be used**

*Clause 5* outlines how table 15.1 in this schedule, which specifies the threshold quantity of a hazardous chemical, is to be applied.

**How table 15.2 must be used**

*Clause 6* outlines how table 15.2 in this schedule, which specifies the threshold quantities for explosive materials, is to be applied.

**Criteria for toxicity**

Table 15.3 provides the criteria for toxicity

**Schedule 16 Matters to be included in emergency plan for major hazard facility**

**Site and hazard detail**

*Clause 1* outlines the information required on the site and hazard detail.

**Command structure and site personnel**

*Clause 2* requires detail of the command philosophy and structure to be activated in an emergency and details of the site personnel responsible for liaising with emergency services.

**Notifications**

*Clause 3* outlines the responsibilities for notification in the event of a major incident or an event that could be expected to lead to a major incident.

**Resources and equipment**

*Clause 4* identifies the resources and equipment required to handle on-site and off-site emergencies.

**Procedures**

*Clause 5* sets out the procedures required for safe evacuation, the control points for utilities, the control of incidents involving schedule 15 chemicals and for decontamination following an incident.

**Schedule 17 Additional matters to be included in safety management system of major hazard facility**

**Safety policy and safety objectives**

*Clause 1* outlines the requirement to have the means by which a safety policy and objectives are communicated to all persons participating in the implementing the safety management system.

**Organisation and personnel**

*Clause 2* provides for the identification of personnel competent to participate in the safety management system and a description of the command structure in place to support the system.

**Operational controls**

*Clause 3* requires a description of the operational controls for the safe operation of plant, the isolation of the major hazard facility in the event of an emergency and adequate means of gaining access to the facility for service and maintenance.

**Duties of operators**

*Clause 4* provides for the description of the means by which the operator complies with duties under the Act and chapter 9 of the regulation.

### **Management of change**

*Clause 5* requires a description of the procedures for managing change.

### **Principles and standards**

*Clause 6* provides for a statement of principles concerning design and engineering standards to ensure the safe operation of the major hazard facility.

### **Performance monitoring**

*Clause 7* outlines the requirements for performance standards for measuring the effectiveness of the safety management system, a description of the way in which these performance standards are to be met and the performance indicators for the effectiveness of control measures.

### **Audit**

*Clause 8* requires the auditing of performance against the performance standards..

## **Schedule 18 Additional matters to be included in safety case for major hazard facility**

### **Part 1 Facility description**

#### **The facility**

*Clause 1* requires the safety case to include a brief description of the nature of the facility and its operation, including a description of on-site activities and processes that involve or will involve schedule 15 chemicals.

#### **The surrounding area**

*Clause 2* requires the safety case to include a detailed scaled plan of the facility and its surrounding area.

### **Part 2 Safety information**

#### **Control measures to limit the consequences of major incidents**

*Clause 3* requires the safety case to include the detailed description of the control measures designed to limit the consequences of major incidents.

#### **Performance monitoring**

*Clause 4* states that the safety case must include a detailed description of the performance standards and performance indicators required by item 7 of schedule 17 to be included in the safety management system.

#### **Safety management system**

*Clause 5* provides that the safety case must clearly reference the relevant part of the documented safety management system.

#### **Safety and reliability of facility structures and plant**

*Clause 6* requires a description of the steps taken to ensure that safety and reliability are incorporated into the design and construction of all aspects of the major hazard facility itself.

#### **Major incident history**

*Clause 7* states that a summary of the major incidents that have occurred at the major hazard facility over the previous 5 years must be provided.

## **Schedule 19 Dictionary**

The dictionary defines words and phrases used throughout the regulation.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

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