Queensland

Workplace Health and Safety Regulation 2008

Regulatory Impact Statement for SL 2008 No. 283

made under the

Building Act 1975
Child Employment Act 2006
Dangerous Goods Safety Management Act 2001
Environmental Protection Act 1994
Explosives Act 1999
Fire and Rescue Service Act 1990
Queensland Building Services Authority Act 1991
State Penalties Enforcement Act 1999
Transport Operations (Road Use Management) Act 1995
Workplace Health and Safety Act 1995

Workplace Health and Safety Queensland

Regulatory Impact Statement for the proposed *Workplace Health and Safety Regulation 2008*

November 2007

Queensland **the Smart State**

Queensland Government
Department of Employment and Industrial Relations

Purpose of a Regulatory Impact Statement

Under the *Statutory Instruments Act 1992*, if a proposed regulation is likely to impose appreciable costs on the community, or part of the community, a Regulatory Impact Statement (commonly known as a RIS) must be prepared before the regulation is made.

The purpose of the RIS is to explain to the community the need for the subordinate legislation, and sets out the costs and benefits that would flow from its adoption.

How to respond

All members of the community are invited to comment on the information presented in this Regulatory Impact Statement on the proposed *Workplace Health and Safety Regulation 2008*.

Comments should be made using the response form provided. However, failure to use this form will not preclude comments from being considered.

The closing date for providing comment is **29 February 2008**.

Written submissions should be sent to one of the following:

Mail: Director, Legislation Development and Review
Workplace Health and Safety Queensland
Department of Employment and Industrial Relations
GPO Box 69
BRISBANE QLD 4001

Email: whsqris@deir.qld.gov.au

Online: www.deir.qld.gov.au

Public access to submissions

If your submission contains information that you do not wish to be disclosed to others, please mark it 'Confidential'. Respondents wishing to make confidential submissions should be aware of the *Freedom of Information Act 1992*. Under this Act, the department must, on application, grant access to documents in its possession unless an exemption provision applies.

For example, if a submission contains information about a person's personal affairs (his or her experiences relevant to a matter covered by this RIS), and it is in the public interest to protect that person's privacy, the 'personal' information in that submission will not be accessible under the *Freedom of Information Act 1992*.

Consideration of issues raised

After the public comment period closes, the government will consider issues raised by members of the community. Further consultation may occur to address any concerns raised by the community prior to the development of a final position by the government.

Further enquiries

Further enquiries can be made by calling Workplace Health and Safety Queensland on (07) 3247 4850.

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Regulatory Impact Statement on the proposed *Workplace Health and Safety Regulation 2008.*

Background

Queensland's Workplace Health and Safety legislative framework

The objective of the *Workplace Health and Safety Act 1995* ('the Act') is to prevent a person's death, injury or illness being caused by a workplace, a relevant workplace area, work activities or plant or substances for use at a workplace. The Act establishes a framework for preventing or minimising exposure to risk, including setting benchmarks for industry by making supporting regulations.

The *Workplace Health and Safety Regulation 1997* ('the 1997 Regulation') is subordinate legislation made under the Act. The 1997 Regulation is a consolidated regulation consisting of 26 Parts and 15 Schedules, and supports the workplace health and safety obligations under the Act.

Many of the parts and related schedules of the 1997 Regulation have been amended regularly since it commenced on 1 February 1998. These amendments have ranged from relatively minor changes, to the inclusion of significant new parts (e.g. new provisions about asbestos, construction work and diving). The amendments have occurred as a result of various factors, such as technical developments, changes in work practices, or agreements to implement national standards.

In February 2006, the Council of Australian Governments (COAG) agreed to a new National Competition Policy reform agenda in response to a report from the National Competition Policy Review Working Group. The new reform agenda contains a number of decisions for action aimed at reducing regulatory burdens on industry. The report identified a number of regulatory 'hot spots' for action, including occupational health and safety regulation.

In April 2006, the Australian Government released a report on reducing regulatory burdens on business. The report identified problems created for business by the cross-jurisdictional regulatory environment and the lack of a coherent national approach.

Through COAG, the Council for the Australian Federation (COAF) and the Workplace Relations Ministers' Council, the Queensland government, in addition to all other state and territory governments, has since agreed to focus on achieving national consistency in workplace health and safety legislation. This is to be achieved mainly through giving effect to national standards within state and territory legislative frameworks.

National standards are largely developed by the Australian Safety and Compensation Council (ASCC). The ASCC is a council made up of government, employer and employee representatives that leads and coordinates national efforts to:

- prevent workplace death, injury and disease
- improve workers' compensation arrangements
- improve the rehabilitation and return to work of injured workers.

The ASCC also:

- provides a national forum for state and territory governments, employers and employees to consult and participate in the development of policies relating to occupational health and safety and workers' compensation matters
- promotes national consistency in the occupational health and safety and workers' compensation regulatory framework.

The proposed *Workplace Health and Safety Regulation 2008*

The need for the *Workplace Health and Safety Regulation 2008* (2008 Regulation) has been brought about as a result of the automatic expiry of the 1997 Regulation, under the provisions of the *Statutory Instruments Act 1992*. The 1997 Regulation will expire on 1 September 2008.

In the absence of a new regulation being put into place, the entire framework currently contained in the 1997 Regulation would cease to exist. As a result, to ensure the continuity in the current workplace health and safety regulatory framework, it is appropriate and necessary for the 2008 Regulation to be made.

The RIS process for the proposed 2008 Regulation

The development of significant subordinate legislation in Queensland that is likely to impose appreciable costs on the community, or part of the community, requires the preparation of a Regulatory Impact Statement (RIS) in accordance with the *Statutory Instruments Act 1992*. The purpose of a RIS is to explain to the community the need for subordinate legislation and to set out the benefits and costs that would flow from its adoption. It also explains what alternative measures have been considered and why they have been rejected.

In response to this requirement, commentary has been prepared in relation to each part of the proposed 2008 Regulation. As the 1997 Regulation is essentially 26 separate parts relating to different hazards, or aspects of workplace health and safety, each individual part needs to be considered during this process.

There are circumstances when a RIS need not be prepared for proposed subordinate legislation. These include when the subordinate legislation provides for a matter that is substantially uniform or complementary with legislation of the Commonwealth or another state; or consists of a matter involving the adoption of an Australian or international protocol, standard, code or intergovernmental agreement if an assessment of the benefits and costs has already been made and the assessment was made for, or is relevant to, Queensland; or a matter that is not of a legislative character (e.g. machinery, administration).

The existing content of many parts of the 1997 Regulation results from national agreements. These parts will be reviewed under the process for the review of national standards that is carried out in conjunction with other states and territories and the Commonwealth.

A number of the parts of the 1997 Regulation consist of issues that are currently under review at a national level, under the national harmonisation agreements (approved by COAG).

Furthermore, a majority of parts of the 1997 Regulation have been reviewed within the past 10 years.

For these reasons, it is not proposed to review all 26 parts of the 1997 Regulation.

This RIS examines the imposition of appreciable costs for those parts of the 1997 Regulation that:

- ∉ have not been subject to a national regulatory impact statement process
- ∉ have not been subject to an appropriate consultative process at the time of, or in the time since, implementation of the provisions within the past 10 years
- ∉ are not part of a nationally agreed position on enforcement of a particular matter.

A summary of each part of the 1997 Regulation, and the reasons behind inclusion or exclusion from the RIS process, is outlined in the table on the following pages.

Summary table of parts of the 1997 Regulation

Part No.	Description	To be formally reviewed	Rationale
1	Preliminary – includes the title, commencement date, etc.	No	Contains machinery and administrative provisions only
2	Plant	No	Subject to national standard
3	Prescribed occupations	No	Subject to national standard; also amendments made in 2005 and 2007 following two RIS processes
3A	Prescribed activities	No	Provisions consistent with other states and territories; some provisions subject to national standards
4	Workplace health and safety officers	Yes	**Not subject to a national standard and hasn't been reviewed**
4A	Accredited providers, assessment summaries and registered training organisations	No	Subject to national standard; amended in 2005 following QLD RIS process
5	Certificates	No	Administrative provisions
6	Notifiable construction work	No	Administrative and machinery provisions
7	Injuries, illnesses and dangerous events	Yes	**Not subject to a national standard and hasn't been reviewed**
7A	Access – employers doing work that is not construction work	No	Non-prescriptive, simple provisions
10	Noise	No	Subject to national standard; under review at national level
11	Asbestos	No	Subject to national standards; amended in 2005 following QLD RIS process
12	Underwater diving work	No	Amended in 2005 following QLD RIS process
12A	Conducting recreational snorkelling	Yes	**Not subject to a national standard and hasn't been reviewed**

13	Hazardous substances	No	Subject to national standards; national standards under review at national level; national RIS was released 2006
14	Lead	No	Subject to national standard
15	Confined spaces	No	Subject to Australian Standard; also to be reviewed at national level
16	Roll-over protective structures	No	Subject to Australian Standard; introduced in 2003 following QLD RIS process
17	Construction work	No	Substantially amended in 2002 following RIS process; amended again in 2005 to adopt national standard
21	Amenities – work that is not construction work	No	Introduced in 2005 following extensive consultation
21A	Employers – requirements for building provided for worker to occupy when performing work that is not construction work or rural industry work	No	Introduced in 2005 following extensive consultation
21B	Employers– atmospheric contaminants	No	Subject to national standard; national standards under review at national level; national RIS was released 2006
21C	First aid	No	Amended in 2004; contains simple, non-prescriptive provisions
21D	Workplace health and safety contributions	No	Administrative provisions
22	Miscellaneous – provides for a rural exemption to other parts of the regulation, and provides for workplace health and safety representative (WHSR) training	No	∉ Rural exemption provisions subject to a separate, concurrent QLD review. ∉ WHSR provisions commenced in 2007 following RIS process in 2005
23	Transitional provisions	No	Administrative and machinery provisions only

The body of this RIS is divided into two distinct parts:
Section A outlines the parts of the 2008 Regulation that will be specifically addressed as part of the formal RIS process. These are:

- Part 4: Workplace Health and Safety Officers
- Part 7: Injuries, illnesses and dangerous events
- Part 12A: Conducting recreational snorkelling

Section B outlines the parts of the 2008 Regulation that will not be the subject of the formal RIS process, and the rationale behind inclusion of each in this group.

This RIS is also accompanied by a companion Response Form document. The Response Form outlines certain questions in relation to each of the above parts, as well as a number of general questions on the format the 2008 Regulation may take (e.g. with respect to numbering).

Authorising law

The proposed 2008 Regulation will be made under s38 of the *Workplace Health and Safety Act 1995* (the Act).

Policy objectives

The Queensland Government is committed to the identified outcomes of building Queensland's economy and strengthening Queensland communities.

In support of this, the Department of Employment and Industrial Relations' purpose is to improve productivity, equity, safety and participation in Queensland workplaces. Fair, safe and decent work for Queenslanders supports social wellbeing and sustained economic growth.

More specifically, Workplace Health and Safety Queensland aims to reduce work-related death, injury and illness and associated costs. Each year in Queensland, work-related injury and illness is estimated to cost the community more than $5 billion, and claims around 100 lives.

The *Queensland Workplace Health and Safety Strategy 2004-12* sets targets as a step towards achieving its vision of Queensland workplaces free from death, injury and illness. These targets are also reflected in the *National Occupational Health and Safety Strategy 2002–12* (administered by the ASCC).

The objective of the Act, as set out in s7(1), is to prevent a person's death, injury or illness being caused by a workplace, by a relevant workplace area, by work activities, or by plant or substances for use at a workplace. Subsection (2) goes on to state this is to be achieved through the prevention or minimisation of a person's exposure to risk, with subsection (3) providing for the establishment of a framework to do so.

The primary objective of the proposed 2008 Regulation is to:

- maintain continuity of Queensland's workplace health and safety legislative framework, in line with national agreements and Workplace Health and Safety Queensland (WHSQ) strategies
- prescribe ways to minimise exposure to certain risks to a person's workplace health and safety
- prohibit exposure to certain risks to a person's workplace health and safety
- provide for supporting administrative matters relating to workplace health and safety (e.g. prescribing course requirements for certain people, requiring registration of certain plant, prescribing fees etc).

Legislative intent

The legislative intent of the 2008 Regulation is to maintain the workplace health and safety framework currently in place in Queensland.

The government's policy objectives will be achieved by adopting a regulation that mirrors the content of the 1997 Regulation, subject to changes required (as a result of the expiry of the 1997 Regulation) to maintain the intention of the current provisions. A general assessment of this option is outlined in the following sections.

Following the general assessment of the 2008 Regulation as a whole and separately, as well as options and alternatives for each part, are also outlined.

Options and alternatives for the Workplace Health and Safety Regulation 2008

Option 1 – Remake the 1997 Regulation as the 2008 Regulation

The first option proposed is to mirror the current provisions of the 1997 Regulation in the 2008 Regulation. This maintains the status quo currently experienced by industry. Such a position ensures no change to the current standards for the regulation of workplace health and safety for Queensland workers. This is especially relevant for those parts of the 1997 Regulation which have been implemented relatively recently, where industry has had to modify or adapt conduct of business to accommodate the provisions.

Option 1 allows the Queensland government to meet its obligations under various national agreements with respect to national harmonisation of workplace health and safety laws. Meeting these obligations is an important consideration, with national harmonisation of workplace health and safety laws a major factor in future regulatory development.

It should be noted that not all parts of the 1997 Regulation are subject to national agreements, and there are areas that are open to review. These sections are outlined and discussed later.

Option 2 – Expiry of the 1997 Regulation with no new regulation

The second option is not to proceed with the 2008 Regulation. As a result, upon the expiry of the 1997 Regulation, all obligations established under the 1997 Regulation would cease to exist.

It must be recognised that allowing the 1997 Regulation to expire without replacement does not remove the most basic obligations placed upon employers, designers and persons in control under the Act. However, it does effectively result in self-regulation by industry in the way general obligations are fulfilled. Furthermore, the Queensland government will be failing to meet its commitments to the Council of Australian Governments (COAG).

Option 2 is not favoured, as it provides a significantly lower level of regulatory control over workplace health and safety, and requires employers to determine their own means of control over high risk work activities. This may result in controls being insufficient to adequately control risk.

Cost benefit assessment

Costs to businesses affected by regulatory initiatives can stem from a variety of sources. These may include:

- ‘paper burden’ or administrative costs to businesses associated with complying with and/or reporting on particular regulatory requirements
- licence fees or other charges levied by government
- changes likely to be required in production, transportation and marketing procedures
- shifts to alternative sources of supply
- delays in the introduction of goods to the marketplace and/or restrictions in product availability
- requirements to increase competency levels through training.

Increases in costs to consumers may also arise from the introduction of regulatory initiatives. These may derive from:

- higher prices for goods and services
- reduced utility of goods and services
- delays in the introduction of goods to the marketplace and/or restrictions in product availability.

Workplace incidents and illnesses can impose significant costs on businesses. For small businesses particularly, workplace incidents can have a major financial impact. Workplace incidents and illnesses can, however, also lead to costs for society as a whole. The model below outlines some of the parties involved and how these costs are passed on.

In a recent report by the Department of Employment and Industrial Relations[1], it was estimated that the real costs of workplace injury and illness can be allocated as follows:

- employers bear about 5 % – costs include workers’ compensation, loss of productivity, and overtime
- workers bear about 35 % – costs include loss of income, pain and suffering, loss of future earnings, medical costs and travel costs

[1] *The Costs of Workplace Injury and Illness in Queensland 2002-03,* Workplace Health and Safety Queensland, 2004. Based on *Costs of workplace injury and illness to the Australian economy: Reviewing the estimation methodology and estimates of the level and distribution of costs,* produced by Access Economics for the National Occupational Health & Safety Commission.

- society bears about 60 % – costs include social welfare payments, medical and health costs, and loss of human capital.

In terms of cost, effective workplace health and safety interventions have the following benefits:

- significant reductions in the human cost to individuals, families and the community caused by workplace deaths, injuries and illnesses
- significant reductions in the financial burden on individuals, families and the community caused by workplace deaths, injuries and illnesses
- significant reductions in the burden on the workers' compensation scheme caused by workplace deaths, injuries and illnesses, which in turn increases costs imposed on industry
- significant reductions in the financial burden on the public health system for the treatment of workplace incidents
- significant reductions in costs for stakeholders, such as insurance companies, customers, other companies and shareholders.

The prevention of workplace incidents also has the following benefits:

- healthier, more productive workers, who produce a higher quality of work
- less work-related incidents and illnesses lead to less sick leave, which in turn results in lower costs and less disruption to the production processes
- less damages and lower risks for liabilities
- lower likelihood of damaging equipment.

It is important to differentiate between existing costs of regulation and additional costs arising as a result of the proposed 2008 Regulation. For example, businesses that currently conduct recreational snorkelling and employ a lookout and/or guide, in compliance with the 1997 Regulation, already incur the cost of employing that person. The reality is that there are no foreseeable additional costs arising out of the proposed 2008 Regulation.

Implementation of Option 1 is achieved without increasing any burden on Queensland businesses. This is as a result of the new provisions continuing the current requirements, obligations and duties which already exist under the 1997 Regulation. Accordingly, with respect to business and the community generally, the cost can be described as neutral. The costs would also remain neutral for government, with minimal (if any) need for education and promotion of the content of the 2008 Regulation.

Where possible, the department has considered amending provisions to result in a reduction of the cost of the regulation, while still achieving the objective (i.e. to improve administrative and reporting procedures).

Implementation of Option 2, while initially lowering costs for business, may in fact have dramatic long term cost outcomes for business and the community. Such costs could possibly flow from increases to injury rates, changes to business practices (especially at a national level), and decreases to productivity. Further, increased costs to government would be expected in the immediate term, to provide for education and promotion on the general obligations remaining in the Act, despite removal of specific obligations under the 1997 Regulation. These processes would need to ensure all workplaces understood, as far as possible, the content of their general obligations in their specific circumstances.

Section A – Parts of the Workplace Health and Safety Regulation 1997 specifically being reviewed

Part 4: Workplace Health and Safety Officers

Employers with 30 or more workers are required by the *Workplace Health and Safety Act 1995* ('the Act') to appoint a Workplace Health and Safety Officer (WHSO) to help eliminate workplace health and safety risks.

The Act defines a WHSO as a person who:

- holds a current authority for appointment as a workplace health and safety officer
- is appointed as a workplace health and safety officer by:
  - an employer for the employer's workplace; or
  - a principal contractor.

WHSOs provide advice to employers to help them meet their obligations under the Act. WHSOs are trained to identify workplace health and safety hazards and help implement risk assessments in the workplace.

Part 4 of the 1997 Regulation states that a person wishing to be appointed as a WHSO must apply to the chief executive (Director-General) for a certificate of authority and provides the circumstances in which the Director-General may grant the application. A certificate of authority is required under the Act before a person can be employed as a WHSO.

In making an application, the person must demonstrate that they have either been assessed as competent, or have sufficient experience to perform the functions of a WHSO. This means that an applicant must complete the prescribed training course modules, and after receiving assessment reports from their training provider, submit the reports to Workplace Health and Safety Queensland (WHSQ). Alternatively, where an applicant believes he or she has sufficient experience, they can apply for recognition of prior learning through a registered training organisation (RTO) to have their competencies recognised, and then apply to WHSQ for a certificate. To date, 22,201 WHSO certificates of authority have been approved.

This part of the 1997 Regulation also provides for the approval of either a WHSO course, or WHSO recertification course for the purposes of the Act. The Director-General cannot approve a course unless it is considered the course provides adequate instruction about the functions of a WHSO. There are two courses that have been approved, the initial 'Course in functioning as a Workplace Health and Safety Officer' and the follow up 'Course in re-certification to function as a Workplace Health and Safety Officer'.

Options and alternatives to Part 4

It is not an alternative to let the part expire without replacement, given the requirement under the Act that, for a person to be considered as qualified to hold the position of WHSO, they must hold a certificate of authority. In the absence of a process where certificates of authority could be granted, there would be no qualified people other than those already holding a certificate. This would place inappropriate pressure on industry in obtaining the services of workers to be appointed as WHSOs, and unnecessarily impact on compliance with the Act provisions.

There are two alternative options appropriate for consideration:
1. remake the part without major change
2. remake the part amending either or both approval methods.

Option 1 – Remake Part 4 without major change

The result of Option 1 is that all workers intending to seek appointment as a WHSO will continue to seek the approval of the Director-General. Also, a WHSO course must be approved by the Director-General. This maintains the status quo currently experienced by industry and WHSQ.

Option 2 – Remake Part 4 with an alternative approval process

This option is to create a new approval process for the issue of certificates of authority to be appointed as a WHSO, and a new approval process for a course to function as a WHSO. An alternative system could take a number of different forms, and are as follows:

- creating a wholly independent body to make such decisions
- allowing the registered training organisation (RTO) to issue the certificate directly to the applicant after completing the approved training.

Cost benefit assessment of Part 4

The benefit of Option 1 is that the Director-General of the Department of Employment and Industrial Relations, of which WHSQ is a division, is responsible for ensuring appropriate approvals are provided. Further, the necessary checking and reporting systems have already been developed in WHSQ, meaning a neutral cost impact on the government and no cost incurred by the establishment of another body to issue certificates.

In addition, the risk of fraudulent certificates being issued is managed, as WHSQ has control over approval of appointments. This is the preferred option.

It can be argued that having an independent body make decisions provides impartiality to any decision-making process, reducing the risk of biased decisions being made, and improper control over decision outcomes being exercised. However, creation and appointment of an independent body will involve increased costs for government. Furthermore, decisions under Part 4 are narrow in scope, and no substantive issues have been raised about the appropriateness of decisions made under the current process.

Adopting either of these alternatives would have a negative net cost, as there would be no real benefit gained by the community or business, and costs would be incurred by government due to the necessary changes in administrative and internal reporting systems.

In relation to Option 2, transferring the issue of certificates to RTOs would impose a cost on RTOs in terms of setting up administrative systems and possible costs of equipment to produce and issue certificates. The benefit to business would be negligible, as it is up to the individual wanting to be appointed as a WHSO to make the application, not the employer, and the only cost associated with the application is submitting the form.

Part 7: Injuries, illnesses and dangerous events

Part 7 requires that where a serious bodily injury occurs, or there is a work caused illness or a dangerous event[2], then certain people have an obligation to notify WHSQ in an approved form within certain timeframes (dependent on the incident). Penalties exist for failure to notify.

Further, obligations exist for principal contractors, employers or relevant persons to maintain records of any workplace incident[3] and dangerous event. At present, these records need to be held for a period of one year after the record is made.

In addition, where a serious bodily injury occurs, or there is a work caused illness or a dangerous event, the site of the incident is not to be altered or dealt with, pending a decision being made on the level of investigation required. The site may only be dealt with following approval from either a police officer or a WHSQ inspector.

In the financial year 2006/2007, there were 6,423 notifications made to WHSQ under this part.

Options and alternatives to Part 7

There are two proposed options for consideration:

1. remake the part without major change
2. allow the part, or a portion, to expire.

Option 1 – Remake Part 7 without major change

The preferred option is to maintain the current notification requirements for injuries, illnesses and dangerous events.

However, it is proposed to extend the period of time for keeping a record of a workplace incident (under s.53) from one year to three years. This is to ensure records are kept for sufficient time to allow full investigations to be conducted, where necessary, and to allow for any potential time lag between an incident occurring and an injury or illness being caused or made worse by the incident. This proposal would not impose a significant additional cost.

Option 2 – Expiry of Part 7 in whole or part

An alternative option is to allow the current regulation to expire, in whole or in part. One or all three distinct sections of the current Part 7 could be allowed to expire without replacement.

Cost benefit assessment of Part 7

The benefit of the preferred option, Option 1, is that it will maintain the robust process of ensuring WHSQ is notified of all major incidents, while also preserving the incident site for

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[2] The terms *serious bodily injury*, *work caused illness* and *dangerous event* are defined in the *Workplace Health and Safety Act 1995.*

[3] Also defined in the *Workplace Health and Safety Act 1995.*

investigation. It will also allow WHSQ inspectors to better assess workplaces' compliance with legislation through review of their records of workplace incidents.

Notifications made to WHSQ are used to determine when and where investigations are needed. The notifications are categorised, based on severity and type of incident. In some cases, WHSQ will respond to the notified event. In other cases, notified events are placed on regional registers to determine what action is necessary. Where there is a build-up of issues at a particular workplace, or the register identifies a need, an inspector will conduct an occupational health and safety workplace assessment. This information is important to WHSQ in monitoring serious injuries and dangerous events in industries and workplaces, and can be used to identify trends or problem areas.

All other state and territory governments have similar requirements for reporting serious incidents to the relevant authority.

In relation to Option 2, if the requirement to notify WHSQ about serious workplace incidents is allowed to expire, then WHSQ would not receive timely and detailed information on these incidents, and would therefore be unable to react promptly and effectively to address them.

For circumstances where emergency services attend the scene of a workplace accident, it may be that appropriate formal notification arrangements could be put into place (such as with Emergency Services or Queensland Police) that would ensure prompt notification to WHSQ of major workplace incidents. These arrangements would need to be developed if this option were adopted. In circumstances where emergency services or police are not involved, WHSQ would not be notified of serious workplace incidents.

An alternative avenue for information collection and notification of incidents to WHSQ may be for WHSQ to receive notification from WorkCover Queensland once a claim is lodged. In the financial year 2006/07, the number of claims made to WorkCover Queensland, that would need to be notified to WHSQ, was 95,243. A formal information sharing power would need to be in place for WHSQ to rely on this avenue for information collection. This method could result in a significant time lag between the incident occurring and WHSQ being notified, which would increase WHSQ response time and lessen the effectiveness of investigations. Also, this method would not result in reports of 'near miss' events where no one is injured.

The reporting requirements do place some burden on business through the development, implementation and monitoring of systems. Their removal may reduce the burden on business. However, requirements exist in both the Act[4], and the *Risk Management Code of Practice 2007*, to monitor and review workplace health and safety risks, including workplace incidents.

In relation to preservation of evidence, the Criminal Code provides specific offences dealing with interfering with evidence[5]. However, the benefit of the current provisions is the clarity in which it applies. Where a person suffers a serious bodily injury or work caused illness, or a dangerous event occurs, the site cannot be dealt with without the permission of a police officer or WHSQ inspector. Of the incidents currently reported to WHSQ, 26% are actively

[4] See section 27A *Workplace Health and Safety Act 1995.*

[5] See *The Criminal Code*, s126 (Fabricating Evidence), s129 (Destroying Evidence) and s 140 (Attempting to pervert justice).

investigated by WHSQ inspectors. Removal of the provision may result in confusion in industry as to whether they can deal with a site.

Part 12A: Conducting recreational snorkelling

Part 12A requires employers or self-employed persons conducting recreational snorkelling to implement systems as part of their undertaking. The systems focus on the safety of the snorkeller, and involve conducting counts of all people on board a vessel, both before leaving port and before leaving a site, as well as making a written record of this count. Also, the provisions require that each snorkeller is advised of the increased health risks for people who have existing medical conditions, and ensure a lookout and/or guide is involved. Lookouts and guides must have certain skills, such as being able to recognise hazards and snorkellers in difficulty, and to perform rescues.

Options and alternatives to Part 12A

There are two alternative options appropriate for consideration:

1. remake the part without major change
2. allow the part, or a portion, to expire.

Option 1 – Remake Part 12A without major change

Option 1, the preferred option, is to maintain the status quo with respect to the obligations surrounding the operation of recreational snorkelling businesses. The provisions are aimed at ensuring safety within the recreational snorkelling industry, and are closely based on the equivalent provisions in place for the conduct of recreational diving or recreational technical diving activities (see Part 12 of the 1997 Regulation).

Option 2 – Expiry of Part 12A in whole or part

An alternative is to allow the part to expire, thereby reducing the regulatory burden upon industry with respect to the provision of recreational snorkelling activities. In the circumstances, business owners would no longer be required under the legislation to conduct a count of snorkellers, make a record of the count, verify it and then keep it for one year. For example, to reduce the regulatory burden, the requirement to verify and keep the record could be allowed to expire.

In addition, the requirement to inform snorkellers about increased risks resulting from an existing medical condition, or to have in place designated and capable guides and lookouts, could be allowed to expire. However, these last provisions are considered extremely important in minimising the risk to workplace health and safety of snorkellers.

Cost benefit assessment of Part 12A

Since 1998, there have been 40 recreational snorkelling fatalities in Queensland. The following table shows the numbers of snorkelling deaths in Queensland since 1998.

Year -	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	**Total**
Rec. snorkellers	2	5	6	3	8	4	4	3	3	1	39

Snorkel workers	0	0	0	0	1	0	0	0	0	0	1
Snorkellers total	2	5	6	3	9	4	4	3	3	1	**40**

The cost impact of Option 1 is neutral, with all businesses currently required to have the appropriate systems in place. Further, the current provisions are also considered to be an important part of protecting the Queensland tourism industry from events that may impact on its profitability; therefore it is considered appropriate that the provisions be continued.

If Option 2 was to be adopted, it may appear that cost reductions for business may result. However, the expiry of this part may result in an increase in snorkelling accidents or fatalities.

The recreational diving and snorkelling market is a developing niche market for the Queensland tourism industry. In the year ending March 2007, 1.1 million visitors to Queensland undertook snorkelling activities[6]. To have an increase in deaths or injuries to snorkellers in Queensland would potentially damage the tourism industry via negative publicity, both within Australia and internationally, notwithstanding the human cost of such deaths and injury.

In addition, the majority of providers of these snorkelling activities also undertake recreational diving or recreational technical diving services. Such businesses are required to conduct the prescribed count and assessments, and provide lookouts/guides for divers in any event. Also, if the provisions were removed, business operators would be subject to different requirements, dependent on what activity a person was undertaking. Clarity and simplicity in the requirements are appropriate.

6 Queensland Scuba Diving and Snorkelling Report: Visitor Activities and Characteristics. *Tourism Research Australia, Canberra.*

Section B – Parts of the *Workplace Health and Safety Regulation 1997* not to be formally reviewed

Following are the parts of the *Workplace Health and Safety Regulation 1997* (1997 Regulation) that will not be **formally** reviewed as part of the RIS under the *Statutory Instruments Act 1992*, and the rationale for not reviewing them.

Part 2: Registrable plant and registrable plant design

Plant includes:

- machinery
- equipment
- appliances
- pressure vessels
- implements and tools
- personal protective equipment
- components of plant and fittings.

Part 2 of the 1997 Regulation imposes two registration requirements on employers and owners of certain items of plant.

The first requirement provides certain items of plant (as listed in Schedule 4 in the 1997 Regulation) to have their design registered before the plant can be used. Design registration includes a requirement for design verification prior to registration, and a flat fee of $75 per design registration (which is a one-off fee).

If a plant design is registered in another state or territory, it will be accepted in Queensland, without the design having to be re-registered, provided the design has not been changed in any way that requires new measures to control risk (section 16(4)), and the certificate number of the plant design is permanently marked on the plant so as to be clearly visible (section 16C).

The numbers of plant design registrations in Queensland are:

Financial year	Number of plant design registrations
2002 - 03	551
2003 - 04	629
2004 - 05	666
2005 - 06	610
2006 - 07	573

The second requirement provides that certain items of plant (as listed in Schedule 3 in the 1997 Regulation) be registered annually before the plant can be used. Also, certain registrable plant (certain types of tower cranes and mobile cranes) are required to be inspected by a competent person before they can be registered. The cost to register each item of plant ranges from $42 to $1,189, depending on the item, and is renewable every February. Plant registered in another state or territory cannot be used in Queensland unless it is registered in Queensland and the fee paid.

The numbers of items of plant registered in Queensland as at 31 January 2007 are:

Description	Numbers of plant
mobile crane	1917
tower crane	215
escalator	760
service lift	555
lift: passenger, other	6787
pressure vessel	12884
boiler	1100
building maintenance unit	64
air conditioning unit	2275
cooling tower	1781
class 2 amusement device	515
class 3 amusement device	60
class 4 amusement device	41
class 5 amusement device	31
truck-mounted concrete placing unit with booms	198

This part is based on the *National Standard for Plant [NOHSC:1010 (1994)]*.

As a result of amendments made to the 1997 Regulation which became effective from July 2004 and February 2005, the types of items of plant requiring plant registration in Queensland aligns with requirements in the national standard, except for airconditioning units and cooling towers. These are required to be registered in Queensland due to its climatic environment, and the increased risk of Legionella disease, requiring the need to monitor this type of plant.

As a result of amendments to the 1997 Regulation effective from 16 December 2005, plant registration has been further aligned with the national standard, in that people wishing to register certain items of registrable plant (tower cranes and mobile cranes) are required to ensure this plant is inspected by a competent person, and to provide a statement to that effect to Workplace Health and Safety Queensland (WHSQ). From 1 February 2007, if the crane is 10 years old, or a multiple of ten years, the competent person must be an engineer.

The national standard is currently being reviewed at a national level. WHSQ has been involved in the review by way of officer attendance at focus groups and providing comments on draft documents.

In June 2005, the National Occupational Health and Safety Commission (now the ASCC) issued the 'Report of the Review for the National Standard for Plant'. Since then, further development of the national standard has taken place through the ASCC, and a new standard is expected within the foreseeable future.

Part 3: Prescribed occupations

Part 3 states that work must not be performed in a prescribed occupation, such as scaffolding, rigging and crane operation, unless a worker has appropriate authority. The part specifies what constitutes appropriate authority, how exemptions can be made, training requirements and other obligations.

This part was the subject of amendment and review in July 2005 and July 2007.

In 2005, a RIS was developed and circulated for public comment. A copy of the RIS can be viewed at http://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2005/05SL308R1.pdf.

The RIS proposed that the preferred option for licensing operators of high risk equipment in prescribed occupations was to have RTOs carry out training and assessments, rather than accredited providers (certificate assessors). The RIS explained that this would provide a more structured and better quality assessment regime since assessors would be required to work under the Australian Quality Training Framework.

The proposal provided for a transition timetable of around two years to enable accredited providers to make the transition to the Vocational Education and Training (VET) sector.

The majority of responses to the RIS supported the proposal.

In addition, the *National Regulatory Impact Statement for The National Standard For Licensing Persons Performing High Risk Work* (the National RIS) was released in March 2006 for public comment.

The national RIS pointed out that the existing licensing system was not effective enough in reducing both the incidence and the severity of workplace injuries. To address these issues, the National RIS identified and assessed three options in relation to certification for operating high risk industrial equipment in Australia.

The options were to:
1. Maintain the status quo.
2. Develop a new *National Standard for Licensing Persons Performing High-Risk Work.* This option would require the introduction of photographic licences for the purposes of reducing the risk of identity fraud and the fraudulent production of licences and a requirement for licences to be renewed every five years.
3. Require formal training for operators of high risk equipment without licensing. This option would remove the requirement for people to obtain licences authorising the performance of certain types of high risk work. OHS authorities would no longer be involved in the administration of a licensing system. However, formal training, as required under Option 2, would be mandatory.

The RIS identified Option 2, which was ultimately accepted, to be the best option, as it provided substantial net benefits in dollars ($38.6 million over a 10-year period), as well as contributing to the policy objectives of the Australian Government by:
- facilitating the operation of nationally consistent and efficient arrangements for licensing persons engaged in high risk work
- removing duplication between the OHS and VET sectors
- creating a nationally recognised and consistent training system that should improve operator competency levels and facilitate portability of skills.

Based on a purely quantitative assessment of the benefits of each of the options, Option 1 was deemed to provide no net benefit, and while Option 3 would provide net benefits in the vicinity of $162.7 million (over a 10 year period), there were also many elements of Option 3 that could not be accurately estimated. For instance, it could be expected that abandoning the

licensing regime as proposed under Option 3, would potentially result in an increase in the amount of workplace incidents as there would not be a mechanism to properly monitor and validate adherence to minimum standards for the performance of specific high risk work.

A copy of the national RIS was tabled with the regulation amendments in 2007 and can be viewed at http://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2007/07SL115R.pdf .

The national RIS, in support of the national standard, was developed through three rounds of consultation. The first round was conducted in 2004, and consisted of a review of the previous national standard and guidelines, targeting a cross section of stakeholder groups. In August 2005, the ASCC released a public discussion paper and draft RIS on the draft national standard. The final RIS was released in March 2006 and incorporated public feedback received from the draft version.

The *National Standard for Licensing Persons Performing High-Risk Work* was declared in April 2006, and all Australian state and territory jurisdictions agreed to adopt the requirements of the national standard by 1 July 2007.

While Queensland had already introduced legislation to initiate moving the training and licensing of people performing high risk work to the VET sector, amendments made by the *Workplace Health and Safety Amendment Regulation (No.1) 2007* this year related to renewable and photographic licences, mandatory skills development before assessment, and measures to manage the renewal and continued transportability of licences across state and territory jurisdictions.

Part 3A: Prescribed activities

Part 3A has provisions dealing with persons performing prescribed activities, which are certain types of demolition work and asbestos removal work as outlined in Schedule 1 of the the Act.

Under this part, a relevant person must not perform a prescribed activity, unless the person holds a certificate to perform the activity. The part also states how a certificate must be applied for, and prescribes requirements for training and supervision in a prescribed activity.

To gauge the effect of prescribed activities regulations, the table below shows how many certificates to conduct prescribed activities have been issued.

Certificate	Occupation code	Number issued
supervise asbestos removal work ('A class')	AR1	57
perform asbestos removal work ('B class')	AR2	8432
perform demolition work	DM1/DM2	446

This part was last amended in 2007.

Asbestos removal work requirements in this part are based upon the *National Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (2005)* and the *National Code of Practice for the Management and Control of Asbestos in Workplaces [NOSHC: 2018 (2005)]*.

As outlined in the discussion in Part 11 – Asbestos, substantial consultation was undertaken during the development of these codes.

Licensing requirements for demolition work and asbestos removal work in this part are substantially uniform with licensing requirements in other states and territories and as such, under the *Statutory Instruments Act 1992*, this part is exempt from the preparation of a RIS.

Part 4A: Accredited providers and Registered Training Organisations

Part 4A specifies what must be done to become an accredited provider and places specific requirements on RTOs and accredited providers.

An accredited provider must apply to the Chief Executive for appointment to become an accredited provider, and an RTO must ensure that trainers and assessors comply with the requirements of the *Vocational Education, Training and Employment Act 2000.*

This part was introduced in 2005 to affect the move of training and licensing into the control of the VET sector, consistent with the *National Standard for Licensing Persons Performing High-Risk Work*. The part introduces arrangements in conducting training and assessment arrangements for RTOs, and preserves the same arrangements for accredited providers.

The move of training and assessment to the VET sector was the subject of a RIS and public consultation process in 2005 (see Subordinate Legislation (SL) No. 308 of 2005). The RIS can be viewed at http://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2005/05SL308R1.pdf.

The discussion in Part 3 – Prescribed occupations outlines the RIS proposals in further detail.

Part 5: Certificates

Part 5 defines certificates for the purposes of workplace health and safety legislation, outlines how to apply for a certificate and puts certain requirements on the Chief Executive relating to the granting or refusing an application. There are also provisions covering replacement, surrender, renewal and suspension of certificates.

These are administrative procedures only and exist solely to outline the process by which an application for any certificate is dealt with. This helps to create clarity and transparency in administrative processes.

No substantive provisions are contained within the part, as each certificate is dealt with in substantive provisions contained in other parts of the 1997 Regulation.

Part 6: Notifiable building and construction work

Part 6 requires that certain building and construction work must be notified, outlines how notification must be made, and provides for a fee, which is set out in Schedule 1 of the 1997 Regulation. The part also provides circumstances in which exemptions from payments of fees are allowed. The fee is set by way of percentage of work value, currently being 0.125% of the value of work above $80,000.

The part deals with administrative procedures only and fulfils the functions described below.

The information required under this part is provided to Q-Leave (the Building and Construction Industry Portable Long Service Leave Authority) and then passed on to WHSQ.

This information is necessary for WHSQ to guide its regulatory and enforcement activities. For example, it is used for forecasting resource allocations on a regional basis, as well as for informing the inspectorate about particular projects.

This information is obtained by Q-Leave, rather than directly by WHSQ, as part of a red tape reduction process. Q-Leave collects data for three entities, thereby reducing the number of places where a project is required to be registered. These entities are Q-Leave, WHSQ and the Building and Construction Industry Training Fund.

Part 7A: Access – employers doing work that is not construction work

Part 7A creates a duty for employers to provide workers with appropriate, safe and clear access to the workplace.

This part was introduced in 2004 and extends the obligations under the Act for a person in control of a workplace to ensure safe access to and from the workplace for people other than workers.

Providing safe and clear access is necessary to ensure workers are able to arrive at and leave their place of work safely. The part is not prescriptive and does not impose an appreciable cost that restricts competition.

Part 10: Noise

Noise at the workplace is a major cause of hearing loss in Queensland. This contributes to social isolation and reduced quality of life and work performance, as well as increased absenteeism and worker turnover. It also contributes to workplace injuries and accidents, in addition to noise- related injuries.

Part 10 states that an employer must not expose workers to excessive noise. The part stipulates the maximum noise levels to which workers can be exposed. The part is not prescriptive and is straightforward in nature.

This part is based upon the *National Standard for Occupational Noise [NOHSC:1007 (2000)] 2nd edition* and is consistent with the *National Code of Practice for Noise Management and Protection of Hearing at Work [NOHSC:2009* (2005)*]*.

The national standard is currently being reviewed at the national level by the ASCC.

Part 11: Asbestos

Part 11 imposes obligations on employers and relevant persons working with asbestos or asbestos containing material, including licensing requirements.

Part 11 was replaced in December 2005 (see SL No. 308 of 2005).

This part is based on, and requires compliance with, the *National Code of Practice for the Management and Control of Asbestos [NOHSC:2018 (2005)]* and the *National Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (2005)]*. Extensive consultation was undertaken on the requirements of the draft codes as part of a national RIS released in April/May 2004. For more information, contact the ASCC on (02) 6121 5317.

In addition, a Queensland RIS for the proposed regulation for the extension of licensing requirements for the removal of asbestos-containing material was released in 2005, prior to the amendments being made in December 2005. A copy of the RIS is available at http://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2005/05SL308R2.pdf .

The RIS considered three possible options to achieve the government's objectives of reducing potential exposure to asbestos fibres, by ensuring that people who remove asbestos are competent and use safe work methods. These were:

1. maintain the status quo
2. require a licence to remove non-friable asbestos-containing material in quantities greater than 10 square metres
3. require a licence to remove any quantity of asbestos-containing material.

Options 1 and 3 were rejected. It was considered that Option 1 would not lead to a reduction in the number of people potentially exposed to asbestos fibres, and failed to address public concern about the manner in which asbestos removal was being undertaken. Option 3 was considered too onerous and costly for workplaces and private residents.

Therefore, the RIS outlined the preferred option was to require a licence when someone is removing more than 10 square metres of non-friable asbestos-containing material. This approach is also consistent with national trends in asbestos licensing regulation. This part of the regulation reflects those proposals supported by stakeholders.

The estimated total cost of the preferred option was $1.99 million over the next 30 years. The average overall benefits are saving at least 330 lives, and between $60.13 million and $220.11 million over the next 30 years.

The majority of responses to the RIS supported the proposal.

Part 12: Underwater diving work

Part 12 requires employers and self-employed persons conducting underwater diving work to carry out certain things, such as ensure minimum competency levels of divers, conduct risk assessments, ensure medical fitness, keep safety logs and provide site briefs. Underwater diving work includes construction diving, other occupational diving and recreational diving.

This part was amended in 2005 and was the subject of a RIS and extensive public consultation process in May 2004 (see SL No. 70 of 2005). The amendments to the 1997 Regulation and supporting codes of practice resulted from recommendations from the Coroner's Court after a series of dive fatalities.

Prior to the amendment in 2005, construction diving, recreational diving and recreational technical diving were already covered to an extent by the 1997 Regulation. The amendments

introduced regulations for the first time to cover other occupational diving, such as harvest, research and retrieval diving, and added some requirements for all underwater diving.

Prior to developing the RIS, officers from WHSQ met with an established industry reference group in Cairns to discuss issues surrounding the policy proposal. Members of the reference group represented each major sector of industry affected by the proposal. Seven private sector industry experts and four public sector officers were involved in the initial consultation process. A specific consultation process was developed and undertaken to gather required information from indigenous communities, who would be significantly affected by the regulation. This included community fishery representatives from the Torres Strait.

The RIS identified three options to address safety issues in the diving industry and protect people at work from the risks associated with performing underwater diving work. These were:

1. A regulation and code of practice were to be introduced. The regulation was to cover competence of divers, dive safety logs, risk management, site induction/brief and diving from vessels underway. The code of practice would give practical guidance on issues, such as required equipment, gas quality in cylinders, decompression management, emergency plans, rescues, first aid and oxygen.
2. A regulation was to be introduced. This would cover the same issues as Option 1, but rather than a code of practice, all aspects of underwater diving would be regulated.
3. No regulation or code of practice would be introduced (i.e. maintain status quo).

The RIS proposed that the best way to achieve a reduction in death, injury and illness without a major impact on occupational diving industry businesses, was to introduce regulations relating to other occupational diving, and develop a code of practice to assist obligation holders meet their workplace health and safety obligations (Option 1).

Following the release of the RIS outlining the proposal in July 2004, 76 submissions were received. The regulation is the result of discussions held with the industry reference group over the issues raised during consultation, with agreement reached by the group over the approach taken by the regulation.

The RIS can be viewed at:
http://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2005/05SL070R.pdf

Part 13: Hazardous substances

Part 13 details the responsibilities of manufacturers, importers, suppliers and relevant persons in relation to hazardous substances in workplaces. Hazardous substances are either designated as such, or if not designated, a substance that meets certain criteria.

Provisions relate to the use of hazardous substances in the workplace, including:

- the use of Material Safety Data Sheets (MSDS);
- labelling of hazardous substances
- the use of a hazardous substances register in the workplace
- using hazardous substances in enclosed systems
- completion of risk assessments and implementation of control measures
- health surveillance, eon exposure and use of designated doctors
- record keeping;

- training and induction of workers
- spray painting with hazardous substances.

Part 13 gives effect to the *National Model Regulations for the Control of Workplace Hazardous Substances [NOHSC:1005 (1994)]*.

The current national model regulations date back to 1994 and are currently the subject of review at a national level. A national model has been proposed, and the main concepts of the draft proposal are to:

- consolidate the requirements for workplace hazardous substances and dangerous goods into a single framework
- use the Globally Harmonized System of Classification and Labelling of Chemicals (GHS) as a classification tool for substances within the scope of the proposed framework.

Included in the proposal is a suite of draft documents, namely:

- *National Standard for the Control of Workplace Hazardous Chemicals*
- *National Code of Practice for the Control of Workplace Hazardous Chemicals*
- *National Code of Practice for the Labelling of Workplace Hazardous Chemicals*
- *National Code of Practice for the Preparation of Safety Data Sheets*.

A national RIS, *Proposed revisions to the National OHS framework for the control of workplace hazardous substances and dangerous goods* and the *Public Discussion Paper for the Draft National Standard and Code for the Control of Workplace Hazardous Chemicals* accompanied these draft documents. These documents were open for public comment from September 2006 until March 2007. Copies can be obtained by visiting: http://www.ascc.gov.au/ascc/AboutUs/PublicComment/ClosedComment/DraftNationalStandardandCodesofPracticefortheControlofWorkplaceHazardousChemicals.htm**.**

The RIS proposed that the eventual merging of hazardous substances and dangerous goods requirements is likely to reduce the cost impost that industry currently experiences as a result of meeting two sets of regulatory requirements.

Consultation results indicated that there was general support for combining the hazardous substances and dangerous goods frameworks. However, a number of issues and concerns were raised surrounding this, such as increased complexity of chemical information and the timely adoption of the framework by state and territory jurisdictions in Australia.

The key issues raised by stakeholders regarding the GHS were:

- the scope of the GHS to be selected for Australia
- whether the GHS would be referenced directly.

A summary of comments can be viewed online at: http://www.ascc.gov.au/ascc/AboutUs/PublicComment/ClosedComment/DraftNationalStandardandCodesofPracticefortheControlofWorkplaceHazardousChemicals.htm **.**

The issues raised in the comments period are to be considered in consultation with the appropriate ASCC technical group. Analysis of technical changes to the documents is ongoing, with a new national standard expected in the near future.

Part 14: Lead

Part 14 outlines requirements for manufacturers, importers, suppliers, relevant persons and workers to minimise the risk from exposure to lead. Lead is considered a hazardous substance, but is treated separately to other hazardous substances by the 1997 Regulation.

The part provides for the preparation and provision of information about lead, risk assessments to be conducted for lead processes, how exposure to lead is to be controlled, and how the health of people working with lead should be monitored. Where a lead-risk job is being conducted, a relevant person must undertake atmospheric monitoring, health surveillance and remove certain workers from the job. Induction training and ongoing annual training is to be given to workers who may be exposed to lead.

Lead particles can be inhaled through dust or fumes, or swallowed through eating contaminated food, or smoking with contaminated fingers. Untreated lead poisoning in adults, children and pets can be fatal.

Continued exposure or high levels of exposure to lead can cause anaemia, kidney damage, nerve and brain damage.

Some of the workplace activities exposing people to lead include:

- dry machine grinding, discing, buffing or cutting of lead
- manufacturing or recycling lead-acid batteries
- repairs to radiators or vehicle exhaust systems
- melting or casting of lead or alloys containing lead (e.g. lead damp-course, trophies, yacht keels, leaded brass)
- removing lead paint from surfaces by dry sanding, heat or grit blasting
- demolition, involving oxy-cutting of structural steel primed with lead paint
- fire assay involving lead
- handling lead compounds causing lead dust (e.g. from dry lead pigments, lead UV stabilisers)
- spray painting with lead paint.

This part is based on the *National Standard for the Control of Inorganic Lead at Work [NOHSC:1012 (1994)]* and the *National Code of Practice for the Control and Safe Use of Inorganic Lead at Work [NOHSC:2015(1994)]*.

Given the current agreements for national harmonisation, it is undesirable to make major changes to the Queensland regulation outside of those agreed at a national level.

The costs of requirements of Part 14 are as follows:

Item	**Approximate cost**
Atmospheric monitoring (based on workplace of approximately 20 workers based in Brisbane)	$2500-3000
Health surveillance, including biological monitoring	
4 full medical including lead testing	$150
4 blood lead testing	$60
4 sign-off of health surveillance and biological monitoring by designated doctor	$25

Personal protective equipment (PPE) required (this depends on type of work being done and appropriate control measures):	
4 20 pack of disposable P2 respirators	$25 - 45
4 10 pack disposable P2 respirators with valve	$20 - 60
4 half-face mask with filter cartridges	$30 - 75
4 protective coveralls	$12 - 80
4 gloves	From $5
4 extraction and ventilation system installed in workplace (respirators not usually necessary)	$ 300 - 3000

In reality, these costs will not be an increase in existing costs, as the requirements currently exist under the 1997 Regulation.

Given the serious health risks posed by exposure to lead, it is not a viable option to allow the part to expire.

Part 15: Confined spaces

Part 15 requires certain obligation holders to comply with particular clauses of *AS/NZS 2865 – Safe working in a confined space*. These obligation holders are:

- designers, manufacturers or suppliers of plant that is a confined space
- persons who modify a confined space
- users of a confined space.

The parts of the Australian Standard which must be complied with are:

- hazard identification
- risk assessment
- control measures
- training and competence
- emergency response
- record keeping.

Working in a confined space presents unique hazards and may even exacerbate other hazards (e.g. noise, heat stress, being overcome by fumes, gases or oxygen depletion, high or low temperatures, manual tasks and slips, trips and falls).

Each year in Australia people are killed in a wide range of confined spaces, from storage vessels to complex industrial equipment. Many of these fatalities occur when attempting to rescue another person in a confined space. Additionally, people can be seriously injured from other hazards found within confined spaces.

This part does not replicate sections of the Australian Standard, but requires obligation holders to comply with specifically listed clauses of the standard.

To maintain their currency, all standards are periodically reviewed and new editions are published. The current *AS/NZS 2865 – Safe working in a confined space* was published in 2001 and developed by a technical committee convened by Standards Australia. The committee included representatives from employer and industry groups, employee unions,

government departments and workplace safety groups. Prior to being published, Standards Australia issued a draft form of the standard for comment.

Standards Australia can be contacted via http://www.saiglobal.com/shop/script/search.asp . In October 2005, the ASCC placed confined spaces on its agenda as an issue for review.

To minimise the risk of death, injury or illness at a workplace, it is necessary to retain the provisions of the regulation dealing with confined spaces.

Part 16: Roll-over protective structures for wheeled tractors (ROPS)

Part 15 requires most wheeled tractors to be fitted with a roll-over protective structure (ROPS). This part commenced on 1 July 2003 and became fully operational on 1 July 2007.

This part of the regulation is essential to protect operators of tractors from the risk of death and injury caused by tractor accidents. Tractor-related accidents are one of the primary causes of fatalities on Queensland farms. Nearly half of all tractor-related deaths are caused by rollovers. ROPS provide a zone of protection for the operator and reduce the risk of the operator being crushed by the tractor in the event of a rollover.

This part is based on *AS1636 – Tractors – Roll-over protective structures – Criteria and Test.*

The part is also consistent with the *National Standard for Plant [NOHSC:1010 (1994)]*. The national standard is currently under review at a national level, with a new standard expected within the foreseeable future.

There are approximately 100,000 tractors in use in Queensland, about one-fifth of these (20,000) are not fitted with ROPS. It was estimated, based on a survey of rural workplaces, that approximately 3800 of these would be retired from use prior to the 1 July 2007 deadline for ROPS to be fitted.

A RIS was prepared and accompanied the introduction of this part (see SL No.68 of 2003).

The RIS outlined three options for preventing or reducing fatalities and serious injuries caused by tractor rollovers at workplaces. These were:

1. 'do nothing' – no regulatory intervention
2. mandatory roll-over protective structures for tractors that are new, hired or leased for use at workplaces
3. mandatory roll-over protective structures for all tractors used at workplaces other than in specific circumstances.

The RIS pointed out that the majority of tractor-related deaths in Queensland occur on tractors without ROPS. At the time of the RIS, it was estimated that 33,684 tractors would need to be fitted with ROPS.

Option 1 was rejected, as data indicated that voluntary fitment of ROPS to tractors in Queensland increased by less than 5% between 1993 and 1998, so it was necessary to introduce regulations making ROPS mandatory.

Option 2 was also rejected, as it would not effectively achieve the policy objective in the short to medium term, due to the high number of existing tractors without ROPS in Queensland.

Option 3 was preferred, as it was considered the only way to ensure existing tractors would also be fitted with ROPS, not only those that were new, hired or leased.

The responses to the RIS were considered in finalising the 1997 Regulation. In addition, the Rural Industry Sector Standing Committee, established under the Act, agreed that specific regulatory provisions should be developed about ROPS for tractors. The Rural Industry Sector Standing Committee was involved in the development of, and endorsed the proposed regulation for ROPS for tractors. Direct discussions also occurred with a number of organisations on the proposed regulation.

A copy of the RIS was tabled with the *Workplace Health and Safety Amendment Regulation (No.1) 2003* and can be viewed at http://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2003/03SL068R.pdf .

To ensure the risk of death and injury from tractor roll-overs is minimised, this part of the regulation must be retained.

Part 17: Construction work

Part 17 places requirements on principal contractors, relevant persons and workers in relation to construction work.

Provisions include those that deal with:

- preparation of construction safety plans and work method statements
- workplace health and safety inductions
- prescribed occupations and prescribed activities
- the erection of signs
- the risk of a person falling
- excavations and excavation work
- safe housekeeping practices
- common plant
- hazardous substances
- underground services
- falling objects
- ladders and scaffolding
- amenities in construction workplaces.

In 1999, the Building and Construction Industry Taskforce (Workplace Health and Safety) was established by the then Minister to examine ways of reducing the unacceptable levels of death, injury and illness in the building and construction industry. The Taskforce recommended a suite of legislative reforms to respond to their findings. The recommendations of the Taskforce are contained in the *Building and Construction Industry (Workplace Health and Safety) Taskforce Final Report*, which can be accessed via http://www.deir.qld.gov.au/pdf/whs/construction_taskforce2000.pdf .

In response to the Taskforce findings, regulations were developed and introduced in 2002 and accompanied by a RIS (SL No.109 of 2002).

The RIS outlined three options for preventing or reducing fatalities and serious injuries while performing predominantly high risk activities in the building and construction industry. The

options focused on the responsibilities of principal contractors, employers and self-employed persons involved in the building and construction industry. The options were as follows:

1. no regulatory intervention (i.e. retain the status quo)
2. performance-based regulation
3. a combination of performance-based and prescriptive regulation.

Option 3 was the preferred and subsequently adopted option, as it provided flexibility to industry on the workplace health and safety solutions that could be used while maintaining some degree of prescription to ensure the quality of the solution selected.

Substantial amendments to this part were then made in 2005 (see SL No.308 of 2005) to adopt the *National Standard for Construction Work [NOHSC:1016 (2005)]*.

In developing the regulation to implement the *National Standard for Construction Work, a* number of proposals were prepared throughout the consultation with stakeholders. The proposed regulation reflected those proposals given support by stakeholders. The implementation of the *National Standard for Construction Work* will mean greater national consistency for business, particularly for businesses that also operate outside Queensland. The rearrangement of the construction provisions throughout the regulation are intended to make the regulation more user-friendly for principal contractors, relevant persons and workers.

In addition, other national documents that apply to specific areas of construction work are the:

- *National Code of Practice for Induction for Construction Work* (May 2007)
- *Proposed National Code of Practice for the Prevention of Falls in General Construction* (closed for comment November 2005, not yet declared).

Both these documents were accompanied by Regulatory Impact Statements at a national level, and can be viewed by visiting www.ascc.gov.au and following the 'about us' link to 'publications'.

Part 21: Amenities – work that is not construction work

Part 21A sets out the penalties for failure to maintain appropriate amenities for work other than construction work. Provisions include requirements for toilets, a sheltered area in which to eat meals, hand washing facilities and drinking water.

For work in a rural industry, appropriate amenities are outlined in Schedule 8B (s218). Appropriate amenities for all other work that is not construction work, or work in a rural industry, are outlined in Schedule 8C (s219).

These provisions were implemented from 1 January 2005 following an extended period of public consultation and negotiation with stakeholders (commencing in the late 1980's).

Numerous documents outlining regulatory options were prepared, including various impact statements used for consultative purposes. Amendments to the amenities provisions occurring between 2002 and 2005 have cumulatively resulted in the current Part 21.

Implementation of the provisions continues to be monitored by WHSQ, including consultation with stakeholders.

Part 21A: Employers – requirements for building provided for worker to occupy when performing work that is not construction work or rural industry work

Part 21A provides that employers have particular duties in relation to ventilation, lighting, floor area and air space for the building which workers occupy. The part does not apply to construction work or work in the rural industry, as these are covered separately in other parts of the 1997 Regulation.

The comment for Part 21 applies in regard to this part also.

Part 21B: Atmospheric contaminants

Part 21B deals with atmospheric contaminants generated at a workplace. Schedule 9 of the 1997 Regulation defines a 'contaminant' as anything that may be harmful to the health and safety of workers.

The part stipulates that atmospheric contaminants generated in a workplace (other than hazardous substances defined in s100 of the 1997 Regulation) must not exceed the national exposure standard, as stated in the *Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC:1003(1995)]*.

This part is based on the *National Exposure Standards for Atmospheric Contaminants in the Occupational Environment*. This standard is being reviewed as part of the review of the *National Model Regulations for the Control of Workplace Hazardous Substances [NOHSC:1005 (1994)]*.

Please see comments for Part 13 – Hazardous Substances on the extent of this review. It is expected that the standards relating to contaminants will form part of the new *National Standard for the Control of Workplace Hazardous Chemicals.*

Part 21C: First aid

Part 21C sets out the requirements regarding:

- the provision and maintenance of first aid equipment for employers whose workers perform work other than construction work
- the availability of a person with first aid training for employers whose workers perform rural industry work.

This part was amended in 2004 to introduce requirements for first aid at workplaces generally. Previously, provisions about first aid only related to construction and rural industry workplaces.

First aid equipment, capable personnel and first aid facilities are important resources in assisting workplaces to manage workplace injuries and illnesses. In addition, this part is not prescriptive in that it requires 'appropriate', 'adequate' and 'reasonably accessible' equipment, personnel and facilities. Therefore, it does not impose any appreciable cost upon employers, or restrict entry to business activity.

Part 21D: Workplace health and safety contributions

Part 21D exists to provide for the payment of workplace health and safety contributions by non-scheme employers and details how to calculate the amount of the workplace health and safety contribution payable by each non-scheme employer. A 'non-scheme employer' is an employer who operates in Queensland, but is insured under the Commonwealth workers' compensation scheme (Comcare), rather than under the Queensland workers' compensation scheme.

Approximately 15 % of workers in Queensland are covered by 'non-scheme' employers. The remaining 85 % are insured by WorkCover Queensland and their employers are not required to pay contributions under this part.

This requirement is legislated under the Act (Part 14, Div 1B) and its purpose is to establish funding support for activities of the department in order to provide workplace health and safety regulation and related education and prevention services.

This part, introduced in 2005, is administrative in nature and provides the means by which a requirement under Part 14, Div 1B in the Act can be effected.

The part does not restrict entry into business, as its effect is neutral. This requirement ensures the funding component of premiums paid to WorkCover by businesses, are available to WHSQ.

Part 22: Miscellaneous

Part 22 deals with two substantive items. It provides for a rural exemption to other parts of the regulation, and provides for Workplace Health and Safety Representative (WHSR) training.

The provisions in relation to the rural exemption are currently under review as part of a separate process. A RIS will be released for public comment outlining proposals for regulatory change prior to any amendments being made.

The WHSR training provisions commenced on 3 May 2007, and were the subject of a RIS and public consultation process (see SL No.75 of 2007). The RIS *Prescribed Training for Workplace Health and Safety Representatives* was released in September 2005, and outlined options in relation to WHSRs' access to training.

The role of the WHSR relates primarily to acting on behalf of workers at the workplace in regard to workplace health and safety issues. A WHSR is elected by the workers at the workplace, unlike a Workplace Health and Safety Officer (WHSO) who is appointed by the employer.

The options outlined in the RIS in relation to WHSR training were:

1. Regulatory intervention outlining an approved three day training course delivered by RTOs and consisting of established course content. This was the preferred option.
2. Minimum regulatory intervention outlining the number of days training that a WHSR is entitled to, how often, and the broad subject areas to be covered. This option does not prescribe a specific course.
3. 'Do nothing' – no regulatory intervention. Therefore, effect is not given to s81(1)(o) of the Act regarding entitlement of WHSRs to training.

It was considered that Option 2 would not ensure any quality in the training provided to WHSRs. For this reason, it was not as likely as Option 1 to meet the policy objective of 'enhancing workplace health and safety outcomes by ensuring that WHSRs can access training specifically designed to assist them to carry out their roles effectively'.

Adopting Option 3 was also considered unlikely to meet the policy objective, as it would not increase the competency of WHSRs.

In addition to the public consultation undertaken through the RIS process, a curriculum development advisory committee was formed to develop the *Course in Functioning as a Workplace Health and Safety Representative*. A number of stakeholders representing employer, industry and employee groups were either represented on that committee or consulted during the development process.

The RIS can be viewed by visiting http://www.legislation.qld.gov.au/LEGISLTN/SLS/RIS_EN/2007/07SL075R.pdf .

Part 23: Transitional provisions

Transitional provisions are often required when amending or replacing other provisions of legislation. They may deal with circumstances that happen before certain provisions commence, and may be needed to isolate the earlier circumstances in some way.

These provisions are common with schemes for the grant of any form of property, right, privilege, authority or licence. For example, when an occupational licence is introduced or changed, transitional provisions may be included to allow existing workers, in the affected industry time, to obtain the new licence.

The contents of this part are reflected in the parts to which the individual provisions relate, and are not dealt with separately.

Consistency with authorising law

The *Workplace Health and Safety Regulation 2008*, in its entirety, is consistent with the overall objective of the Act. That is, to prevent a person's death, injury or illness being caused by a workplace, by a relevant workplace area, by work activities, or by plant or substances for use at a workplace.

Consistency with other legislation

The proposed legislation is not inconsistent with the policy objectives of any other legislation.

Fundamental legislative principles

The *Legislative Standards Act 1992* requires that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament. The proposed regulation will not alter the rights and liberties of individuals from that existing under the current workplace health and safety legislative framework.

Conclusion

The Queensland Government is committed to the national harmonisation of workplace health and safety laws. The continuation of the workplace health and safety regulatory framework, as proposed, will ensure that this objective is met, while the objective of the *Workplace Health and Safety Act 1995* to prevent a person's death, injury or illness being caused by a workplace, by a relevant workplace area, by work activities, or by plant or substances for use at a workplace, is achieved.

Workplace Health and Safety Queensland

Regulatory Impact Statement for the proposed removal of the *rural industry exemption* from the *Workplace Health and Safety Regulation 1997*

November 2007

Queensland **the Smart State**

Queensland Government
Department of Employment and Industrial Relations

Purpose of a Regulatory Impact Statement
The development of significant subordinate legislation in Queensland, that is likely to impose appreciable costs on the community or parts of the community, requires the preparation of a Regulatory Impact Statement (RIS) in accordance with the *Statutory Instruments Act 1992*. The purpose of a RIS is to explain to the community the need for the proposed regulation and to set out the likely costs and benefits that would flow from its adoption in comparison with other options explored.

THE CLOSING DATE FOR PUBLIC REVIEW AND PROVIDING COMMENT ON THIS REGULATORY IMPACT STATEMENT IS 29 February 2008.

Submissions must be made in writing and should be sent to:

Mail: Removal of the Rural Industry Exemption RIS
Legislation Development & Review Branch
Workplace Health and Safety Queensland
Department of Employment and Industrial Relations
GPO Box 69
Brisbane QLD 4001

OR

Email: whsqris@deir.qld.gov.au (preferably in Microsoft Word)

OR

Fax: (07) 3247 4519 (please provide a coversheet addressed to):
Removal of the Rural Industry Exemption RIS
Legislation Development & Review Branch

Confirmation of your submission will be sent to you within five business days of Workplace Health and Safety Queensland receiving your submission. If you do not receive confirmation within this timeframe, please phone (07) 3247 4850.

Public Access to Submissions
If your submission contains information that you do not wish to be disclosed to others, please mark it 'Confidential'. Respondents wishing to make confidential submissions should be aware of the operation of the *Freedom of Information Act 1992* (the FOI Act). Under the FOI Act, the Department of Employment and Industrial Relations must, on application, grant access to documents in the possession of the department unless an exemption provision applies. For example, if a submission contains information about a person's personal affairs, and it is in the public interest to protect that person's privacy, the 'personal' information in that submission will not be accessible under the FOI Act.

Consideration of issues raised on the Regulatory Impact Statement
The results of the consultation will be outlined in the explanatory notes, which will accompany the regulation, when it is made.

Further enquiries
Further enquiries can be made by calling (07) 3247 4850.

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Regulatory Impact Statement

Title

Workplace Health and Safety Amendment Regulation - Removal of s.229 rural industry exemption of the *Workplace Health and Safety Regulation 1997.*

Introduction

Currently, s229 of the *Workplace Health and Safety Regulation 1997* (the Regulation)[1] exempts rural industry from the following parts:

A relevant person in rural industry is exempted from complying with the following provisions:	**Description of provision:**
∉ Part 2 in relation to plant that is a mobile elevating work platform with an elevation of 6m or less	Design registration of mobile elevating work platforms with an elevation of 6m or less
∉ Part 3 (Note: This part applies to relevant persons and workers)	Requirements for working in prescribed occupations
∉ Part 3A, except in relation to a prescribed activity that is asbestos removal work	Demolition work
∉ Part 4	Workplace Health and Safety Officers
∉ Part 13	Hazardous substances
∉ Part 14	Lead
∉ Part 15	Confined spaces
∉ Part 17, division 3, subdivision 9	Relevant person's obligation for risk from excavations
∉ Part 21B	Atmospheric contaminants

This Regulatory Impact Statement (RIS) outlines and examines options for the amendment of the rural industry exemption provision which will lift the exemption and give workers in rural industry equivalent protection to that applying in other industries. The attached Appendix reproduces in full all of the sections of the Regulation from which the rural industry is currently exempt.

The development of significant subordinate legislation in Queensland that is likely to impose appreciable costs on the community or part of the community requires the preparation of a RIS in accordance with the *Statutory Instruments Act 1992*. The purpose of a RIS is to explain to the community the need for subordinate legislation and to set out the benefits and costs that would flow

[1] For the full text of s.229 of the regulation, see Appendix 13.

from its adoption. It also explains what alternative measures have been considered and why they have been rejected.

The Queensland Government is party to the Competition Principles Agreement, agreed to by the Council of Australian Governments in 1995 (amended in 2000). The guiding principle of this agreement is that legislation should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

In keeping with this agreement, this RIS addresses these issues by outlining the benefits and costs to industry from the proposed regulatory provisions.

Background

On proclamation of the *Workplace Health and Safety Act 1989*, the rural industry was exempt from the application of the Act and its attendant Regulation. In 1990, the Act was amended to additionally apply to rural industry. At that time, an exemption provision was written in to the Workplace Health and Safety Regulation to entirely exempt rural industry, with some exceptions.

In 2000, a process was commenced for the gradual lifting of the exemption which, when fully implemented, will give workers in rural industry equivalent protection accorded to workers in other industries. Several parts of the exemption have already been lifted, and a number of other provisions have become applicable to rural industry. It is proposed to remove the remaining exemption in one amendment, with adequate phase in to allow sufficient and reasonable time for the rural industry to comply.

The definition of the rural industry as outlined in Schedule 9 of the Regulation is as follows:

> ***rural industry*** means an industry in which persons are engaged primarily in work—
> (a) in the cultivation of any agricultural crop or product whether grown for food or not; or
> (b) in the rearing and management of livestock; or
> (c) in the classing, scouring, sorting or pressing of wool; or
> (d) in aquaculture; or
> (e) in flower or vegetable market gardens; or
> (f) at clearing, fencing, trenching, draining or otherwise preparing land for any purpose stated in paragraph (a), (b), (d) or (e).

Risks associated with working in rural industry

Fatalities

The rural industry has the highest work-related fatality rate of all industry sectors at 12.2 per 100,000 workers in 2005-06, recording 7 work related deaths. The number of work-related fatalities has been constant, with 7 deaths in each of the preceding 2 financial years. However, the fatality rate is increasing due to the falling number of workers in the industry. The rural fatality rate is

almost 3 times the fatality rate for workers in all industries in Queensland, at 4.0 fatalities per 100,000 workers.[2]

A third of fatalities were due to vehicle incidents (e.g. motorcycles, all terrain vehicles, and tractors). Between 2000-01 and 2005-06, half of those fatally injured in rural industry were general farm hands. The largest concentration of fatalities was in the grain, sheep and beef cattle farming industry sub-sector.

Non-fatal workers' compensation claims

As shown in the following table, the work-related injury rate in 2005/06 for the rural industry was 19.7 per 1,000 workers, which was significantly above the all industries average rate of 14.7 per 1,000 workers. Both the long and short-term trends are of an increasing injury rate. The actual numbers of injuries are falling, but this is in the context of a decreasing workforce. Between 2003/04 and 2005/06, the number of work-related injuries per 1,000 workers in rural industry has increased by 22%. This is the greatest increase experienced by any industry sector.

Accepted Non-fatal Workers' Compensation Claims[2]

	2000 /01	2001 /02	2002 /03	2003 /04	2004 /05	2005 /06	3 year % change 2003/04 – 2005/06	6 year % change 2000/01 – 2005/06
No. claims	1334	1344	1285	1143	1139	1128	1%	15%
Rate (per 1,000)	16.9	14.5	15.9	16.2	18.0	19.7	2%	17%

Current legislative requirements

On proclamation of the *Workplace Health and Safety Act 1989* (the Act), the rural industry was exempt from the application of the Act and its Regulation. In 1990, the Act was amended to apply to the rural industry and an exemption provision was written into the Regulation to exempt the rural industry from the Regulation.

At its meeting on 9 March 2000, members of the Rural Industry Sector Standing Committee (Rural ISSC) agreed to endorse the strategy for the removal of the rural industry exemption. To date, the removal of the exemption has been progressed in a staged manner. This has ensured that adequate consideration has been given to the likely impact of the removal of each individual part of the Regulation and the industry's capacity to comply with the new arrangements.

Since 2001, the exemption has been removed from the following:

- Noise (2002)
- Amenities and introduction of amenities provisions specific to the rural industry (2003)
- Electrical - now covered under the *Electrical Safety Act 2002* (2002)
- Asbestos (2006)

[2] Based on accepted claims from employees and eligible self-employed workers while on duty or on a break at the place of work. Excludes the mining industry. Source: Queensland Employee Injury Database, Office of Economic and Statistical Research. Data current at May 2007 and is subject to change.

The remaining exemption in the Regulation is as follows:

A relevant person in rural industry is exempted from complying with the following provisions:	**Description of provision:**
∉ Part 2 in relation to plant that is a mobile elevating work platform with an elevation of 6m or less	Design registration of mobile elevating work platforms with an elevation of 6m or less
∉ Part 3 (*Note:* This part applies to both relevant persons and workers)	Requirements for working in prescribed occupations
∉ Part 3A, except in relation to a prescribed activity that is asbestos removal work	Demolition work
∉ Part 4	Workplace Health and Safety Officers
∉ Part 13	Hazardous substances
∉ Part 14	Lead
∉ Part 15	Confined spaces
∉ Part 17, division 3, subdivision 9	Relevant person's obligation for risk from excavations
∉ Part 21B	Atmospheric contaminants

It is now proposed to remove the remaining exemption through a single amendment to the Regulation.

Costs and timing of implementation

There will be costs to the rural industry in the removal of this exemption, both direct in terms of providing additional controls to minimise workplace risk, as well as indirect in terms of time spent understanding the additional requirements and planning for implementation within the business. Full details of these costs and the associated benefits of removing the exemption are outlined later.

To address this, there will be sufficient time allocated for the rural industry to understand its requirements and plan for implementation, as detailed in the sections relating to the specific parts of the exemption in the section on cost benefit assessment.

Stakeholders

The primary stakeholder group for consultation on the removal of the rural industry exemption is the Rural Industry Sector Standing Committee. In addition, consultation will occur with the following groups:

- Queensland Farmers' Federation
- AgForce Queensland
- FarmSafe Queensland
- Canegrowers
- Queensland Council of Unions
- Australian Workers' Union
- Queensland Dairyfarmers' Organisation

Authorising law

Section 38 of the *Workplace Health and Safety Act 1995* provides the head of power for the making of a regulation.

Policy objectives

The policy objective of the proposed amendment regulation is to provide the same level of protection for persons conducting a business or undertaking, employers, self-employed persons, workers and others from the risk of death, injury or illness occurring as a result of the hazards commonly encountered in rural industry that is currently provided to the rest of industry.

Need for intervention

The rural industry represents 10% of all businesses in Queensland and 3% of employed people. The rural industry workforce has declined by approximately one-fifth since 2003.

The rural industry had the third highest non-fatal claim rate in comparison to other industry groups in 2005/06.

There was a 21% increase in the non-fatal claim rate between 2003/04 and 2005/06.

The traumatic injury rate of 9.4 claims per 1,000 workers was one of the highest out of all industry sectors. The proportion of traumatic injury claims (48%) was significantly higher in this industry than in other industry groups.

There was a 22% increase in the traumatic injury claim rate between 2003/04 and 2005/06. The most common type of claim was fruit, vegetable or nut farm hands sustaining injuries from using knives and cutlery, and motorcycle, scooter or trail bike vehicle incidents.

The major causes of injury were body stressing; falls, trips and slips of a person; and being hit by moving objects. This involved most frequently the outdoor environment and farm animals.

The musculoskeletal disorder claim rate was 9.1 claims per 1,000 workers in 2005/06, following a 17% increase since 2003/04. Handling, lifting, carrying, or putting down objects, in particular vegetation or crates, cartons, boxes, cases, drums, kegs and barrels were the most common causes of injuries.

The rural industry has the highest fatality rate of all industry groups.

General farm hands were most likely to be fatally injured with the largest concentration of fatalities being in the grain, sheep and beef cattle farming industry sub-sector, particularly in beef cattle farming.

The most common cause of fatalities was motorcycle, scooter or trail bike vehicle incidents.

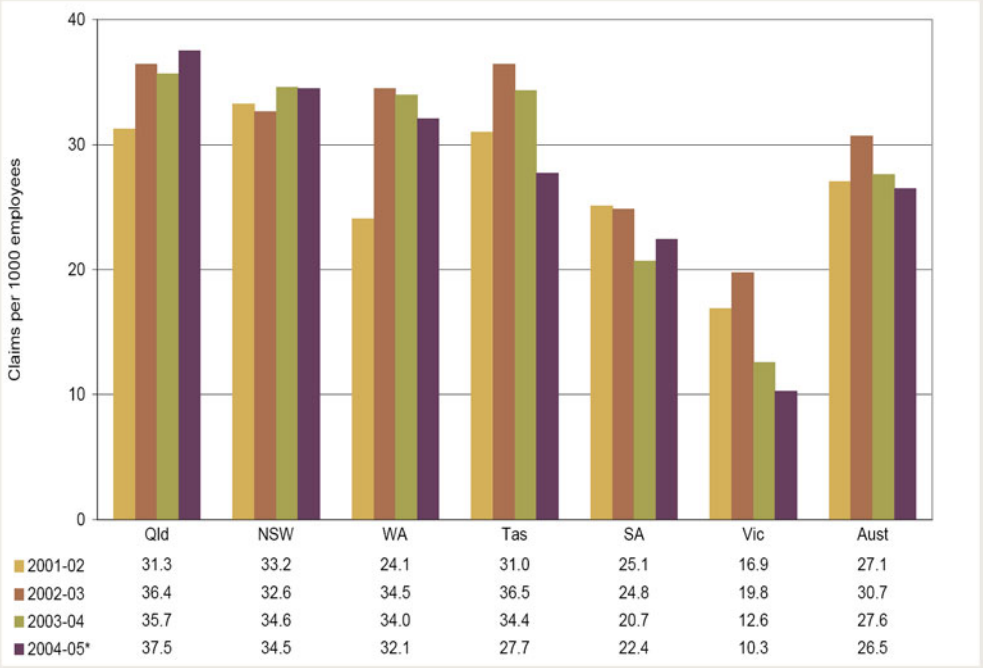
National harmonisation and interstate comparisons

The impact of the inconsistent application of occupational health and safety regulation across jurisdictions is regularly identified by business as an area of concern. In April 2007, the Council of Australian Governments (COAG) reaffirmed its commitment to achieving national consistency in OHS compliance requirements.

Currently, Queensland is the only State or Territory which provides an exemption to the rural industry in compliance with OHS legislation.

A general comparison of the safety performance of Queensland's rural industry compared to that of other States and Territories is as follows:

Incidence rates by jurisdiction, one or more weeks off work[3]



	Qld	NSW	WA	Tas	SA	Vic	Aust
2001-02	31.3	33.2	24.1	31.0	25.1	16.9	27.1
2002-03	36.4	32.6	34.5	36.5	24.8	19.8	30.7
2003-04	35.7	34.6	34.0	34.4	20.7	12.6	27.6
2004-05*	37.5	34.5	32.1	27.7	22.4	10.3	26.5

*Data for 2004–05 are preliminary and are subject to change.

The above figure shows the incidence rates of compensated claims involving one or more weeks off work in the Agriculture, forestry and fishing industry (rural industry) over the past four years by jurisdiction. These data show considerable variability between jurisdictions over this time period. In 2004–05, Queensland's rural industry recorded the highest rate of claims per 1,000 employees of all jurisdictions, and significantly higher than the national rate. Furthermore, the rate of claims in Queensland appears to be rising, whilst that for Australia as a whole is falling.

[3] *Agriculture, Forestry and Fishing Information Sheet*, Australian Safety and Compensation Council, Commonwealth of Australia, 2007.

Legislative intent

The Queensland Government's Smart State Strategy supports regulatory reform to deliver enhanced prosperity and quality of life by providing economic growth and social wellbeing through fair, safe and decent work.

The removal of the rural industry exemption supports the Government's commitment to providing safe and healthy work environments for all Queenslanders.

The specific requirements of the *Workplace Health and Safety Regulation 1997*, as they would apply to the rural industry if the exemption was lifted, are outlined in detail in the appendix:

- Regulation Part 2 – Mobile elevating work platforms
- Regulation Part 3 – Prescribed occupations
- Regulation Part 3A – Prescribed activity (demolition work)
- Regulation Part 4 – Workplace Health and Safety Officers
- Regulation Part 13 – Hazardous substances
- Regulation Part 14 – Lead
- Regulation Part 15 – Confined spaces
- Regulation Part 17 division 3 subdivision 9 – Excavation work
- Regulation Part 21B – Employers – atmospheric contaminants
- Regulation section 229 – Rural industry exemption

Consistency with the authorising law

The removal of the rural industry exemption from the Regulation is consistent with the overall objective of the *Workplace Health and Safety Act 1995* to prevent a person's death, injury or illness being caused by a workplace, by a relevant workplace area, by work activities, or by plant or substances for use at a workplace.

Consistency with other legislation

The proposed regulation is not inconsistent with any other Queensland legislation.

Options and alternatives

Consideration has been given to a number of options for achieving the desired policy objectives as follows:

Option 1	Retain the rural industry exemption
Option 2	Remove the rural industry exemption entirely
Option 3	Remove individual aspects of the rural industry exemption over an extended period of time

Cost benefit assessment

Costs to businesses affected by regulatory initiatives can stem from a variety of sources. These may include:

- ‘paper burden’ or administrative costs to businesses associated with complying with and/or reporting on particular regulatory requirements
- licence fees or other charges levied by government
- changes likely to be required in production, transportation and marketing procedures
- shifts to alternative sources of supply
- delays in the introduction of goods to the marketplace and/or restrictions in product availability
- requirements to increase competency levels through training.

Increases in costs to consumers may also arise from the introduction of regulatory initiatives. These may derive from:

- higher prices for goods and services
- reduced utility of goods and services
- delays in the introduction of goods to the marketplace and/or restrictions in product availability.

Workplace incidents and diseases can impose significant costs on businesses. For small businesses particularly, workplace incidents can have a major financial impact. Workplace incidents and diseases can however, also lead to costs for society as a whole. The model below outlines some of the parties involved and how these costs are passed on.

In a recent report by the Department of Employment and Industrial Relations,[4] it was estimated that the real costs of workplace injury and illness can be allocated as follows:

- employers bear about 5% — costs include workers’ compensation, loss of productivity, and overtime
- workers bear about 35% — costs include loss of income, pain and suffering, loss of future earnings, medical costs and travel costs
- society bears about 60% — costs include social welfare payments, medical and health costs, and loss of human capital.

In terms of cost, effective workplace health and safety interventions have the following benefits:

- significant reductions in the human cost to individuals, families and the community caused by workplace deaths, injuries and illnesses
- significant reductions in the financial burden on individuals, families and the community caused by workplace deaths, injuries and illnesses
- significant reductions in the burden on the workers’ compensation scheme caused by workplace deaths, injuries and illnesses, which in turn increases costs imposed on industry
- significant reductions in the financial burden on the public health system for the treatment of workplace incidents
- significant reductions in costs for stakeholders such as insurance companies, customers, other companies and shareholders.

The prevention of incidents also has the following benefits:

- healthier more productive workers that produce a higher quality of work

[4] *The Costs of Workplace Injury and Illness in Queensland 2002-03,* Workplace Health and Safety Queensland, 2004. Based on *Costs of workplace injury and illness to the Australian economy: Reviewing the estimation methodology and estimates of the level and distribution of costs,* produced by Access Economics for the National Occupational Health & Safety Commission.

- less work-related incidents and diseases lead to less sick leave. This in turn results in lower costs and less disruption of the production processes
- less damages and lower risks for liabilities
- lower likelihood of damaging equipment.

Costs and Benefits of Option 1 (Retain the rural industry exemption)

Option 1 maintains the current situation where the general obligations under the *Workplace Health and Safety Act 1995* apply to the rural industry, but the specific requirements of certain sections of the Workplace Health and Safety Regulation 1997 relating to the following do not apply:

- Mobile elevating work platforms with an elevation of 6m or less
- Prescribed occupations
- Demolition work
- Workplace Health and Safety Officers
- Hazardous substances
- Lead
- Confined spaces
- Relevant person's obligation for risk from excavations
- Atmospheric contaminants

This option places no additional financial, administrative or other costs on the industry. Obligation holders in rural industry will continue to be required to meet their general obligations under the Act, but will not be required to meet the specific requirements of those parts of the Regulation to which the rural industry is exempt.

The benefits of this option are that obligation holders in rural industry do not have to spend time understanding and implementing any additional occupational health and safety requirements than those that currently apply.

Maintaining the rural industry exemption, however, affords a lesser level of legislative control and protection to workers in rural industry than in all other applicable industries.

Costs and Benefits of Option 2 (Removing the rural industry exemption)

There will be some cost to the rural industry under option 2, both direct in terms of providing additional controls to minimise workplace risk, as well as indirect in terms of time spent understanding the additional requirements and planning for implementation within the business.

However, these additional controls were introduced under the 1997 Regulation in all other industry sectors as a necessary legislative requirement to deliver improved health and safety outcomes in the following areas:

- Mobile elevating work platforms with an elevation of 6m or less
- Prescribed occupations
- Demolition work
- Workplace Health and Safety Officers
- Hazardous substances
- Lead
- Confined spaces
- Relevant person's obligation for risk from excavations

- Atmospheric contaminants

These requirements were introduced to reduce the incidence of work related injuries and ill-health and thus offset the significant economic and social costs of workplace injury and disease. It is now proposed to apply these requirements to the rural industry for the same reasons.

To address the additional cost requirements of the removal of the rural industry exemption, there will be sufficient time allocated for the rural industry to understand its requirements and plan for implementation. The timeframe for this is detailed later in the RIS, in the cost/benefit discussion under each individual regulatory provision.

Costs and Benefits of Option 3 (Remove individual aspects of the rural industry exemption over an extended period of time)

Option 3 achieves the same outcome as Option 2 (full removal of the exemption), except that it phases the removal of the exemption over time.

There would be additional costs associated with this approach. The costs associated with providing additional controls to minimise workplace risk would be similar to those outlined in Option 2. Furthermore, under this option, obligation holders will need to spend time to understand their additional obligations on a number of occasions over time, rather than on one occasion (as with Option 2).

The benefits of this option are that any costs of removing specific sections of the rural industry exemption will be spread over a period of time.

However, this option will further delay the application of a number of legislative controls and protection to workers in rural industry than in all other applicable industries.

A proposed time period for the removal of the rural industry exemption is as follows:
2008
- Regulation Part 2 – Mobile elevating work platforms
- Regulation Part 15 – Confined spaces
- Regulation Part 3A – Prescribed activity (demolition work)
- Regulation Part 14 – Lead

2009
- Regulation Part 13 – Hazardous substances
- Regulation Part 17 Division 3 Subdivision 9 – Excavation work
- Regulation Part 21B – Atmospheric contaminants

2010
- Regulation Part 3 – Prescribed occupations
- Regulation Part 4 – Workplace Health and Safety Officers

Cost benefit assessment for specific parts of the rural industry exemption

Part 2: Mobile elevating work platforms

Part 2 of the *Workplace Health and Safety Regulation 1997* currently applies to all plant requiring registration (listed in Schedule 3 of the regulation) or design registration (listed in Schedule 4 of the regulation) used in rural industry. Mobile elevating work platforms with an elevation of 6 metres or less are subject to the rural industry exemption.

The requirement to register the design of boom-type elevating work platforms was introduced under the 1997 Regulation in all other industry sectors as a necessary legislative requirement to deliver improved health and safety outcomes, and minimise the potential risks posed by this machinery.

Elevating work platforms are not listed in Schedule 3 (registrable plant), and so would continue not to require registration, and no annual fee would be payable.

Boom-type elevating work platforms are listed in Schedule 4 (registrable plant design). Accordingly, once the exemption is removed, boom-type elevating work platforms with an elevation of 6 metres or less will require design registration.

Boom-type elevating work platforms are commonly used in rural industry, and particularly in the banana, macadamia, avocado, pawpaw and other orchard industries.

1. What will the removal of this part of the exemption entail?

- A requirement to register the design of all boom-type mobile elevating work platform prior to use in the workplace.

2. How would the three options apply to this provision?

- ***Option 1*** *– Retain the rural industry exemption:* This would entail a continuation of two different standards applying to mobile elevating work platforms, one for rural and another for all other industries. Retaining the rural industry exemption for this part also means that workers in rural industry will continue to face potentially greater risk to their health and safety compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation.
- ***Option 2*** *– Remove the rural industry exemption entirely:* Under this option, it is proposed to require that any new or used mobile elevating work platform brought in to the business comply with the design registration requirement. Existing machines would need to have their design registered if they are modified or change ownership. This will be completed from date of commencement. Removing the exemption will provide workers in rural industry with an equivalent level of legislated health and safety when compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation. ***(This is the preferred option).***
- ***Option 3*** *– Remove individual aspects of the rural industry exemption over an extended period of time:* Under this option, the proposed action would be the same as option 2, except that the timing of the application of the currently exempted regulatory provisions would be further extended.

3. What will it cost the rural industry if this part of the exemption is removed?

- Design registration currently costs $79.10. There would not be any additional cost if the mobile elevating work platform was a commercially available machine or purpose built design which already has design registration.
- To achieve design registration a boom-type elevating work platform would need to comply with the requirements of the relevant Australian Standard. Many of the boom-type elevating work platforms used in rural industry do not currently comply with this standard. The costs of upgrading an existing boom-type elevating work platform and achieving design registration could be in the order of $20,000 per unit. Existing boom-type elevating work platforms would only need to be design registered if they are modified or change ownership.
- It is estimated that there are approximately 2,000 such items of plant in rural industry which would require registration. It is expected that many of the older non-compliant boom-type elevating work platforms would not be design registered, as these machines do not have a long service life. These machines would only need to be design registered if they were modified or change ownership. The additional cost of purchasing an Australian Standard compliant boom-type elevating work platform compared to a non-compliant one of similar capacity is estimated to be in the order of $5,000.

4. When is it proposed to make this part applicable to the rural industry (option 2)?

- Any new or used boom-type elevating work platform first brought in to the business would need to comply with the design registration requirement from the date the exemption is removed. Existing machines would need to be design registered if they are modified or change ownership.

The specific requirements of this part of the Regulation are outlined in the Appendix**.**

Part 3: Prescribed occupations

The rural industry exemption relating to *Part 3 – Prescribed occupations* of the *Workplace Health and Safety Regulation 1997* applies to both "a relevant person in rural industry" and "a worker in rural industry".

The requirement to hold an occupational licence for operators of certain plant, including high risk plant was introduced under the 1997 Regulation in all other industry sectors as a necessary legislative requirement to deliver improved health and safety outcomes, and minimise the potential risks posed by this plant. The removal of the exemption will ensure that rural workers receive appropriate training in safety requirements when using certain items of plant.

1. What will the removal of this part of the exemption entail?

- A requirement for workers in rural industry in the following occupations to hold a licence for performing high risk work and for an employer to ensure appropriate training is provided. For the rural industry in particular, this will affect workers, employers and managers on rural workplaces, including operators of forklifts, boom-type elevating work platforms or other prescribed occupations.

- The removal of the exemption for prescribed occupations will only relate to the following 23 occupations which are subject to national agreements.

- Basic scaffolder
- Intermediate scaffolder
- Advanced scaffolder
- Dogger
- Basic rigger
- Intermediate rigger
- Advanced rigger
- Operator of a tower crane
- Operator of a self-erecting tower crane
- Operator of a derrick crane
- Operator of a portal-boom crane
- Operator of a bridge or gantry crane
- Operator of a vehicle loading crane
- Operator of a non-slewing mobile crane
- Operator of a slewing mobile crane
- Operator of a materials hoist
- Operator of a materials or personnel hoist
- Operator of a boom-type elevating work platform
- Operator of a mobile truck mounted concrete placing boom
- Operator of a forklift truck, other than a pedestrian operated forklift truck
- Operator of an order picking forklift truck
- Basic boiler operator
- Intermediate boiler operator
- Advanced boiler operator
- Operator of a turbine
- Operator of a reciprocating steam engine

- The following eight prescribed occupations which are regulated at a state level will not be subject to the removal of the exemption as these will be subject to a national review in 2008.
  - Operator of a dozer
  - Operator of an excavator
  - Operator of a front-end loader
  - Operator of a front-end loader or backhoe
  - Operator of a grader
  - Operator of a road roller
  - Operator of a skid-steer loader
  - Operator of a scraper

2. How would the three options apply to this provision?

- ***Option 1*** *– Retain the rural industry exemption:* This would entail a continuation of two different standards for performing high risk work where operators in all industries except rural require a certificate to operate in a prescribed occupation. Retaining the rural industry exemption for this part also means that workers in rural industry will continue to face potentially greater risk to their health and safety compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation.
- ***Option 2*** *– Remove the rural industry exemption entirely:* Under this option, it is proposed to require that the requirements for nationally prescribed occupations would apply from 2 years after commencement of the removal of the rural industry exemption. Removing the exemption will provide workers in rural industry with an equivalent level of legislated health and safety when compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation. ***(This is the preferred option).***
- ***Option 3*** *– Remove individual aspects of the rural industry exemption over an extended period of time:* Under this option, the proposed action would be the same as option 2, except that the timing of the application of the currently exempted regulatory provisions would be further extended.

3. What will it cost the rural industry if this part of the exemption is removed?

- The fee for an application to work in a prescribed occupation is currently $49.70. The cost of training varies considerably, starting from about $800 for a 3 day forklift training and assessment.

4. When is it proposed to make this part applicable to the rural industry (option 2)?

- The requirements for prescribed occupations would apply from 2 years after commencement of the removal of the rural industry exemption. This delay is provided in recognition of the significant number of certificates that need to be obtained and training provided. Furthermore, there is recognition of the additional difficulties and costs applying to providing training for workers on remote workplaces.

The specific requirements of this part of the Regulation are outlined in the appendix.

Part 3A: Prescribed activity (demolition work)

The regulation for prescribed activities in rural industry already applies to asbestos removal work. In rural industry, only demolition work is currently subject to the rural industry exemption.

Demolition work, as described in Schedule 3 of the *Workplace Health and Safety Act 1995* means work to demolish or dismantle systematically a structure, or part of a structure, but does not include the systematic dismantling of—

a) a part of a structure for alteration, maintenance, remodelling or repair; or
b) formwork, falsework, scaffold or other construction designed or used to provide support, access or containment during construction work.

The requirements for demolition work were introduced under the 1997 Regulation in all other industry sectors as a necessary legislative requirement to deliver improved health and safety outcomes, and minimise the potential risks posed by demolition work.

1. What will the removal of this part of the exemption entail?

- A relevant person must not perform demolition work unless the person (including a principal contractor) holds a certificate to perform demolition work. Further requirements could apply, depending on the type of demolition work being performed, including training and supervision.
- Provisions for applying to work in a prescribed activity are also included in Part 5 of the Regulation.

2. How would the three options apply to this provision?

- ***Option 1*** *– Retain the rural industry exemption:* This would entail a continuation of two different standards applying to demolition work, one for rural and another for all other industries. Retaining the rural industry exemption for this part also means that workers in rural industry will continue to face potentially greater risk to their health and safety compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation.
- ***Option 2*** *– Remove the rural industry exemption entirely:* Under this option, it is proposed that the requirements for prescribed activities (demolition work) in rural industry apply from commencement of the removal of the rural industry exemption. Removing the exemption will provide workers in rural industry with an equivalent level of legislated health and safety when compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation. ***(This is the preferred option).***
- ***Option 3*** *– Remove individual aspects of the rural industry exemption over an extended period of time:* Under this option, the proposed action would be the same as option 2, except that the

timing of the application of the currently exempted regulatory provisions would be further extended.

3. What will it cost the rural industry if this part of the exemption is removed?

- Demolition work does not fall within the definition of work in rural industry. Demolition work is not perceived as a common activity in rural industry, and it is considered that the impact on the industry will be minimal. Therefore, the cost to an individual workplace undertaking demolition work would have a very low financial impact. The fee for a single application to perform demolition work is currently $49.70.

4. When is it proposed to make this part applicable to the rural industry (option 2)?

- The requirements for the prescribed activity of demolition work would apply from commencement of the removal of the rural industry exemption.

The specific requirements of this part of the Regulation are outlined in the appendix.

Part 4: Workplace Health and Safety Officers

1. What will the removal of this part of the exemption entail?

- All employers in workplaces who normally employ 30 or more persons (as per section 93 of the *Workplace Health and Safety Act*) are required to appoint a Workplace Health and Safety Officer. Currently, the rural industry is exempt from this requirement.
- The functions of WHSOs, as outlined in this part of the Act are:
    - to tell the employer or principal contractor about the overall state of health and safety at the workplace;
    - to conduct inspections at the workplace to identify any hazards and unsafe or unsatisfactory workplace health and safety conditions and practices;
    - to report to the employer or principal contractor any hazard or unsafe or unsatisfactory workplace health and safety practice identified during inspections;
    - to establish appropriate educational programs in workplace health and safety
    - to investigate, or assist the investigation of, all workplace incidents at the workplace;
    - to help inspectors in the performance of the inspectors' duties; and
    - if any workplace incident or immediate risk to workplace health and safety at the workplace happens—to report the incident or risk to the employer or principal contractor
- Under the *Workplace Health and Safety Regulation 1997*, WHSOs are required to complete the following training:
    - a core module of 5 days; and
    - an industry specific elective module, which ranges from 2 to 4 days.

2. How would the three options apply to this provision?

- ***Option 1*** *– Retain the rural industry exemption:* This would entail a continuation of two different standards applying to the requirement to appoint a Workplace Health and Safety Officer in workplaces employing over 30 workers, one for rural and another for all other industries. Retaining the rural industry exemption for this part also means that workers in rural industry will continue to face potentially greater risk to their health and safety compared to

workers in all other industries which are subject to Queensland's workplace health and safety legislation.

- ***Option 2*** *– Remove the rural industry exemption entirely:* Under this option, it is proposed to require that rural workplaces employing over 30 workers (as per section 93 of the Workplace Health and Safety Act) appoint a Workplace Health and Safety Officer within two years. This time delay is to provide time for the development of a rural industry specific elective module, and time for workplaces (particularly remote workplaces) to make a person available for training. Removing the exemption will provide workers in rural industry with an equivalent level of legislated health and safety when compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation. ***(This is the preferred option).***
- ***Option 3*** *– Remove individual aspects of the rural industry exemption over an extended period of time:* Under this option, the proposed action would be the same as option 2, except that the timing of the application of the currently exempted regulatory provisions would be further extended.

3. What will it cost the rural industry if this part of the exemption is removed?

- The approximate training costs for a Workplace Health and Safety Officer are $1,400 (core module $750, elective $650).
- The approximate cost of the recertification course to be completed by a Workplace Health and Safety Officer every five years is $380.
- The cost of a certificate of appointment as a Workplace Health and Safety Officer is $49.70.
- It is estimated that there are between 300 – 600 workplaces in rural industry which could be affected by this regulation when the exemption is lifted. Each workplace would face a one off cost of approximately $1,400 for training, and a certificate of training of $49.70. Recertification training costs of approximately $380 would apply every 5 years thereafter. A proportion of these workplaces will already have appointed a Workplace Health and Safety Officer, although these would not have done the proposed rural elective module.
- There will also be costs to the industry of workers being absent from the workplace whilst undergoing training.

4. When is it proposed to make this part applicable to the rural industry (option 2)?

- It is proposed to require that rural workplaces employing over 30 workers (as per section 93 of the *Workplace Health and Safety Act*) appoint a Workplace Health and Safety Officer within two years. This includes sufficient time for the development of a rural industry specific elective module, as well as time for each affected workplace to have a person trained and appointed as a Workplace Health and Safety Officer.

The specific requirements of this part of the Regulation are outlined in the appendix.

Part 13: Hazardous substances

Hazardous substances are used on the vast majority of farms. Hazardous substances are potentially harmful to a person's health or safety, and controls need to be put in place wherever these chemicals are used.

The requirements for hazardous substances were introduced under the 1997 Regulation in all other industry sectors as a necessary legislative requirement to deliver improved health and safety

outcomes, and minimise the potential risks posed by these chemicals. Lifting the exemption will ensure that appropriate controls are in place to protect rural workers working with hazardous substances.

Appropriate training in the use of hazardous substances is widely available in Queensland, the most common being *ChemCert Accreditation.* This enables chemical users to meet all regulatory requirements (including the *Workplace Health and Safety Regulation 1997*) for access to chemicals and comply with chemical use legislation as well as to meet obligations under industry quality assurance programs. It is based on endorsed national competencies.

1. What will the removal of this part of the exemption entail?

- The *Code of Practice for Rural Chemicals for use at a Rural Workplace* was written and made by the Minister particularly because of the rural industry exemption. As such, it has a number of common requirements with the regulation.
- The regulation lists the hazardous substances for which health monitoring must be supplied. This issue is not covered in the code, and will impact on rural workplaces that use organophosphate pesticides. This health surveillance involves designated doctors, and there are now significantly more designated doctors in rural areas than was the case in the early 1990's, when the code was first developed.
- There are provisions and responsibilities on the various parties relating to the use of hazardous substances in the workplace including:
  - the use of Material Safety Data Sheets (MSDS);
  - labelling of hazardous substances;
  - the use of a hazardous substances register in the workplace;
  - where hazardous substances are used in enclosed systems;
  - completion of risk assessments and implementation of control measures;
  - health surveillance on exposure and use of designated doctors;
  - record keeping; and
  - training and induction of workers.
- Relevant persons at a workplace where a hazardous substance is to be used must put in place processes to ensure they:
  - obtain, record and display MSDS for all hazardous substances supplied to their workplace;
  - keep a register listing all hazardous substances used at the workplace;
  - ensure hazardous substance containers are correctly labelled;
  - warn people in the workplace when hazardous substances are being used in an enclosed system;
  - complete risk assessments on the use of the hazardous substance, record the results, put in place control measures when a risk of exposure is identified and monitor exposure as required;
  - arrange for designated doctors to provide health surveillance when exposure occurs and keep a record of the report provided by the doctor;
  - train and induct workers in relation to working safely with hazardous substances.

2. How would the three options apply to this provision?

- ***Option 1*** *– Retain the rural industry exemption:* This would entail a continuation of two different standards applying to hazardous substances, one for rural and another for all other industries. Retaining the rural industry exemption for this part also means that workers in rural industry will continue to face potentially greater risk to their health and safety compared to

workers in all other industries which are subject to Queensland's workplace health and safety legislation.

- ***Option 2*** *– Remove the rural industry exemption entirely:* Under this option, it is proposed to require compliance with this part of the regulation within 12 months of the removal of the rural industry exemption. Removing the exemption will provide workers in rural industry with an equivalent level of legislated health and safety when compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation. ***(This is the preferred option).***
- ***Option 3*** *– Remove individual aspects of the rural industry exemption over an extended period of time:* Under this option, the proposed action would be the same as option 2, except that the timing of the application of the currently exempted regulatory provisions would be further extended.

3. What will it cost the rural industry if this part of the exemption is removed?

- The main cost to obligation holders is the time to set-up and maintain the processes required to ensure they meet their obligations and ensuring there are trained staff in place to manage the processes. For businesses that use a lot of hazardous substances frequently, this can be quite time consuming and the costs will be quite substantial. For businesses that use very few hazardous substances, the time cost is much lower.
- For those industries using hazardous substances which will require the implementation of health surveillance, there will be additional costs. These costs will vary depending on the substances used, the extent of their use and the results of any health surveillance.

4. When is it proposed to make this part applicable to the rural industry (option 2)?

- It is proposed to require compliance with this part of the regulation within 12 months of the removal of the rural industry exemption.

The specific requirements of this part of the Regulation are outlined in the appendix.

Part 14: Lead

Available evidence suggests that little or no lead work occurs on most workplaces in rural industry.

The requirements for lead were introduced under the 1997 Regulation in all other industry sectors as a necessary legislative requirement to deliver improved health and safety outcomes, and minimise the potential risks posed by lead. Lifting the exemption will ensure that appropriate controls are in place to protect rural workers working with lead.

1. What will the removal of this part of the exemption entail?

- Part 14 of the Regulation details the responsibilities of manufacturers, importers, suppliers and relevant persons in relation to lead in workplaces. The part provides for the preparation and provision of information about lead, risk assessments to be conducted for lead processes, how exposure to lead is to be controlled and how the health of people working with lead should be monitored.
- Where a lead-risk job is being conducted, a relevant person must undertake atmospheric monitoring, health surveillance and remove certain workers from the job. Induction training and ongoing annual training is to be given to workers who may be exposed to lead.

2. How would the three options apply to this provision?

- ***Option 1*** *– Retain the rural industry exemption:* This would entail a continuation of two different standards applying to lead, one for rural and another for all other industries. Retaining the rural industry exemption for this part also means that workers in rural industry will continue to face potentially greater risk to their health and safety compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation.
- ***Option 2*** *– Remove the rural industry exemption entirely:* Under this option, it is proposed to require that the lead regulatory provisions would apply upon commencement. Removing the exemption will provide workers in rural industry with an equivalent level of legislated health and safety when compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation. ***(This is the preferred option).***
- ***Option 3*** *– Remove individual aspects of the rural industry exemption over an extended period of time:* Under this option, the proposed action would be the same as option 2, except that the timing of the application of the currently exempted regulatory provisions would be further extended.

3. What will it cost the rural industry if this part of the exemption is removed?

- It is anticipated that the costs to the rural industry of removing this part of the exemption will be negligible as, based on information currently available, little or no lead work takes place in rural industry.

4. When is it proposed to make this part applicable to the rural industry (option 2)?

- It is proposed to require that the lead regulatory provisions would apply upon commencement.

The specific requirements of this part of the Regulation are outlined in the appendix.

Part 15: Confined spaces

The requirements for working in and around confined spaces were introduced under the 1997 Regulation in all other industry sectors as a necessary legislative requirement to deliver improved health and safety outcomes, and minimise the potential risks posed by confined spaces. Lifting the exemption will ensure that appropriate controls are in place to protect rural workers working in and around confined spaces.

1. What will the removal of this part of the exemption entail?

- Part 15 of the Regulation requires certain obligation holders to comply with particular clauses of the *Australian Standard AS/NZS 2865 – Safe working in a confined space*. These obligation holders are:
  - designers, manufacturers or suppliers of plant that is a confined space
  - persons who modify a confined space
  - users of a confined space.
- The parts of the Australian *Standard* which must be complied with cover:
  - hazard identification
  - risk assessment
  - control measures
  - training and competence

- emergency response
- record keeping.

- There is a Guide for working safely in confined spaces, which provides advice about working in a confined space. This guide was written by Workplace Health and Safety Queensland for the rural industry, but applies to all industries. The guide is wholly consistent with the requirements of both this part and the Australian Standard, and has applied to the rural industry since publication

2. How would the three options apply to this provision?

- ***Option 1*** *– Retain the rural industry exemption:* This would entail a continuation of two different regulatory standards applying to confined spaces, one for rural and another for all other industries. Retaining the rural industry exemption for this part also means that workers in rural industry will continue to face potentially greater risk to their health and safety compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation.
- ***Option 2*** *– Remove the rural industry exemption entirely:* Under this option, it is proposed to require compliance with the regulation upon commencement, particularly as the guidance material about confined spaces has been available to rural industry for over 3 years. Removing the exemption will provide workers in rural industry with an equivalent level of legislated health and safety when compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation. ***(This is the preferred option).***
- ***Option 3*** *– Remove individual aspects of the rural industry exemption over an extended period of time:* Under this option, the proposed action would be the same as option 2, except that the timing of the application of the currently exempted regulatory provisions would be further extended.

3. What will it cost the rural industry if this part of the exemption is removed?

- The costs associated with the removal of this part of the exemption should be negligible, as the existing guidance material for the rural and other industries has the same requirements as the regulation.

4. When is it proposed to make this part applicable to the rural industry (option 2)?

- It is proposed to require compliance with the regulation upon commencement, as the guidance material about confined spaces has been available to rural industry for over 3 years.

The specific requirements of this part of the Regulation are outlined in the appendix.

Part 17: Excavation work

Currently the rural industry is exempt from Part 17, Division 3, subdivision 9 of the Regulation.

The requirements for excavation work were introduced under the 1997 Regulation in all other industry sectors as a necessary legislative requirement to deliver improved health and safety outcomes, and minimise the potential risks posed by excavations. Lifting the exemption will ensure that appropriate controls are in place to protect rural workers carrying out demolition work.

1. What will the removal of this part of the exemption entail?

For persons either carrying out excavation work or working in an excavation, a relevant person must follow the risk management methodology outlined in the Regulation, ie

- identify the hazards
- assess the risks associated with these hazards
- decide on appropriate control measures, including those specified in the Regulation for specific types of excavation
- implement and maintain these control measures

2. How would the three options apply to this provision?

- ***Option 1*** *– Retain the rural industry exemption:* This would entail a continuation of two different standards applying to excavation work, one for rural and another for all other industries. Retaining the rural industry exemption for this part also means that workers in rural industry will continue to face potentially greater risk to their health and safety compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation.
- ***Option 2*** *– Remove the rural industry exemption entirely:* Under this option, it is proposed to require excavation work requirements to fully apply in rural industry from 12 months after the commencement of this part. This is to give the rural industry and workers time to meet the various requirements of the regulation, including training and certification. Removing the exemption will provide workers in rural industry with an equivalent level of legislated health and safety when compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation. ***(This is the preferred option).***
- ***Option 3*** *– Remove individual aspects of the rural industry exemption over an extended period of time:* Under this option, the proposed action would be the same as option 2, except that the timing of the application of the currently exempted regulatory provisions would be further extended.

3. What will it cost the rural industry if this part of the exemption is removed?

- There are costs associated with the application of this part of the Regulation. These include time for carrying out appropriate risk assessments, as well as costs relating to specific control measures, such as shoring and battering in trenches.
- However, it is expected that, due to the high risk posed by working in excavations, these control measures are currently being used by the rural industry, and hence the additional costs will be minimal.

4. When is it proposed to make this part applicable to the rural industry (option 2)?

- It is proposed to require excavation work requirements to fully apply in rural industry from 12 months after the commencement of this part.

The specific requirements of this part of the Regulation are outlined in the appendix.

Part 21B: Employers – atmospheric contaminants

Atmospheric contaminants include:

Type	Examples	Industry/Process
Dusts including fibres	silica dust, grain dust, asbestos fibres	agriculture
Fumes	metal fumes, welding fumes	welding
Mists	pesticide mist	aerial spraying
Vapours	paint solvent, chlorinated hydrocarbons	spray painting, degreasing
Gases	carbon monoxide, chlorine, hydrogen sulphide	internal combustion engines, manure pits
Biological agents	influenza viruses, Q Fever organism, pollen	agriculture

The requirements for controlling atmospheric contaminants were introduced under the 1997 Regulation in all other industry sectors as a necessary legislative requirement to deliver improved health and safety outcomes, and minimise the potential risks posed by uncontrolled atmospheric contaminants. Lifting the exemption will ensure that appropriate controls are in place to protect rural workers exposed to atmospheric contaminants.

1. What will the removal of this part of the exemption entail?

- The Regulation deals with atmospheric contaminants generated at a workplace. Schedule 9 of the Regulation defines a 'contaminant' as anything that may be harmful to the health and safety of workers. The part stipulates that atmospheric contaminants generated in a workplace (other than hazardous substances defined in section 100 of the Regulation) must not exceed the national exposure standard, as stated in the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC:1003(1995)].
- All employers who generate contaminants into the work atmosphere through such things as work activities, processes or plant are affected.
- Employers should undertake atmospheric monitoring to determine if contaminant levels are above the levels in the national exposure standards. This could be done in-house by a trained person or by an external specialist on a fee-for-service basis.
- Where levels above the national standard are found employers must put in place treatments to eliminate or reduce the level of contaminants in the workplace, such as changing a work process or plant *item* used, install appropriate ventilation, constructing a spray painting booth and providing personal breathing apparatus. The cost involved would depend on the type of treatment required e.g. purchasing a new item of plant, installing ventilation and purchasing personal breathing apparatus.

2. How would the three options apply to this provision?

- *Option 1 – Retain the rural industry exemption:* This would entail a continuation of two different standards applying to atmospheric contaminants, one for rural and another for all other industries. Retaining the rural industry exemption for this part also means that workers in rural industry will continue to face potentially greater risk to their health and safety compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation.
- *Option 2 – Remove the rural industry exemption entirely:* Under this option, it is proposed to require compliance with this part of the regulation within 12 months of the removal of the rural industry exemption. Removing the exemption will provide workers in rural industry with an

equivalent level of legislated health and safety when compared to workers in all other industries which are subject to Queensland's workplace health and safety legislation. ***(This is the preferred option).***

- *Option 3 – Remove individual aspects of the rural industry exemption over an extended period of time:* Under this option, the proposed action would be the same as option 2, except that the timing of the application of the currently exempted regulatory provisions would be further extended.

3. What will it cost the rural industry if this part of the exemption is removed?

- Employers in rural industry will need to determine that they are not generating exposure to a level of atmospheric contaminants above the national exposure standard. In some cases, this will require atmospheric monitoring at a cost.
- For those employers where exposures exceed the national exposure standard, they will need to put in place treatments to eliminate or reduce the level of contaminants in the workplace. These costs will vary depending on the contaminants generated and the required controls to reduce exposures to below the national exposure standard.

4. When is it proposed to make this part applicable to the rural industry (option 2)?

- It is proposed to require compliance with this part of the regulation within 12 months of the removal of the rural industry exemption.

The specific requirements of this part of the Regulation are outlined in the appendix.

Fundamental legislative principles

The *Legislative Standards Act 1992* requires that legislation has sufficient regard to rights and liberties of individuals and the institution of Parliament. The proposed removal of the rural industry exemption will not alter the rights and liberties of individuals from that existing under the current workplace health and safety legislative framework.

Conclusion

The Queensland Government is committed to ensuring safe and healthy work environments for workers in all sectors of industry.

The rural industry exemption currently affords workers and others in rural industry a lower level of legislated health and safety than workers in other industries.

Workplace incidents and diseases can impose significant costs on businesses and the society as a whole.

The rate of injury in rural industry is one of the highest rates across industry and Queensland's rural industry has higher rates of injury than most other States and Territories.

To this end, the Government supports the removal of the rural industry exemption. However, in recognition of the costs associated with the removal of this exemption, adequate time will be given for workplaces to implement the required measures.

Appendix

Regulation Part 2 – Mobile elevating work platforms

[Note: the rural industry exemption only applies to mobile elevating work platforms with an elevation of 6 metres or less. These provisions currently apply to all other plant for Part 2 of the regulation.]

Part 2 Registrable plant and registrable plant design

Division 2 Registration of registrable plant

10 Registrable plant not to be used before registration

An owner of registrable plant must not use registrable plant, or allow it to be used, unless the plant is registered.
Maximum penalty—20 penalty units.

11 Registration of registrable plant

(1) The owner of registrable plant may apply to the chief executive, in accordance with part 5, division 1A, to register registrable plant.
(2) Registration is valid—
(a) for the initial registration—from the date stated in the certificate until 31 January in the following year; and
(b) for the renewal of the certificate—from 1 February until 31 January in the following year.

12 Notification of change of ownership of registered plant

A holder of a certificate of registration of registered plant must give the chief executive notice of a change of ownership of the plant in the approved form within 28 days of the change.
Maximum penalty—20 penalty units.

13 Cessation of registration of registered plant

The registration of registered plant is taken to end on the day ownership of the plant changes if the holder of the certificate of registration does not notify the chief executive under section 12.

14 Refund of fees because of change of ownership of registrable plant

(1) This section applies if the chief executive receives a notice under section 12.
(2) The chief executive must cancel the registration and refund to the former holder of the certificate of registration the unexpired part of the registration fee.
(3) The refund is to be worked out on a proportional basis according to the number of whole months from the end of the month when the change happened to 31 January in the following year.

Division 3 Registration of registrable plant design

15 Application of div 3

This division does not apply to manually powered plant.

16 Plant not to be installed or used unless certificate of registration is in force

(1) A relevant person must not install or use plant mentioned in schedule 4[5] unless a certificate of registration of registrable plant design granted under part 5, division 1A for the design of the plant is in force[6].
Maximum penalty—20 penalty units.
(2) A relevant person who is an employer must not allow a worker of the employer to install or use plant mentioned in schedule 4 unless a certificate of registration of registrable plant design granted under part 5, division 1A for the design of the plant is in force.
Maximum penalty—20 penalty units.
(3) The owner of any of the following specified high risk plant must not install or use, or allow anyone else to install or use, the plant unless a certificate of registration of registrable plant design granted under part 5, division 1A for the design of the plant is in force—
(a) an escalator[7];
(b) an LP gas cylinder;

[5] Schedule 4 (Registrable plant design).
[6] For when the certificate is in force, see section 16A. See sections 233 and 234 for transitional provisions about certificates, or applications for certificates, of registration of registrable plant design.
[7] Escalator, LP gas cylinder and lift are defined in schedule 2 of the Act.

(c) a lift;
(d) a specified amusement device.

Maximum penalty—20 penalty units.

(4) A person does not commit an offence against subsection (1) or (2) in relation to plant mentioned in schedule 4 or against subsection (3) in relation to specified high risk plant mentioned in that subsection if—

(a) the person holds a certificate of registration, approval or notification of the design of the relevant plant in force under a corresponding law; and
(b) the design has not been changed in a way that requires new measures to control risk[8].

(5) The chief executive may give a person who relies under subsection (4) on a certificate in force under a corresponding law written notice—

(a) requiring the person to give the chief executive a copy of the certificate within 10 days after the day of the notice; and
(b) stating that is an offence for the person to fail, without reasonable excuse, to comply with the requirement.

(6) The person must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty for subsection (6)—10 penalty units.

16A When certificate of registration is in force

(1) A certificate of registration of registrable plant design continues in force until it stops having effect under this section.

(2) A certificate of registration of registrable plant design for a design of plant stops having effect if the design is changed in a way that requires new measures to control risk[9].

Example of a change in design causing certificate to stop having effect—
A certificate of registrable plant design is in force for the design of a mobile crane. The crane's reach is increased by fitting a longer boom, which increases the risk of the crane overturning. The certificate stops being in force because of the change.

Example of a change in design not causing certificate to stop having effect—
A certificate of registrable plant design is in force for the design of a fire tube boiler. The boiler's output is raised by increasing its firing rate, but the operating pressure and temperature of the boiler are unchanged. The certificate does not stop being in force because of the change.

(3) In this section—

certificate of registration of registrable plant design includes a certificate, approval or notification in force under a corresponding law.

16B Certificate number to be given

(1) The holder of a certificate of registration of registrable plant design for the design of plant must give the certificate number to—

(a) each manufacturer of plant, manufactured according to the design, known to the holder; and
(b) each supplier of plant, manufactured according to the design, known to the holder.

Maximum penalty—20 penalty units.

(2) The manufacturer or supplier must give the number to each person to whom the manufacturer or supplier supplies plant manufactured according to the design.

Maximum penalty—20 penalty units.

16C Certificate number to be marked on plant

(1) A supplier of plant mentioned in schedule 4 must ensure that the number of the certificate of registration of registrable plant design for the design of the plant is permanently marked on the plant so as to be clearly visible.

Maximum penalty—20 penalty units.

(2) A relevant person who installs or uses, or a relevant person who is an employer who allows a worker to install or use, plant mentioned in schedule 4 must ensure that the number of the certificate of registration of registrable plant design for the design of the plant is permanently marked on the plant so as to be clearly visible.

Maximum penalty—20 penalty units.

(3) Subsection (2) does not apply to the following specified high risk plant—

(a) an escalator;
(b) an LP gas cylinder;
(c) a lift;
(d) a specified amusement device.

(4) The owner of specified high risk plant mentioned in subsection (3) must ensure that the number of the certificate of registration of registrable plant design for the design of the plant is permanently marked on the plant so as to be clearly visible.

Maximum penalty—20 penalty units.

(5) In this section—

[8] See the examples in section 16A.

[9] A fresh certificate will be needed if the plant is to be installed or used after the change.

certificate of registration of registrable plant design includes a certificate, approval or notification in force under a corresponding law.

Regulation Part 3 – Prescribed occupations

Part 3 Prescribed occupations

Division 1 Work in prescribed occupation

17 Authority to perform work in prescribed occupation

(1) An employer must not employ or otherwise allow a worker to perform work in a prescribed occupation unless the worker has appropriate authority to perform work in the prescribed occupation.

Maximum penalty—40 penalty units.

(2) A person must not perform work in a prescribed occupation unless the person has appropriate authority to perform work in the prescribed occupation.

Maximum penalty—40 penalty units.

(3) A person has appropriate authority to perform work in a prescribed occupation if—

(a) the person holds a certificate to work in the prescribed occupation; or

(b) the person holds a certificate, issued by a recognised official, authorising work in an occupation that is the same or substantially the same as the prescribed occupation; or

(c) the person is a trainee in the prescribed occupation; or

(d) the person holds an assessment summary under subsection (4) for the unit of competency for the prescribed occupation, that was issued within 14 days before the day on which the work is to be performed; or

(e) the person holds a statement of attainment for the unit of competency for the prescribed occupation, that was issued within 60 days before the work is to be performed; or

(f) the person has applied under section 19 for a certificate to work in the prescribed occupation, and has not received from the chief executive—

(i) the certificate; or

(ii) notice of refusal for the application.

(4) An assessment summary for a person named in the summary must—

(a) be issued by a registered training organisation; and

(b) state the person who performed the assessment and be signed by that person; and

(c) state, for the unit of competency to which the assessment summary relates, that the person named in the summary—

(i) is competent; and

(ii) demonstrated the appropriate underpinning knowledge and practical assessment.

(5) Subsection (1) does not apply to a worker, and subsection (2) does not apply to a person, if the worker or person holds an exemption under section 20A in relation to performing the work in the prescribed occupation.

18 Work incidental to prescribed occupation

(1) This section applies to—

(a) a person—

(i) whose work is primarily—

(A) the maintenance, servicing or repair of plant; or

(B) the demonstration of plant for sale; and

(ii) who performs work not involving use of the plant for the purpose for which it was designed; and

(b) a person—

(i) whose work is primarily the maintenance, servicing or repair of plant; and

(ii) who performs rigging work not involving lifting a load of more than 1t.

Example of subsection (1)(a)—

a person who repairs the boom of a crane if the person does not lift a load with the crane

Example of subsection (1)(b)—

a person who when repairing plant, for example a pump, needs to lift the plant if the plant weighs no more than 1t

(2) The person is taken not to be performing work in a prescribed occupation.

19 Application for certificate to work in prescribed occupation

A person may apply to the chief executive, in accordance with part 5, division 1A, for a certificate to work in a prescribed occupation.

20 Application for exemption from holding certificate

(1) An employer may apply to the chief executive for an exemption from holding a certificate to work in a prescribed occupation for a worker of the employer.

(2) A self-employed person may apply to the chief executive for an exemption from holding a certificate to work in a prescribed occupation.
(3) An application under subsection (1) or (2) must be made in the approved form and state—
(a) the reasons for making the application; and
(b) the alternative measures to be used to ensure work in the prescribed occupation for which the exemption is sought is performed safely.
(4) The chief executive may grant the exemption if the chief executive is satisfied—
(a) the applicant proposes to use particular alternative measures to ensure the work is performed safely; and
(b) the alternative measures will ensure the work is performed safely.
(5) The chief executive may require an applicant under subsection (1) or (2) to give the chief executive any further information the chief executive reasonably requires to decide the application.
(6) A requirement under subsection (5) may state a reasonable period, of at least 28 days, by which the stated further information must be given to the chief executive.
(7) If an exemption is granted, the chief executive may place restrictions on the performance of the work in the prescribed occupation.

20A Decision on application for exemption
(1) If the chief executive decides to grant an exemption under section 20, the chief executive must issue the exemption to the applicant.
(2) If the chief executive decides to refuse an application under section 20, the chief executive must give written notice to the applicant about the decision within 10 days after making the decision.
(2) The notice must state—
(a) the reasons for the refusal; and
(b) that the person may appeal against the decision under part 11[10] of the Act.

Division 2 Training in prescribed occupations

21 Employer's duty for training in prescribed occupation
(1) A trainee's employer must ensure a trainee in a prescribed occupation—
(a) is being trained to achieve the standard set in the competency standard for the occupation; and
(b) is being trained by a person (*supervisor*) who—
(i) holds a certificate to work in the prescribed occupation; and
(ii) supervises the trainee as required by section 22 when the trainee performs work in the occupation; and
(c) keeps the training record mentioned in section 24.
Maximum penalty—20 penalty units.
(2) A trainee's employer must not train the trainee to perform work in a prescribed occupation unless the employer has prepared a training plan under subsection (3) for the particular trainee's training.
Maximum penalty—10 penalty units.
(3) The training plan must state the following—
(a) the trainee's name and address;
(b) the employer's name and address;
(c) the unit of competency for the prescribed occupation;
(d) the accredited course for which the unit of competency is undertaken;
(e) the scope of the training, including the topics to be covered;
(f) the nominal hours for the training;
(g) the day training is to start;
(h) the day training is to end;
(i) the primary training locations;
(j) the plant to be used by the trainee for the training;
(k) the certificate under subsection (1)(b)(i) that must be held by the supervisor;
(l) the arrangements for monitoring the training;
(m) the arrangements for assessing the trainee's competency;
Example for paragraph (m)—
A registered training organisation is to be engaged to—
(a) evaluate the evidence of the training undertaken by the trainee; and
(b) assess the trainee's competence in the relevant competency
(n) the way the training must be recorded, including, for example, by keeping the training record mentioned in section 24.

22 Supervisor's duty for training in prescribed occupation

[10] Part 11 (Appeals) of the Act

The trainee's supervisor must directly supervise the trainee when the trainee performs work in the prescribed occupation unless—

(a) the nature or circumstances of a particular task make direct supervision impracticable or unnecessary; and

(b) supervision is reduced only to a reasonable level having regard to the trainee's competence in performing the task; and

(c) the reduced level of supervision will not place the health and safety of the trainee or someone else at risk.

Maximum penalty—20 penalty units.

24 Trainee's duty for training in prescribed occupation

The trainee must keep a written training record that identifies the trainee and includes the following—

(a) the scope of work performed by the trainee in the prescribed occupation;

(b) the date on which the work was performed;

(c) if the performance of work in the prescribed occupation includes the operation of plant—the type of plant operated;

(d) the date the training was completed;

(e) the name of the supervisor who supervised the training;

(f) the number of the certificate to work in the occupation held by the supervisor.

Maximum penalty—20 penalty units.

25 Supervisor to sign entry in training record

The trainee's supervisor must sign an entry in the trainee's training record if—

(a) the supervisor supervised the training about which the entry relates; and

(b) the supervisor is satisfied that the entry is correct.

Maximum penalty—20 penalty units.

Division 3 Other obligations of employers and certificate holders

26 Employer must reasonably believe worker is competent

(1) This section applies to an employer of a worker who holds a certificate to work in a prescribed occupation.

(2) The employer must not allow the worker to perform work under the certificate, that involves the use or operation of plant unless the employer reasonably believes the worker is competent to use or operate the plant.

Maximum penalty—40 penalty units.

27 Holder of certificate must reasonably believe he or she is competent

(1) This section applies to the holder of a certificate to work in a prescribed occupation.

(2) The holder must not perform work under the certificate, that involves the use or operation of plant unless the holder reasonably believes that he or she is competent to use or operate the plant.

Maximum penalty—40 penalty units.

28 Holder of certificate must take reasonable precautions and exercise proper diligence

(1) This section applies to the holder of a certificate to work in a prescribed occupation.

(2) The holder must take reasonable precautions and exercise proper diligence in performing the work for which the certificate was granted.

Maximum penalty—40 penalty units.

Division 4 Expiry of particular certificates of competency issued before March 1992 unless holder gives notice

29 Pre-March 1992 certificate of competency for work in an occupation will end on 30 June 2008 unless holder gives notice

(1) This section applies to each of the following certificates (a *relevant certificate*) if the relevant certificate is in force under the Act—

(a) a certificate of competency to work in, or in a part of, an occupation prescribed under the repealed *Workplace Health and Safety Act 1989* and granted under that Act before 1 March 1992;

(b) a certificate of competency for an occupation issued under the repealed *Construction Safety Act 1971*, including a certificate of competency that was formerly a licence for an occupation issued under the repealed *Inspection of Scaffolding Act 1915*;

(c) a certificate of competency authorising a person to take charge of particular machinery issued under the repealed *Inspection of Machinery Act 1951*.

(2) A relevant certificate ends at midnight on 30 June 2008 unless the holder of the certificate notifies the chief executive under subsection (5)(c).

(3) The chief executive must, on at least 3 separate occasions, publish a notice under subsection (5) in a newspaper circulating throughout the State (the *newspaper notice*).

(4) The last occasion must be not later than 30 April 2008.

(5) The newspaper notice must state—

(a) that the newspaper notice applies to the holder of any relevant certificate issued in Queensland before 1 March 1992 and in force under the *Workplace Health and Safety Act 1995*; and
(b) that the relevant certificate will end at midnight on 30 June 2008 unless the holder of the certificate gives notice to the chief executive; and
(c) that, if the holder of the certificate wants to give notice to the chief executive, the notice must be given to the chief executive before midnight on 30 June 2008 in a way stated in the notice and include the following—
(i) a statement that the holder wants to continue to hold the certificate;
(ii) the certificate number;
(iii) the holder's residential and postal address and date of birth; and
(d) that the notice to the chief executive may be given by post, telephone, fax, internet or at an office of the department; and
(e) the addresses, and telephone and fax numbers, for paragraph (d).

(6) Subsection (5) does not prevent the notice stating other matters about workplace health or safety.
(7) In this section—
issue includes grant.

Regulation Part 3A – Prescribed activity (demolition work)

Part 3A Prescribed activities

Division 1 Certificate to perform prescribed activity

29B Certificate to perform prescribed activity
(1) A relevant person must not perform a prescribed activity unless—
(a) if the prescribed activity is demolition work, and there is a principal contractor—the principal contractor or the relevant person holds a certificate to perform the activity issued by the chief executive; or
(b) if the prescribed activity is asbestos removal work—the relevant person holds a certificate to perform the activity issued by the chief executive.
Maximum penalty—40 penalty units.
(2) However, subsection (1)(b) does not apply to the performance of work to remove 10m2 or more of bonded asbestos containing material if the work activity performer, for the business or undertaking conducted by the relevant person, who performs the work holds a bonded asbestos removal certificate.

29C Application for certificate to perform prescribed activity
(1) A person may apply to the chief executive, under part 5, division 1A, for a certificate to perform a prescribed activity.
(2) The chief executive may grant the application only if the chief executive is satisfied that, within 60 days before the application was made, an authorised accredited provider or a registered training organisation has assessed the applicant, under the approved criteria, as competent to perform the prescribed activity.
(3) A certificate is valid for 2 years from the day it is granted unless suspended or cancelled.
(4) In this section—
approved criteria means—
(a) for demolition work—the criteria stated in Information Paper D1 (Approved criteria for a certificate to perform the prescribed activity of demolition work) issued by the chief executive; or
(b) for asbestos removal work—the criteria stated in Information Paper AR1 (Approved criteria for a certificate to perform the prescribed activity of asbestos removal work) issued by the chief executive[11].
authorised accredited provider means an accredited provider whose functions stated under section 178(2)[12] of the Act include assessing a person's satisfaction of the approved criteria.

29D Continuing to satisfy approved criteria
In addition to any other condition imposed by the chief executive under section 39, a certificate held by a person to perform a prescribed activity is subject to the following conditions—
(a) the person must take all reasonable steps to ensure that the person continues to satisfy the approved criteria;
(b) if the prescribed activity to be performed under the certificate is demolition work—the performance of the prescribed activity must be restricted to the particular structures, or particular types of structures, stated in the certificate.

Division 2 Training and supervision in prescribed activities

[11] These information papers may be obtained at no cost from any office of the Department of Employment and Industrial Relations dealing with workplace health and safety, or at www.deir.qld.gov.au on the internet.
[12] Section 178 (Functions of accredited providers) of the Act

29E Employer's duty for training in prescribed activity
An employer who employs, or otherwise allows, a worker to perform a prescribed activity must ensure the person has received appropriate training in safe working methods for the performance of the prescribed activity.
Maximum penalty—30 penalty units.

29F Supervision of performance of prescribed activity
(1) The holder of a certificate to perform a prescribed activity must ensure the performance of the prescribed activity is directly supervised by a competent person.
Maximum penalty—30 penalty units.
(2) In this section—
competent person means—
(a) for demolition work—a person who is competent under Information Paper D2 (Requirements to supervise demolition work) issued by the chief executive; or
(b) for asbestos removal work—a person who is competent under Information Paper AR2 (Requirements for a competent person to supervise performance of the prescribed activity of asbestos removal work) issued by the chief executive[13].

Regulation Part 4 – Workplace Health and Safety Officers

Part 4 Workplace health and safety officers

30 Workplaces requiring a workplace health and safety officer—Act, s 93
For section 93[14] of the Act, workplaces (other than workplaces where construction work is performed and a principal contractor has not been appointed for the work) in the following industries are prescribed workplaces—
(a) building and construction industry;
(b) community services industry;
(c) electricity, gas and water industry;
(d) financial, property and business services industry;
(e) manufacturing industry;
(f) public administration industry;
(g) recreational services, personal services and other services industry;
(h) retail and wholesale trade industry;
(i) transport and storage industry.

31 Application for certificate of authority of appointment
(1) A person may apply to the chief executive, under part 5, division 1A, for a certificate of authority of appointment of a workplace health and safety officer.
(2) The chief executive may grant the application only if the chief executive is satisfied that—
(a) within 3 months before the application is made—
(i) for an application for a certificate—a registered training organisation has assessed the applicant as competent to perform the functions of a workplace health and safety officer under the Act; or
(ii) for renewal of an application for a certificate—a registered training organisation has assessed the applicant as competent to continue to perform the functions of a workplace health and safety officer under the Act; or
(b) the applicant has other qualifications or experience that would enable the applicant to satisfactorily perform the functions of a workplace health and safety officer.
(2A) The applicant may satisfy the chief executive for subsection (2) by giving the chief executive satisfactory evidence that the applicant has completed—
(a) for subsection (2)(a)(i)—an approved workplace health and safety officer course; or
(b) for subsection (2)(a)(ii)—an approved workplace health and safety officer recertification course.
(3) A certificate is valid for the term (of a maximum of 5 years) stated in the certificate.
(4) In this section—
approved workplace health and safety officer course means a course approved by the chief executive under section 32(1)(a).
approved workplace health and safety officer recertification course means a course approved by the chief executive under section 32(1)(b).

[13] These information papers may be obtained at no cost from any office of the Department of Employment and Industrial Relations dealing with workplace health and safety, or at www.deir.qld.gov.au on the internet.
[14] Section 93 (Appointment of workplace health and safety officer by employer) of the Act. Section 94 (Appointment of workplace health and safety officer by principal contractor) of the Act provides for the appointment of a workplace health and safety officer for a construction workplace.

32 Approval of workplace health and safety officer course
(1) The chief executive may approve—
(a) a workplace health and safety officer course; and
(b) a workplace health and safety officer recertification course.
(2) The chief executive must not approve a workplace health and safety officer course or recertification course unless the chief executive is satisfied the course gives adequate instruction about the functions of a workplace health and safety officer under the Act.

Regulation Part 13 – Hazardous substances

Part 13 Hazardous substances

Division 1 Interpretation

87 Meaning of *exposed*
A person is *exposed* to a hazardous substance if the person absorbs, or is likely to absorb, the substance—
(a) by ingestion or inhalation; or
(b) through the skin or mucous membrane.

88 Meaning of *hazardous substance*
(1) In this part, other than division 4[15]—
hazardous substance means—
(a) a designated hazardous substance; or
(b) a substance that is not a designated hazardous substance but meets the approved criteria.
(2) However, a hazardous substance does not include—
(a) lead within the meaning of part 14; or
(b) a substance containing a disease causing organism; or
(c) a radioactive substance; or
(d) a substance used at a workplace for personal or sanitary use not related to a work activity.
Example of subsection (2)(d)—
skin cream brought into the workplace by a worker for the worker's personal use, but not a skin cream supplied at the workplace for removing grease or other chemicals from the skin

Division 2 Manufacturers and importers

89 Who division applies to
This division applies to a manufacturer or importer of a hazardous substance for use at a workplace[16].

90 Preparing, amending and reviewing MSDS
(1) A manufacturer or importer must—
(a) prepare an MSDS for the substance—
(i) before first manufacturing or importing it; or
(ii) if that is not practicable—as soon as practicable after first manufacturing or importing it; and
(b) amend the MSDS whenever necessary to ensure it contains current information; and
(c) review the MSDS at least once in every 5 years to ensure it contains current information.
Example of paragraph (a)(ii)—
It may not be practicable to prepare an MSDS before first manufacturing a substance that is discovered through research.
(2) The MSDS must state—
(a) the substance's product name; and
(b) information about the substance's—
(i) chemical and physical properties; and
(ii) health hazards; and
(iii) safe use; and
(c) the importer's or manufacturer's name, Australian address and Australian telephone number[17]; and

[15] Division 4 (Relevant persons)
[16] See the Act, section 25 (Person may owe obligations in more than 1 capacity).
[17] See NOHSC's document entitled 'National Code of Practice for the Preparation of Material Safety Data Sheets' for further information about the things mentioned in paragraphs (a) to (c).

(d) for a substance containing a type 1 ingredient—the ingredient's chemical name; and
(e) for a substance containing a type 2 ingredient—
(i) the ingredient's chemical name; or
(ii) if the manufacturer or importer reasonably believes disclosure of the ingredient's chemical name gives insufficient commercial protection—the ingredient's generic name; and
(f) for a substance containing a type 3 ingredient—
(i) the ingredient's chemical name; or
(ii) the ingredient's generic name.

(3) Despite subsection (2)(f), instead of stating a type 3 ingredient's chemical or generic name, the MSDS may state that the ingredient is not hazardous if—
(a) the ingredient is not a hazardous substance with a known synergistic effect; and
(b) the manufacturer or importer reasonably believes disclosure of its chemical or generic name gives insufficient commercial protection.

(4) The MSDS must be in English and contain—
(a) unit measures commonly used in Australia; and
(b) the national exposure standard (if any) for the substance.

(5) Subsection (1) is a workplace health and safety obligation for the Act.

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

91 Providing MSDS

(1) A manufacturer or importer who prepares an MSDS must give a copy of it to—
(a) the repository as soon as practicable after it is prepared; and
(b) each person to whom the manufacturer or importer supplies the substance when first supplying the substance to the person.
Maximum penalty for subsection (1)(a)—30 penalty units.

(2) A manufacturer or importer who amends an MSDS by changing information mentioned in section 90(2)(a), (b) or (c) must give a copy of the amended MSDS to—
(a) the repository within 1 month after amending it; and
(b) each person to whom the manufacturer or importer supplies the substance when first supplying the substance to the person after preparing the amended MSDS.
Maximum penalty for subsection (2)(a)—30 penalty units.

(3) A manufacturer or importer must, on request, give a copy of a hazardous substance's current MSDS to—
(a) a relevant person, worker or worker's representative at a workplace where the substance is, or is to be, used; or
(b) the chief executive[18].
Maximum penalty for subsection (3)—30 penalty units.

(4) Subsections (1)(b) and (2)(b) do not apply to a manufacturer or importer if—
(a) the manufacturer or importer supplies a substance to a retailer or retail warehouse operator; and
(b) the substance is contained in a consumer package that will not be opened on the retailer's or operator's premises.

(5) Subsections (1)(b) and (2)(b) are workplace health and safety obligations for the Act.

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

92 Notifying use of type 2 ingredient's generic name

(1) A manufacturer or importer who states a type 2 ingredient's generic name in an MSDS must give NOHSC notice in the approved form of the use of the generic name.

(2) The notice must be given as soon as practicable after the MSDS is prepared.

Maximum penalty—30 penalty units.

93 Disclosing ingredient's chemical name

(1) This section applies despite section 90(3).

(2) A manufacturer or importer must immediately give the chemical name of an ingredient contained in the substance to a designated doctor who—
(a) believes a person has been exposed to the substance at a workplace and needs urgent medical treatment; and
(b) asks for the information for the person's treatment.

(3) If an ingredient's chemical name is needed to give sufficient protection to the relevant person or a worker at a workplace against exposure—

[18] The chief executive means the chief executive of the department administering this part—see the Acts Interpretation Act 1954, sections 33 and 36.

(a) the relevant person may, by written request, ask the substance's manufacturer or importer to give the person the ingredient's chemical name; or
(b) the worker or worker's representative may, by written request, ask the substance's manufacturer or importer to give the person the ingredient's chemical name.

(4) A request under subsection (3) must contain—
(a) the reason for the request; and
(b) an undertaking to use the information only for the purpose mentioned in subsection (3).

(5) The manufacturer or importer must not refuse the request unless the manufacturer or importer has a reasonable excuse.
Maximum penalty for subsection (5)—30 penalty units.

(6) Without limiting subsection (5), it is a reasonable excuse to refuse the request if the manufacturer or importer—
(a) is not satisfied the ingredient's chemical name is needed; and
(b) gives the requester, within 30 days after receiving the request—
(i) written reasons for refusing the request[19];55 and
(ii) information other than the ingredient's chemical name (if any) that may help protect the relevant person or worker from exposure.

(7) Subsection (2) is a workplace health and safety obligation for the Act.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

94 Providing NICNAS summary report and other information

(1) A relevant person at a workplace where a hazardous substance is used may, by written request, ask the substance's manufacturer or importer for—
(a) information from the substance's NICNAS summary report (if any) that may help in the substance's safe use; and
(b) other information (if any), not contained in the substance's MSDS, that may help in the substance's safe use.

(2) The manufacturer or importer must give the relevant person the information within 30 days after receiving the request, unless the manufacturer or importer has a reasonable excuse.
Maximum penalty for subsection (2)—30 penalty units.

Division 3 Suppliers

95 Who division applies to

This division applies to a supplier of a hazardous substance for use at a workplace[20].

97 Providing MSDS

(1) A supplier must give a copy of a hazardous substance's current MSDS to the relevant person at a workplace—
(a) when first supplying the substance to the relevant person; and
(b) when first supplying the substance to the relevant person after preparing or receiving an amended MSDS[21].

(2) Subsection (1) does not apply to a retailer or retail warehouse operator who supplies a hazardous substance contained in a consumer package that will not be opened on the retailer's or operator's premises.

(3) A supplier must, on request, give a copy of a hazardous substance's current MSDS to—
(a) a relevant person, worker or worker's representative at a workplace where the substance is, or is to be, used; or
(b) the chief executive.
Maximum penalty for subsection (3)—30 penalty units.

(4) Subsection (1) is a workplace health and safety obligation for the Act.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

98 Labelling containers

(1) A supplier must ensure a label is fixed to a hazardous substance's container when the substance is supplied.

(2) The label—
(a) must be in English; and
(b) must state the substance's product name; and
(c) must state the substance's risk and safety phrases (other than a safety phrase giving information about a risk phrase); and
(d) if the substance contains a type 1 or type 2 ingredient—must state the ingredient's chemical name; and

[19] The instrument giving the reasons must also refer to the evidence or other material on which those findings were based. See the Acts Interpretation Act 1954, section 27B (Content of statement of reasons for decision).
[20] See the Act, section 25 (Person may owe obligations in more than 1 capacity).
[21] Section 90 deals with the amendment of an MSDS.

(e) if the substance contains a type 2 ingredient and the substance's manufacturer or importer reasonably believes disclosure of the ingredient's chemical name gives insufficient commercial protection—may state the ingredient's generic name.

Example of a safety phrase giving information about a risk phrase in subsection (2)(c)—
a safety phrase stating 'Keep away from heat' if the risk phrase states 'Heating may cause an explosion'

(3) Subsection (1) is a workplace health and safety obligation for the Act.

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

Division 4 Relevant persons

99 Who division applies to

This division applies to a relevant person at a workplace where a hazardous substance is used[22].

100 Meaning of *hazardous substance* for division

In this division—
hazardous substance means a substance for which its supplier must, under section 97, give a relevant person its current MSDS.

101 Obtaining MSDS

(1) A relevant person who, when first supplied with a substance in a container labelled under section 98, does not receive an MSDS for the substance must—

(a) ask the supplier if the substance is a hazardous substance; and
(b) if it is—ask the supplier for a copy of its current MSDS.

(2) This section does not apply to a retailer or retail warehouse operator if the substance—

(a) has been supplied to the retailer or operator for retail sale; and
(b) is contained in a consumer package that will not be opened on the retailer's or operator's premises.

(3) Subsection (1) is a workplace health and safety obligation for the Act.

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

102 Recording and displaying MSDS

(1) A relevant person must—

(a) put the copy of a hazardous substance's MSDS in the register immediately after the relevant person prepares or receives it; and
(b) take reasonable steps to ensure the contents of the MSDS are not changed other than in accordance with an amendment of the MSDS by the manufacturer or importer.

(2) A relevant person who is an employer must also keep a copy of the MSDS close enough to where the substance is being used to allow a worker who may be exposed to the substance to refer to it easily.

(3) This section does not apply to a retailer or retail warehouse operator if the substance—

(a) has been supplied to the retailer or operator for retail sale; and
(b) is contained in a consumer package that will not be opened on the retailer's or operator's premises.

(4) Subsections (1) and (2) are workplace health and safety obligations for the Act.

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

103 Labelling containers

(1) A relevant person must—

(a) ensure a label complying with section 98 is fixed to the container of a hazardous substance used at the workplace; and
(b) take reasonable steps to ensure the label is not interfered with.

(2) If a hazardous substance is transferred from 1 container into a second container and the second container's contents are not entirely used immediately, the relevant person must ensure the second container is fixed with a label stating—

(a) the substance's product name; and
(b) the substance's risk and safety phrases (other than a safety phrase giving information about a risk phrase).

Example of a safety phrase giving information about a risk phrase in subsection (2)(b)—
a safety phrase stating 'Keep away from heat' if the risk phrase states 'Heating may cause an explosion'

(3) Subsections (1) and (2) do not apply to a container if it has been cleaned of the hazardous substance.

(4) Subsections (1) and (2) are workplace health and safety obligations for the Act.

[22] See the Act, section 25 (Person may owe obligations in more than 1 capacity).

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

104 Hazardous substances in enclosed systems

(1) A relevant person must ensure suitable warning of the presence and location of a hazardous substance in an enclosed system at a workplace is given to anyone who may be exposed to the substance if it escapes from the enclosed system.

Example of suitable warning—
a suitable warning stated in AS 1345[23]

(2) Subsection (1) is a workplace health and safety obligation for the Act.

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

105 Risk assessments

(1) A relevant person must assess the risk to the health of the relevant person or a worker from a hazardous substance that is used, or is to be used, at the workplace.

(2) The assessment must be done—

(a) as soon as is practicable after it is used; and

(b) within 5 years after the last assessment; and

(c) when any of the following happen at the workplace—

(i) a work practice involving the substance is significantly changed;

(ii) new information about the substance's hazards is available;

(iii) health surveillance[24] or monitoring[25] shows control measures need to be reviewed;

(iv) new or improved control measures are implemented.

Examples of significantly changed work practices in paragraph (c)(i)—

• the form of a catalyst for a chemical reaction is changed from liquid to a vaporised state

• the form of a substance used is changed from fine powder to pellets

Examples of control measures in paragraph (c)(iv)—
engineering controls, safe work practices and personal protective equipment

(3) The assessment must include—

(a) an identification of the hazardous substance; and

(b) if the substance's MSDS is available—a review of the MSDS; and

(c) if the substance's MSDS is not available—a review of available equivalent information; and

(d) if the substance is contained in a consumer package—a review of the package's label; and

(e) a decision whether any workers may be exposed to the substance; and

(f) a decision about the control measures, health surveillance and monitoring needed for the substance.

(4) The assessment may be a generic assessment prepared for workplaces where the substance is used in the same or similar circumstances.

Example of generic assessment in subsection (4)—
an assessment prepared by an industry body or trade association about the use of brake fluid at service stations

Maximum penalty—30 penalty units.

106 Risk assessment records

The relevant person must, as soon as practicable after doing an assessment, record the following information—

(a) the date when the assessment was done;

(b) whether the degree of risk is assessed to be significant[26];

(c) the substance's product name or other information;

(d) the control measures for the use of the substance that were in place when the assessment was done;

(e) the type of monitoring that is needed and the intervals at which the monitoring must be done;

(f) the type of health surveillance that is needed and the intervals at which the health surveillance must be done.

Maximum penalty—30 penalty units.

107 Controlling exposure

(1) If a risk assessment shows a relevant person or worker may be exposed to a hazardous substance, the relevant person must—

(a) prevent the exposure; or

[23] AS 1345 (Identification of the contents of pipes, conduits and ducts)

[24] See section 109 (Health surveillance).

[25] See section 108 (Monitoring).

[26] For guidance in deciding if the degree of risk is significant, see the Hazardous Substances Code of Practice 2003.

(b) if prevention is not practicable—reduce the exposure to as low a level as is practicable, but in any case the exposure must not be more than the relevant national exposure standard for the relevant period for the substance.

(2) The relevant person must, as far as is practicable, prevent or reduce the exposure by ways other than the use of personal protective equipment.

(3) However, if the exposure cannot be prevented or reduced other than by using personal protective equipment, the relevant person must ensure that anyone who may be exposed—

(a) is given personal protective equipment; and

(b) is properly instructed in the use of the personal protective equipment; and

(c) uses the equipment when there is a risk of being exposed to the substance.

(4) The relevant person must also ensure the control measures decided under the risk assessment are—

(a) implemented as soon as practicable at the workplace; and

(b) effectively maintained.

(5) Subsections (1) to (4) are workplace health and safety obligations for the Act.

Note—

See section 24 of the Act for the penalty for failing to discharge the obligation.

(7) In this section—

relevant period means the exposure period stated in NOHSC's document entitled 'Exposure Standards for Atmospheric Contaminants in the Occupational Environment'.

108 Monitoring

(1) This section applies if the risk assessment shows monitoring is needed.

(2) The relevant person must ensure the monitoring is done at the workplace.

(3) The relevant person must also ensure a record of the monitoring result is made as soon as practicable.

(4) A relevant person who is an employer must—

(a) ensure a worker who may be exposed to a hazardous substance at the workplace is given a copy of the record; and

(b) allow a worker who may be exposed to inspect the record at any reasonable time.

Maximum penalty for subsections (3) and (4)—30 penalty units.

(5) Subsection (2) is a workplace health and safety obligation for the Act.

Note—

See section 24 of the Act for the penalty for failing to discharge the obligation.

109 Health surveillance

(1) A relevant person must arrange for health surveillance of the relevant person or a worker who a risk assessment[27] shows has been exposed to a hazardous substance if—

(a) the substance is listed in schedule 6, column 1 and the degree of risk to the health of the relevant person or worker is significant; or

(b) the relevant person reasonably believes, or ought to reasonably believe—

(i) an identifiable adverse health effect may be related to the exposure; and

(ii) the health effect may happen under the work conditions of the relevant person or worker; and

(iii) a valid technique capable of detecting signs of the health effect exists; or

(c) the relevant person reasonably believes, or ought to reasonably believe—

(i) an identifiable adverse health effect may be related to the exposure; and

(ii) the health effect may happen under the work conditions of the relevant person or worker; and

(iii) a valid biological monitoring procedure is available to detect, in the relevant person or worker, changes from the current accepted values for the substance.

Examples of changes from current accepted values in paragraph (c)(iii)—

• lower than normal blood levels of acetylcholinesterase resulting from organophosphate pesticide exposure

• raised urinary mercury levels in a laboratory technician exposed to mercury vapour

(2) If the health surveillance relates to exposure to a hazardous substance mentioned in schedule 6, column 1, the surveillance must include the things stated in schedule 6, column 2 for the substance.

(3) The relevant person must—

(a) arrange for the health surveillance to be done by, or under, the supervision of a designated doctor; and

(b) ask the designated doctor to give—

(i) the relevant person a health surveillance report; and

(ii) the worker a health surveillance report and an explanation of the report; and

(c) keep the report as a record at the workplace.

[27] See section 105 (Risk assessments).

(4) If the health surveillance is of a worker, a relevant person who is an employer must consult the worker before choosing a designated doctor to do, or supervise, the surveillance.
Maximum penalty for subsection (4)—30 penalty units.
(5) A relevant person who is an employer must pay for a worker's health surveillance.
Maximum penalty for subsection (5)—30 penalty units.
(6) Subsections (1) and (3) are workplace health and safety obligations for the Act.

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

(8) In this section—
health surveillance report means information, other than a medical record, about—
(a) the effects on a person's health related to the person's exposure to a hazardous substance at a workplace; and
(b) the need (if any) for remedial action.

110 Confidentiality of worker's medical record
(1) A relevant person who is an employer may only obtain a worker's medical record with the worker's written consent.
(2) A relevant person who is an employer must not disclose to anyone (other than the worker or someone with the worker's written consent) the contents of the worker's medical record.

Example of someone with the worker's written consent—
the worker's representative at the workplace

Maximum penalty—30 penalty units.

111 Keeping register
(1) A relevant person at a workplace must keep a register at the workplace containing—
(a) a list of all hazardous substances used at the workplace; and
(b) the current MSDS for each substance.
Maximum penalty—30 penalty units.
(2) A relevant person who is an employer must allow the employer's workers who may be exposed to a hazardous substance at the workplace to inspect the register at any reasonable time.
Maximum penalty—30 penalty units.
(3) This section does not apply to a retailer or retail warehouse operator if the hazardous substance is contained in a consumer package that will not be opened on the retailer's or operator's premises.

112 Keeping records
(1) If a risk assessment[28] shows a hazardous substance's use at a workplace causes a significant degree of risk to health, the relevant person must keep the following documents for 30 years from the day the particular document was made—
(a) the risk assessment record[29];
(b) a monitoring result[30];
(c) a health surveillance report[31].
(2) If a risk assessment shows a hazardous substance's use at a workplace does not cause a significant degree of risk to health, the relevant person must keep a record of the assessment for 5 years from the day it was made.
(3) A relevant person who is an employer must allow a worker who may be exposed to a hazardous substance at the workplace to inspect a document mentioned in subsection (1) or (2) at any reasonable time.
(4) If a person stops being a relevant person in the period a document is required to be kept under subsection (1) or (2), the person must ask for, and comply with, the chief executive's directions about the document's storage.
Maximum penalty—30 penalty units.

113 Induction and training about hazardous substances
(1) A relevant person who is an employer must give a worker who may be exposed to a hazardous substance at the workplace induction and ongoing training about the substance.
(2) The induction and training must be appropriate having regard to—
(a) the level of risk identified in a risk assessment; and
(b) the workers who may be exposed to the substance.
(3) The relevant person must keep a record of the induction and training given to a worker for 5 years from the date of the last entry in the record.
Maximum penalty for subsection (3)—30 penalty units.

[28] See section 105 (Risk assessments).
[29] See section 106 (Risk assessment records).
[30] See section 108 (Monitoring).
[31] See section 109 (Health surveillance).

(4) The record must include the following information for each induction or training session—
(a) the date of the session;
(b) the topics dealt with at the session;
(c) the name of the person who conducted the session;
(d) the names of the workers who attended the session.
(5) Subsection (1) is a workplace health and safety obligation for the Act.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

Division 5 Spray painting with hazardous substances

115A Ways to prevent or minimise risk prescribed

(1) Sections 115B to 115H prescribe ways of preventing or minimising exposure to the risk of exposure to a hazardous substance used in or for spray painting in the circumstances mentioned in the sections.
(2) However, the sections do not deal with all circumstances that expose someone to the risk of exposure to a hazardous substance from spray painting.
(3) A person may discharge the person's workplace health and safety obligation for exposure to the risk in the circumstances mentioned in the sections only by following the prescribed ways.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

115B Manufacturing or importing a spray painting booth

(1) This section applies to a manufacturer or importer of a spray painting booth—
(a) for use at a workplace; and
(b) in which a hazardous substance is likely to be used.
Examples of hazardous substances for subsection (1)(b)—
enamels, lacquers, powders, solvents, varnishes
(2) The manufacturer or importer must ensure the booth—
(a) is constructed to be safe and without risk to health when used properly; and
(b) is able to prevent or control the escape of a hazardous substance that might be a risk to health; and
(c) undergoes appropriate testing and examination to ensure it complies with paragraphs (a) and (b).
(3) The manufacturer or importer must ensure the booth is fitted with an effective ventilation system that incorporates—
(a) a filtration system to remove airborne residue produced during a spray painting process; and
(b) an exhaust capture system—
(i) to prevent the exposure of a person in an adjoining work area to a hazardous substance produced by a spray painting process; and
(ii) if prevention is not practicable—to reduce the exposure to as low a level as is practicable, but in any case the exposure must not be more than the relevant national exposure standard for the relevant period for the substance.
Example of airborne residue for subsection (3)(a)—
paint particles from overspray
(4) In this section—
relevant period means the exposure period stated in NOHSC's document entitled 'Exposure Standards for Atmospheric Contaminants in the Occupational Environment'.

115C Supplying a spray painting booth

(1) This section applies to a supplier of a spray painting booth—
(a) for use at a workplace; and
(b) in which a hazardous substance is likely to be used.
Examples of hazardous substances for subsection (1)(b)—
enamels, lacquers, powders, solvents, varnishes
(2) The supplier must take all reasonable steps to ensure the person who is supplied with the booth is given the following information—
(a) the use for which the booth has been designed and tested;
(b) how the booth is to be used safely and without risk to health;
(c) the maintenance procedures for the booth, including the maintenance procedures for any filters.

115D Protecting persons from spray painting

(1) A relevant person must ensure that the risk of a person's exposure to a hazardous substance used in or for spray painting is—
(a) prevented; or

(b) if prevention is not practicable—minimised to as low a level as is practicable, but in any case the exposure must not be more than the relevant national exposure standard for the relevant period for the substance.

(2) In this section—

relevant period means the exposure period stated in NOHSC's document entitled 'Exposure Standards for Atmospheric Contaminants in the Occupational Environment'.

115E Spray painting to be done in spray painting booth

(1) A relevant person must ensure any spray painting using a hazardous substance is done in a spray painting booth.

Examples of hazardous substances for subsection (1)—
acrylic lacquers, 2 pack polyurethane paint, conventional epoxy paint, powders, solvents

(2) However, a spray painting booth is not required if—

(a) it is not practical to do the painting in a booth; or

(b) the painting involves spotting, touching up or other minor work.

Examples for subsection (2)(a)—
1 painting a bridge, building or tower
2 painting a large boat that can not be easily placed in a booth because of its size
Example of spotting or touching up for subsection (2)(b)—
occasionally painting a scratch, small dent or stone chip on a car door
Example of what is minor work for subsection (2)(b)—
occasionally painting a car panel with an acrylic lacquer
Example of what is not minor work for subsection (2)(b)—
1 consecutively painting a number of car panels with an acrylic lacquer
2 painting a whole car panel with 2 pack polyurethane paint

115F Controlling exposure from spray painting

(1) This section applies if a relevant person can not prevent or reduce someone's exposure to a hazardous substance used in or for spray painting other than by using personal protective equipment.

(2) The relevant person must ensure that—

(a) anyone who may be exposed—

(i) is given the appropriate personal protective equipment; and

(ii) is properly instructed in how to use the equipment; and

(iii) uses the equipment when there is a risk of being exposed to the substance; and

(b) personal protective equipment given to someone is effectively maintained.

115G Maintaining a spray painting booth

(1) This section applies if a spray painting booth is used by a relevant person for spray painting a hazardous substance.

(2) The relevant person must ensure the booth is—

(a) regularly inspected by a competent person to ascertain whether the booth can be used safely and without risk to health; and

(b) appropriately maintained by a competent person.

Example of appropriately maintained for subsection (2)(b)—
maintained in accordance with the procedures supplied by the supplier of the booth

(3) To work out how often to inspect the booth, the relevant person must consider the following things—

(a) the inspection intervals recommended by the manufacturer, importer, or supplier of the booth;

(b) the types of spray painting processes done in the booth;

(c) how often the booth is used;

(d) the types of substances, and the volumes of them, used in the booth.

(4) In this section—

competent person means a person who has acquired, through training, qualification, experience, or a combination of these, the knowledge and skill enabling the person to inspect or maintain a spray painting booth for its safe use and proper air movement.

115H Minimum air movement for booths

(1) This section applies if a spray painting booth is used by a relevant person for spray painting a hazardous substance.

(2) The relevant person must ensure the booth's ventilation system can produce and keep an air movement of—

(a) for a full down draught booth—not less than 0.3 metres per second; or

(b) for a booth used only for electrostatic spray painting—not less than 0.4 metres per second; or

(c) for any other booth—not less than 0.5 metres per second;

averaged over the area of the booth where the spray painting is done.

(3) For subsection (2), the air movement must be measured—

(a) when the booth is empty; and

(b) during the booth's spray cycle; and
(c) in the area of the booth where the painting is done; and
(d) for a booth that is not fully contained or enclosed—at the opening in the booth where the internal environment in the booth and the external environment meet.

Example of a booth that is not fully contained—
a tunnel booth that is not fitted with vapour barriers
Example of a booth that is not fully enclosed—
an open face booth

(4) In this section—
spray cycle of a spray painting booth means the time during the booth's operation when the booth may be used for spray painting.

Regulation part 14 – lead

Part 14 Lead

Division 1 Interpretation

116 Meaning of *exposed*
A person is *exposed* to lead if the person absorbs, or is likely to absorb, lead—
(a) by ingestion or inhalation; or
(b) through the skin or mucous membrane.

117 Meaning of *lead hazardous substance*
A *lead hazardous substance* is—
(a) a substance listed in schedule 8[32] in a concentration more than the concentration cut-off level stated for the substance in NOHSC's document entitled 'List of Designated Hazardous Substances'; or
(b) a substance that meets the approved criteria.

Division 2 Manufacturers and importers

118 Who division applies to
This division applies to a manufacturer or importer of lead for use at a workplace[33].

119 Preparing, amending and reviewing MSDS
(1) A manufacturer or importer must—
(a) prepare an MSDS for the lead—
(i) before first manufacturing or importing it; or
(ii) if that is not practicable—as soon as reasonably practicable after first manufacturing or importing it; and
(b) amend the MSDS whenever necessary to ensure it contains current information; and
(c) review the MSDS at least once in every 5 years to ensure it contains current information.

Example of paragraph (a)(ii)—
It may not be practicable to prepare an MSDS before first manufacturing a lead hazardous substance that is discovered through research.

(2) The MSDS must state—
(a) the lead's product name; and
(b) the lead's chemical name; and
(c) information about the lead's—
(i) chemical and physical properties; and
(ii) health hazards; and
(iii) safe use[34], and
(d) the importer's or manufacturer's name, Australian address and Australian telephone number.
(3) The MSDS must be in English and contain—
(a) unit measures commonly used in Australia; and
(b) the national exposure standard (if any) for the lead.
(4) Subsection (1) is a workplace health and safety obligation for the Act.

Note—

[32] Schedule 8 (Lead hazardous substances)
[33] See the Act, section 25 (Person may owe obligations in more than 1 capacity).
[34] See NOHSC's document entitled 'National Code of Practice for the Preparation of Material Safety Data Sheets' for further information about the things mentioned in paragraphs (a) to (c).

See section 24 of the Act for the penalty for failing to discharge the obligation.

120 Providing MSDS

(1) A manufacturer or importer who prepares an MSDS must give a copy of it to—

(a) the repository as soon as practicable after it is prepared; and

(b) each person to whom the manufacturer or importer supplies the lead when first supplying the lead to the person.

Maximum penalty for subsection (1)(a)—30 penalty units.

(2) A manufacturer or importer who amends an MSDS by changing information mentioned in section 119(2) must give a copy of the amended MSDS to—

(a) the repository within 1 month after amending it; and

(b) each person to whom the manufacturer or importer supplies the lead when first supplying the lead to the person after preparing the amended MSDS.

Maximum penalty for subsection (2)(a)—30 penalty units.

(3) A manufacturer or importer must, on request, give a copy of the lead's current MSDS to—

(a) a relevant person, worker or workplace health and safety representative at a workplace where the lead is, or is to be, used; or

(b) the chief executive[35].

Maximum penalty for subsection (3)—30 penalty units.

(4) Subsections (1)(b) and (2)(b) do not apply to a manufacturer or importer if—

(a) the manufacturer or importer supplies lead to a retailer or retail warehouse operator; and

(b) the lead is contained in a consumer package that will not be opened on the retailer's or operator's premises.

(5) Subsection (1)(b) and (2)(b) are workplace health and safety obligations for the Act.

Note—

See section 24 of the Act for the penalty for failing to discharge the obligation.

121 Providing NICNAS summary report and other information

(1) A relevant person at a workplace where lead is used may, by written request, ask the lead's manufacturer or importer for—

(a) information from the lead's NICNAS summary report (if any) that may help in the lead's safe use; and

(b) other information (if any), not contained in the lead's MSDS, that may help in the lead's safe use.

(2) The manufacturer or importer must give the relevant person the information within 30 days after receiving the request, unless the manufacturer or importer has a reasonable excuse.

Maximum penalty for subsection (2)—30 penalty units.

Division 3 Suppliers

122 Who division applies to

This division applies to a supplier of lead for use at a workplace[36].

123 Providing MSDS

(1) A supplier must give a copy of the lead's current MSDS to the relevant person at a workplace—

(a) when first supplying the lead to the relevant person; and

(b) when first supplying the lead to the relevant person after preparing or receiving an amended MSDS.

(2) A supplier must, on request, give a copy of the lead's current MSDS to—

(a) a relevant person, worker or workplace health and safety representative at a workplace where the lead is, or is to be, used; or

(b) the chief executive.

Maximum penalty for subsection (2)—30 penalty units.

(3) Subsection (1) does not apply to a retailer or retail warehouse operator who supplies lead contained in a consumer package that will not be opened on the retailer's or operator's premises.

(4) Subsection (1) is a workplace health and safety obligation for the Act.

Note—

See section 24 of the Act for the penalty for failing to discharge the obligation.

124 Labelling containers

(1) A supplier must ensure a label is fixed to a container of lead when the lead is supplied.

(2) The label must be in English and state—

(a) the lead's product name; and

[35] The chief executive means the chief executive of the department administering this part. See the Acts Interpretation Act 1954, sections 33 and 36.

[36] See the Act, section 25 (Person may owe obligations in more than 1 capacity).

(b) the lead's risk and safety phrases (other than a safety phrase giving information about a risk phrase); and
(c) the lead's chemical name.

Example of a safety phrase giving information about a risk phrase in subsection (2)(b)—
a safety phrase stating 'When using, do not eat or drink.' if the risk phrase states 'Harmful by inhalation and if swallowed.'

(3) Subsection (1) is a workplace health and safety obligation for the Act.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

Division 4 Relevant persons

125 Who division applies to
This division applies to a relevant person at a workplace where a lead process is carried out[37].

126 Obtaining MSDS
(1) A relevant person who, when first supplied with a substance in a container labelled under section 124, does not receive an MSDS for the lead must—
(a) ask the supplier if the substance is lead; and
(b) if it is—ask the supplier for a copy of its current MSDS.
(2) This section does not apply to a retailer or retail warehouse operator if the lead—
(a) has been supplied to the retailer or operator for retail sale; and
(b) is contained in a consumer package that will not be opened on the retailer's or operator's premises.
(3) Subsection (1) is a workplace health and safety obligation for the Act.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

127 Keeping registers
(1) A relevant person at a workplace must—
(a) keep a register at the workplace containing—
(i) a list of the lead used in a lead process at the workplace; and
(ii) the MSDS for the lead used in a lead process at the workplace; and
(b) put the copy of the MSDS in the register immediately after the relevant person receives it; and
(c) keep a copy of the MSDS close to where the lead is being used; and
(d) take reasonable steps to ensure the contents of the MSDS are not changed other than in accordance with an amendment of the MSDS by the manufacturer or importer.
Maximum penalty—30 penalty units.
(2) A relevant person who is an employer must allow the employer's workers to inspect the register at any reasonable time.
Maximum penalty—30 penalty units.
(3) This section does not apply to a retailer or retail warehouse operator if the lead—
(a) has been supplied to the retailer or operator for retail sale; and
(b) is contained in a consumer package that will not be opened on the retailer's or operator's premises.

128 Labelling containers
(1) A relevant person must—
(a) ensure a label complying with section 124[38] is fixed to the container of lead used at the workplace; and
(b) take reasonable steps to ensure the label is not changed.
(2) If lead is transferred from a container into a second container and the second container's contents are not entirely used immediately, the relevant person must ensure the second container is fixed with a label stating—
(a) the lead's product name; and
(b) the lead's risk and safety phrases (other than a safety phrase giving information about a risk phrase).

Example of a safety phrase giving information about a risk phrase in subsection (2)(b)—
a safety phrase stating 'When using, do not eat or drink.' if the risk phrase states 'Harmful by inhalation and if swallowed.'

(3) Subsection (2) does not apply to a container if it has been cleaned of the lead.
(4) Subsections (1) and (2) are workplace health and safety obligations for the Act.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

[37] See the Act, section 25 (Person may owe obligations in more than 1 capacity).
[38] Section 124 (Labelling containers)

129 Risk assessment

(1) A relevant person must assess the risk to the health of the relevant person or a worker from a lead process at the workplace.
Maximum penalty for subsection (1)—30 penalty units.

(2) The assessment must be done—

(a) when a new lead process starts at the workplace and again within 4 weeks after the process starts; and

(b) if, in the last assessment, the process was assessed to include a lead-risk job—within 1 year after the last assessment; and

(c) if, in the last assessment, the process was assessed not to include a lead-risk job—within 5 years after the last assessment; and (d) when any of the following happen at the workplace—

(i) if there is a significant change in the way a lead process is done at the workplace;

(ii) if there is a significant change in the amount of lead, or the amount of lead contained in a thing, used at the workplace.

(3) The assessment must—

(a) identify the lead used at the workplace; and

(b) if the MSDS for the lead is available—review the MSDS; and

(c) if the MSDS for the lead is not available—review available equivalent information; and

(d) if the lead is contained in a consumer package—review the package's label.

(4) Having assessed the risk, the relevant person must decide whether a job in a lead-risk process is a lead-risk job.

(5) If the process is assessed to include a lead-risk job, the relevant person must decide—

(a) the type of atmospheric monitoring needed[39]; and

(b) the control measures needed.

Example of a type of atmospheric monitoring in subsection (5)(a)—
monitoring a worker's breathing zone

(6) The assessment may be a generic assessment prepared for workplaces where lead is used in the same or similar circumstances.

Example—
where there are several soldering stations in a battery factory soldering the same kind of terminals under similar environmental conditions

(7) After doing the assessment, the relevant person must—

(a) if the process is assessed not to include a lead-risk job—develop a plan to ensure a job in the process does not become a lead-risk job; or

(b) if the process is assessed to include a lead-risk job—

(i) notify the chief executive, in the approved form within 28 days after the assessment, that the process includes a lead-risk job; and

(ii) if the process can be changed to a process that does not include a lead-risk job—develop a plan to do that; and

(iii) if the process can not be changed to a process that does not include a lead-risk job—develop a plan to minimise risk to health from the lead.

Maximum penalty for subsection (7)(b)(i)—20 penalty units.

(8) The relevant person must ensure a plan under subsection (7)—

(a) if the relevant person is an employer—is developed in consultation between the relevant person, worker and workplace health and safety representative; and

(b) contains specific aims and ways of deciding whether the aims are being achieved.

(9) A relevant person who is an employer must not allow a person to start work in a lead-risk job if the relevant person knows the person—

(a) has a medical condition that may be adversely affected by exposure to lead; or

(b) is pregnant or breast feeding.

(10) Subsections (4), (5), (7)(a), (b)(ii) and (iii), (8) and (9) are workplace health and safety obligations for the Act.

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

130 Risk assessment records

As soon as practicable after doing an assessment, the relevant person must record the following information—

(a) the date when the assessment was done;

(b) the results of atmospheric monitoring;

(c) whether the process is assessed to include a lead-risk job;

(d) if a process is assessed to include a lead-risk job—

(i) the lead's product name or other identification; and

[39] See section 132 (Atmospheric monitoring).

(ii) the control measures that were in place when the assessment was done; and
(iii) the decision made about—
(A) the type of atmospheric monitoring needed; and
(B) the control measures needed.

Maximum penalty—30 penalty units.

131 Controlling exposure

(1) If a risk assessment shows a relevant person or worker may be exposed to lead, the relevant person must—
(a) prevent the exposure; or
(b) if that is not practicable—reduce the exposure to as low a level as is necessary to minimise risk to health, but in any case the exposure must be less than the national exposure standard for the lead.

(2) The relevant person must, as far as is practicable, prevent or reduce the exposure by ways other than the use of personal protective equipment.

(3) However, if the exposure can not be prevented or reduced other than by using personal protective equipment, the relevant person must ensure that—
(a) anyone who may be exposed—
(i) is given personal protective equipment, including suitable respiratory protective equipment; and
(ii) is properly instructed in the use of the personal protective equipment; and
(iii) uses the equipment when being exposed to the lead; and
(b) warning signs are erected showing the need to wear the personal protective equipment in the lead process area.

(4) The relevant person must ensure—
(a) the control measures decided, and plans developed, under the risk assessment are implemented at the workplace as soon as practicable; and
(b) the control measures, including all engineering controls, safe work practices and personal protective equipment, are effectively maintained.

Example of effective maintenance of personal protective equipment—
cleaning lead from respiratory equipment to maintain its effective use

(5) A relevant person must also ensure—
(a) lead used in a lead process area does not, as far as is practicable, contaminate other areas of the workplace; and
(b) workers are not exposed to the risk from lead in an area provided by the employer for eating and drinking; and
(c) before moving from a lead process area to an area used for eating and drinking, a worker washes the worker's forearms, hands and face at the washing facilities provided at the workplace; and
(d) no one eats, chews gum, smokes or carries anything used for smoking in a lead process area; and
(e) no one in a lead process area drinks from anything other than a drinking facility that is made free from lead contamination; and
(f) the workplace is, as far as is practicable, cleaned of lead; and
(g) a lead process area is not cleaned by compressed air or another compressed gas or dry sweeping; and
(h) a worker does not take lead contaminated clothing home for laundering; and
(i) lead contaminated clothing is laundered.

(6) Subsections (1) to (5) are workplace health and safety obligations for the Act.

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

132 Atmospheric monitoring

(1) If the risk assessment shows a process includes a lead-risk job, the relevant person must ensure—
(a) atmospheric monitoring is done in a lead process area at the workplace; and
(b) the result of the monitoring is recorded as soon as practicable.

Maximum penalty for subsection (1)(b)—30 penalty units.

(2) Subsection (1)(a) is a workplace health and safety obligation for the Act.

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

133 Health surveillance

(1) If the risk assessment shows a process includes a lead-risk job, the relevant person must arrange for health surveillance of the relevant person or a worker who—
(a) is to start work in the job; or
(b) works in the job.

(2) For a relevant person or worker who is to start work in the lead-risk job, the relevant person must arrange for—

(a) health surveillance of the relevant person or worker to be done before the relevant person or worker starts work[40]; and
(b) more biological monitoring of the relevant person or worker to be done within 1 month after the relevant person or worker starts work; and
(c) more health surveillance of the relevant person or worker to be done within 3 months after the relevant person or worker starts work; and
(d) more health surveillance of the relevant person or worker to be done within 6 months after the relevant person or worker starts work.

(3) For a relevant person or worker who works in the lead-risk job, the relevant person must arrange for—
(a) health surveillance of the relevant person or worker to be done within 1 month after the risk assessment shows the job is a lead-risk job; and
(b) health surveillance or biological monitoring of the relevant person or worker to be done at any other time if requested by a designated doctor.

(4) The relevant person must—
(a) arrange for health surveillance or biological monitoring to be done by a designated doctor; and
(b) give the designated doctor, on request, the risk assessment record; and
(c) when arranging for health surveillance or biological monitoring to be done, ask the designated doctor to, as soon as possible after it is done, give—
(i) the relevant person a health surveillance report; and
(ii) the worker—
(A) if health surveillance is done—a health surveillance report and an explanation of the report; and
(B) if biological monitoring is done—the results of biological monitoring; and
(d) give the chief executive notice, in the approved form, of the results of the health surveillance within 6 months of receiving the report.
Maximum penalty for subsection (4)(d)—30 penalty units.

(5) Anything that must be done by a designated doctor under subsection (4) may be done under the supervision of the designated doctor.

(6) If the health surveillance is of a worker, a relevant person who is an employer must ensure the designated doctor is chosen after consultation between the relevant person, worker and workplace health and safety representative.
Maximum penalty for subsection (6)—30 penalty units.

(7) If, after consultation, the relevant person, worker and workplace health and safety representative are unable to decide on a designated doctor, the designated doctor is to be chosen by the relevant person.

(8) A relevant person who is an employer must pay for health surveillance of a worker under this section.
Maximum penalty for subsection (8)—30 penalty units.

(9) Subsections (1) to (4)(c) are workplace health and safety obligations for the Act.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

(11) In this section—
health surveillance report means information about—
(a) the effects on a person's health related to the person's exposure to lead because of a lead-risk job; and
(b) the need (if any) for remedial action; and
(c) the type of remedial action needed.

134 Reviewing control measures

(1) If the atmospheric monitoring shows the level of exposure is equal to or more than the national exposure standard for lead, the relevant person must review the control measures decided in the risk assessment.

(2) If the designated doctor, in a health surveillance report, recommends the relevant person or worker must be removed from a lead-risk job, or that control measures must be reviewed, the relevant person must—
(a) identify how the relevant person or worker was exposed to the lead; and
(b) review the control measures; and
(c) control the exposure.

(3) Subsections (1) and (2) are workplace health and safety obligations for the Act.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

135 Removal of worker from a lead-risk job

(1) A relevant person who is an employer must immediately remove a worker from a lead-risk job to a job that is not a lead-risk job if—

[40] Note that health surveillance means monitoring by medical assessment and biological monitoring. See schedule 9 (Dictionary).

(a) the designated doctor, in the health surveillance report, recommends the worker be removed from the lead-risk job because of the worker's confirmed blood lead level; or
(b) the worker tells the relevant person that the worker—
(i) has a medical condition that may be adversely affected by exposure to lead; or
(ii) is pregnant or breast feeding; or
(c) the relevant person, after consultation with the worker, considers the worker has been exposed to an excessive level of lead; or
(d) the worker, after consultation with the relevant person, considers the worker has been exposed to an excessive level of lead.

Note—
In relation to taking action under this section or division, a person may also have obligations to comply with anti-discrimination or industrial laws.

(2) If the relevant person or worker considers the worker has been exposed to an excessive level of lead, the relevant person must arrange for health surveillance of the worker to be done within 7 days after the worker is removed.
(3) Subsections (1) and (2) are workplace health and safety obligations for the Act.

135A Removal of relevant person from a lead-risk job
(1) A relevant person must remove himself or herself from a lead-risk job to a job that is not a lead-risk job if—
(a) the designated doctor, in the health surveillance report, recommends the relevant person be removed from the lead-risk job because of the person's confirmed blood lead level; or
(b) the relevant person—
(i) has a medical condition that may be adverselyaffected by exposure to lead; or
(ii) is pregnant or breast feeding.
(2) If the relevant person considers he or she has been exposed to an excessive level of lead, the relevant person must arrange for health surveillance of himself or herself to be done within 7 days after the relevant person removes himself or herself.
(3) Subsections (1) and (2) are workplace health and safety obligations for the Act.

136 Return to a lead-risk job
(1) A relevant person who is an employer must not allow a worker to return to a lead-risk job from which the worker was removed under section 135 unless a designated doctor, after determining the worker's confirmed blood lead level by health surveillance, advises the worker may return.
(2) A relevant person must not return to a lead-risk job from which the relevant person removed himself or herself under section 135A unless a designated doctor, after determining the confirmed blood lead level of the relevant person by health surveillance, advises the relevant person may return.
(3) Subsection (1) is a workplace health and safety obligation for the Act.

Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

137 Confidentiality of worker's medical record
A relevant person who is an employer must not disclose to anyone (other than the worker or someone with the worker's written consent) the contents of a worker's medical record.
Maximum penalty—30 penalty units.

138 Induction and training about lead
(1) A relevant person who is an employer must give a worker who may be exposed to lead at the workplace induction and, at least annually, information and ongoing training about lead, including about the worker's obligations under division 5[41].
(2) The induction and training must be appropriate having regard to—
(a) the level of risk identified in a risk assessment; and
(b) the types of workers who may be exposed to the lead; and

Examples of subsection (2)(b)—
1 workers from a non-English speaking background
2 females of reproductive capacity

(c) the potential health risks and toxic effects associated with lead absorption; and
(d) the control measures being used to minimise the risk; and
(e) the correct way to implement the control measures; and

Example 1 of paragraph (e)—
the correct care and use of personal protective equipment
Example 2 of paragraph (e)—

[41] Division 5 (Workers)

the correct way to do the work practices mentioned in section 131(5)[42]

(f) the health surveillance required under this part.

(3) Subsection (1) is a workplace health and safety obligation for the Act.

Note—

See section 24 of the Act for the penalty for failing to discharge the obligation.

139 Keeping records

(1) If a risk assessment shows that a process includes a lead-risk job, the relevant person must keep the following documents for 30 years from the day the particular document was made—

(a) a record of the person working in the lead-risk job, including the person's name, sex and the type of work carried out by the person;

(b) the risk assessment record;

(c) the results of atmospheric monitoring;

(d) the health surveillance report;

(e) a record of the date when a person was removed from, or returned to, the lead-risk job.

(2) If a risk assessment shows that a process does not include a lead-risk job, the relevant person must keep the risk assessment record for 5 years from the day it was made.

(3) A relevant person who is an employer must keep a record of the induction and training given to a worker for 5 years from the date of the last entry in the record.

(4) The record must include the following information for each induction or training session—

(a) the date of the session;

(b) the topics dealt with at the session;

(c) the name of the person who conducted the session;

(d) the names of the workers who attended the session.

(5) The relevant person must allow—

(a) a worker, or the workplace health and safety representative to inspect a document mentioned in subsection (1)(a), (b) or (c), (2) or (3) at any reasonable time; and

(b) a worker to copy the document.

(6) If a person stops being a relevant person in the period a document is required to be kept under subsection (1), (2) or (3), the person must ask for, and comply with, the chief executive's directions about the documents storage.

Maximum penalty—30 penalty units.

Division 5 Workers

140 Who division applies to

This division applies to a worker at a workplace where a lead process is carried out.

141 Health surveillance

(1) A worker must comply with the request of the worker's employer to undergo health surveillance.

(2) Subsection (1) is a workplace health and safety obligation for the Act.

Note—

See section 24 of the Act for the penalty for failing to discharge the obligation.

142 Advising of pregnancy or breast feeding

(1) A worker must tell the worker's employer that the worker—

(a) if the worker knows the worker has a medical condition that may be adversely affected by exposure to lead—has the medical condition; or

(b) if the worker knows the worker is pregnant—is pregnant; or

(c) is breast feeding.

(2) Subsection (1) is a workplace health and safety obligation for the Act.

Note—

See section 24 of the Act for the penalty for failing to discharge the obligation.

Regulation Part 15 – Confined spaces

Part 15 Confined spaces

143 Designing, manufacturing or supplying a confined space

[42] Section 131 (Controlling exposure)

(1) A designer, manufacturer or supplier of plant that is a confined space must comply with clauses 6.1 to 6.3 of AS/NZS 2865[43].
(2) Subsection (1) is a workplace health and safety obligation for the Act.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

144 Modifying a confined space
(1) A person who modifies a confined space must comply with clause 6.4 of AS/NZS 2865.
(2) Subsection (1) is a workplace health and safety obligation for the Act.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

145 Using a confined space
(1) A relevant person at a workplace at which a confined space is used, or is to be used, must comply with the following clauses of AS/NZS 2865—
(a) clause 8.1;
(b) clauses 9.1 and 9.2;
(c) clauses 10.1, 10.5, 10.11, 10.22, 10.30, 10.41 and 10.46 to 10.48;
(d) clauses 11.1, 11.3, 11.6 and 11.9;
(e) clauses 12.1 and 12.2;
(f) clause 13[44].
Maximum penalty for subsection (1)(a), (b) or (f)—30 penalty units.
(1A) A risk assessment under subsection (1)(b) must be carried out by a person who has acquired through training, qualifications, or experience the knowledge and skill enabling the person to perform the assessment.
(2) Subsection (1)(c) to (e) is a workplace health and safety obligation for the Act.
Note—
See section 24 of the Act for the penalty for failing to discharge the obligation.

Regulation Part 17 division 3 subdivision 9 – Excavation work

[Part 17, division 3, subdivision 9 of the *Workplace Health and Safety Regulation 1997*]

Subdivision 9 Relevant person's obligation for risk from excavations
207 Meaning of *competent person* for sdiv 9
(1) A person is a *competent person* for section 210(5) for work in relation to a trench if the person—
(a) has at least 3 years experience in stabilising excavations that are trenches; and
(b) either—
(i) is a geo-technical engineer; or
(ii) holds a qualification, or statement of attainment, from a registered training organisation covering the knowledge and skills mentioned in subsection (2).
(2) The following are knowledge and skills for subsection (1)—
(a) knowledge of relevant Australian Standards, relevant codes of practice and other relevant legislation;
(b) knowledge of, and competence in, the following—
(i) hazard identification and risk assessment for trench stability;
(ii) measures to control exposure to risks from trench collapse;
(iii) safe work practices and procedures for installing control measures;
(iv) how to plan and prepare for working in a trench;
(v) how to identify the location of underground services;
(vi) how to identify soil types and other factors that affect the stability of a trench.

208 Risk from all excavations
(1) This section applies if a relevant person intends to do—
(a) excavation work; or
(b) work in an excavation.
(2) The relevant person must, before the work starts—

[43] AS/NZS 2865 (Safe working in a confined space)
[44] AS/NZS 2865 (Safe working in a confined space)—clause 8.1 (Hazard identification), clauses 9.1 and 9.2 (Risk assessment), clauses 10.1, 10.5, 10.11, 10.22, 10.30, 10.41 and 10.46 to 10.48 (Control measures), clauses 11.1, 11.3, 11.6 and 11.9 (Training and competence), clauses 12.1 and 12.2 (Emergency response), and clause 13 (Record keeping)

(a) for each of the following possible events that are relevant to the work, identify each hazard associated with the event—
(i) a person being trapped by the collapse of the excavation;
(ii) a person being struck by an object falling into the excavation;
(iii) a person falling into the excavation;
(iv) a person inhaling, or otherwise being exposed to, carbon monoxide or another impurity of the air in the excavation; and

Examples of hazards for paragraph (a)—
• unstable rock or soil
• underground water tables
• a previous trench
• machinery being moved near the excavation
• vibration and fumes from vehicles or other plant in or near the excavation
• structures near the excavation
• piles of excavated material beside the excavation

(b) assess the risk that may result because of the hazards; and
(c) decide on the appropriate control measures for the work.

(3) The relevant person must use and maintain the control measures for the work, including the control measures required under subsection (4) or (5), necessary to prevent, or minimise the level of, exposure to the risk.

Examples of control measures—
• plant fitted with suitable overhead protection against the collapse of the excavation
• benching, battering or shoring the sides of the excavation
• a hoarding to prevent access by persons
• a secure cover over the excavation
• filling the excavation as soon as possible
• ensuring there is adequate ventilation to prevent exposure to carbon monoxide

(4) The control measures must include a barricade or hoarding at least 900mm high erected to restrict access by persons to the excavation, unless—
(a) the erection of the barricade or hoarding is impracticable; or
(b) no person is likely to be in the vicinity of the excavation.

(5) If the work will involve a person entering a trench more than 1.5m deep, the control measures specified in section 210 must be used to prevent risks to the person from the collapse of the trench.

(6) Subsections (2) and (3) are workplace health and safety obligations for the Act.

209 Risk from working in trench at least 1m deep

(1) This section applies if a relevant person—
(a) is doing work that involves a trench at least 1m deep; and
(b) is not already required to erect a barricade under section 208(4).

(2) The relevant person must erect a barricade at least 900mm high to restrict access by a person to the trench unless—
(a) the erection of the barricade is impracticable; or
(b) the only persons likely to be in the vicinity of the trench are persons involved with the trench.

(3) However, the relevant person need not erect a barricade around a part of the trench if there already is a barrier beside the part of the trench that restricts access to the trench.

Examples of a barrier—
a permanent fence, wall or pile of excavated material

(4) Subsection (2) is a workplace health and safety obligation for the Act.

210 Risk from working in trench more than 1.5m deep

(1) This section applies if a relevant person intends to do work that will involve a person entering a trench more than 1.5m deep.

(2) The relevant person must use at least 1 of the following control measures, complying with this section, as a control measure under section 208(3) to prevent risk to the person from the collapse of the trench—
(a) shoring all sides of the trench by shielding or in another way;
(b) benching all sides of the trench;
(c) battering all sides of the trench;
(d) having a geo-technical engineer—
(i) approve in writing all sides of the trench as safe from collapse; and
(ii) state in writing how long the approval lasts if there is no stated natural occurrence that could affect adversely the stability of the trench; and
(iii) state in writing the natural occurrences that could affect adversely the stability of the trench.

(3) However, the relevant person may use a combination of the control measures mentioned in subsection (2) if all sides of the trench are dealt with.

(4) If shoring is used and it is commercially manufactured shielding, it must be—
(a) designed by an engineer for the purpose for which it is intended to be used; and
(b) erected in accordance with the instructions, if any, of its manufacturer or supplier.
(5) Sheeting or timber may only be used to shore the trench if a competent person has inspected the trench, assessed the shoring and approved the use of the shoring.
(6) Each bench cut into the side of the trench must be no higher than it is wide, unless a geo-technical engineer has approved a greater height in writing.
(7) The angle of each batter in the trench must not be more than 45º from the horizontal, unless a geo-technical engineer has approved a greater angle in writing.
(8) The relevant person must ensure no vertical face of the side of a benched or battered trench is higher than 1.5m, unless a geo-technical engineer has approved a greater height in writing.
(9) Subsection (2) is a workplace health and safety obligation for the Act.

211 Access by ladders to trench more than 1.5m deep
(1) This section applies if access to and from a trench more than 1.5m deep is by ladders.
(2) A relevant person must ensure that at least 1 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 a person will be.
(3) Subsection (2) is a workplace health and safety obligation for the Act.

212 Events in trench more than 1.5m deep that is not shored, benched or battered
(1) This section applies if—
(a) a trench more than 1.5m deep is not shored, benched or battered; and
(b) something happens that could affect the stability of the trench or place the safety of a person at risk because of the trench.

Examples of things that may happen that could affect the stability of the trench—
• water seeping from a side, or the base, of the trench
• subsidence happening beside the trench
• cracks appearing near, and parallel to, the edge of the trench
• excavated or other material being piled beside the trench

(2) A relevant person must ensure that work in the trench stops immediately and does not restart, other than work to shore, bench or batter the trench, until—
(a) a geo-technical engineer has inspected the trench and approved, in writing, the trench as safe to enter; or
(b) all sides of the trench have been—
(i) shored by shielding or another way; or
(ii) benched; or
(iii) battered.
(3) However, the relevant person may use a combination of the methods mentioned in subsection (2)(b) if all sides of the trench are dealt with.
(4) Subsection (2) is a workplace health and safety obligation for the Act.

Regulation Part 21B – Employers – atmospheric contaminants

Part 21B Employers—atmospheric contaminants

222 Level of atmospheric contaminants

(1) This section applies to an atmospheric contaminant, other than a hazardous substance as defined in section 100, for which the national exposure standard states an exposure level.

(2) An employer must ensure that the level of the atmospheric contaminant generated from a process carried out in the conduct of the employer's business or undertaking is not more than the exposure standard stated for the atmospheric contaminant in the national exposure standard.

Maximum penalty—20 penalty units.

Regulation Section 229 – Rural industry exemption

229 Rural industry exemption

(1) A relevant person in rural industry is exempted from complying with the following provisions—

- part 2 in relation to plant that is a mobile elevating work platform with an elevation of 6m or less
- part 3
- part 3A, except in relation to a prescribed activity that is asbestos removal work
- part 4
- part 13
- part 14
- part 15
- part 17, division 3, subdivision 9
- part 21B.

(2) A worker in rural industry is exempted from complying with part 3.

ENDNOTES

1 Laid before the Legislative Assembly on . . .

2 The administering agency is the Department of Employment and Industrial Relations.