

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 262

Issued by the Minister for Tertiary Education, Skills, Jobs and Workplace Relations

Work Health and Safety Act 2011

Work Health and Safety (Transitional and Consequential Amendments) Act 2011

Work Health and Safety Regulations 2011

Authority

These Regulations are made under section 276 of the *Work Health and Safety Act 2011*, Schedule 3 to that Act, and section 5 of the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011*.

Overview

These Regulations implement the model Work Health and Safety Regulations (the model Regulations) in the Commonwealth jurisdiction and form part of a system of nationally harmonised occupational health and safety (OHS) laws. The Regulations will apply to the Commonwealth, public authorities and, for a transitional period, non-Commonwealth licensees.

The importance of harmonised OHS laws has long been recognised as a critical area of regulatory reform, and is a key priority of the Council of Australian Governments' (COAG) national reform agenda. In July 2008, the Commonwealth and each of the States and Territories signed the *Inter-Governmental Agreement for Regulatory and Operational Reform in OHS* (the IGA), which commits jurisdictions to implement model laws by December 2011. The model laws comprise of a model Work Health and Safety Act, supported by model Regulations and model Codes of Practice.

The model work health and safety laws are intended to protect the safety of workers, reduce compliance costs for business and government and improve efficiency for health and safety regulators.

The Regulations will replace the *Occupational Health and Safety (Safety Standards) Regulations 1994* and the *Occupational Health and Safety (Safety Arrangements) Regulations 1991* which will be repealed, along with the *Occupational Health and Safety Act 1991* (OHS Act), on commencement of the WHS Act on 1 January 2012.

Development of the model WHS Regulations

A Decision Regulation Impact Statement prepared by Safe Work Australia with assistance from Deloitte Access Economics estimates that the model work health and safety laws will deliver net benefits of around \$250 million to the Australian economy over each of the next 10 years. Productivity improvements of up to \$2 billion per annum over the next 10 years are also considered likely. Overall, the

expected aggregate benefits reflect lower administrative burden, reduced regulatory duplication, improved efficiency, and improved work and safety outcomes. A copy of the Decision Regulation Impact Statement is available on the Safe Work Australia website: www.safeworkaustralia.gov.au

Other matters

Use of jurisdictional notes

Jurisdictional notes have been used in the model Regulations to explain how jurisdictional specific provisions may be substituted for model provisions to achieve consistency with other laws and processes operating within the jurisdiction. They are intended to facilitate enactment of the model legislation without affecting harmonisation. The jurisdictional notes are found in the Appendix of the model Regulations.

Application of the Regulations

Section 12 of the WHS Act sets out the scope of the WHS Act (and the Regulations). The Regulations will apply to businesses and undertakings of the Commonwealth, public authorities and, for a transitional period, non-Commonwealth licensees.

As with the current OHS Act, the WHS Act (and the Regulations) operates to the exclusion of state and territory laws in relation to duties of care and other obligations imposed on the Commonwealth, public authorities and non-Commonwealth licensees.

However, a corresponding State or Territory WHS law will not be excluded where a worker, who is owed duties by the Commonwealth, is also owed duties under the applicable state and territory WHS law. This allows parallel duties to be owed.

The model WHS laws extend the primary duty of care beyond the traditional employer and employee relationship to all persons who carry out work in any capacity for a business or undertaking, in recognition of the changing nature of work relationships and to ensure that safety protection is extended to all types of work.

A 'worker' may be owed duties of care by more than one person or 'business or undertaking', for example, where a worker is an employee for one business or undertaking and a contractor for another business or undertaking under a labour hire arrangement.

Parallel duties may also be owed in relation to a workplace.

Where both Commonwealth and State WHS laws apply, the WHS Act makes it clear that Commonwealth and State WHS regulators can work together.

To address issues of double jeopardy, section 12 also provides that a person cannot be convicted for an offence or have a monetary penalty imposed in relation to the same contravention more than once.

Offences in the Regulations

Breaches of the regulations will be criminal offences. The offences, like all other provisions in the model laws, have been drafted in non-jurisdictional specific terms and do not reflect the Commonwealth's general drafting practice of including each physical element of the offence in a separate paragraph.

In considering the recommendations of the National Review into Model Occupational Health and Safety Laws (the National OHS Review), Workplace Relations Ministers agreed that breaches of the duty of care in the model Bill should not require proof of fault in order to make out the offence.

Subsection 12F(2) of the WHS Act provides that, unless otherwise specified, offences in the WHS Act are strict liability offences. A reference to the WHS Act includes a reference to the Regulations (see section 4 of the WHS Act).

For the majority of offences in the Regulations, the prosecution will have to prove only the conduct of the accused. However, where the accused produces evidence of an honest and reasonable, but mistaken, belief in the existence of certain facts which, if true, would have made the conduct innocent, it will be incumbent on the prosecution to establish that there was not an honest and reasonable mistake of fact.

The application of strict liability to the element of an offence in the Regulations has been carefully considered during the drafting of the Regulations.

The strict liability offences arise in the regulatory context where for reasons such as public safety, and the interest in ensuring that regulatory schemes are observed, the sanction of criminal penalties is justified. The offences also arise in a context where a defendant can reasonably be expected, because of his or her professional involvement, to know the requirements of the law. Subsequently, the mental or fault element can justifiably be excluded. The rationale is that people who owe work safety duties (such as employers, persons in control of aspects of work and designers and manufacturers of work structures and products – as opposed to members of the general public) can be expected to be aware of their duties and obligations to workers and the wider public.

Most offences will be subject to other qualifications such as reasonable practicability, due diligence and reasonable care.

Penalties

There are currently considerable disparities in the maximum fines that can be imposed under Australian OHS laws.

The penalty regime in the model Regulations contemplates two types of offence:

1. offences that are 'linked' to the model WHS Act; and
2. stand-alone offences that are subject to a monetary penalty specified in the model WHS Regulations.

An offence has been linked to the WHS Act where it provides detail on how to comply with the duties contained in the WHS Act – specifically to either the general duties in Part 2 or the authorisations provisions in Part 4. These offences include a note at the foot of the provision which states 'WHS Act' followed by the

reference to the section number of the WHS Act to which the provision is linked. A failure to comply with a duty or obligation under a section of the WHS Act referred to in a regulation linked to the WHS Act is an offence to which the penalty for the relevant offence in the WHS Act applies.

Subsection 276(3)(h) of the model WHS Act prescribes the maximum monetary penalty for stand-alone offences under the Regulations as \$30,000.

The penalties in the regulations are intended to reinforce the deterrent effect of the model Regulations and allow courts greater capacity to respond meaningfully and proportionally to the worst breaches by duty holders. In making their recommendations, the National OHS review noted that in a case where death or serious injury results from a breach of occupational health and safety laws, the economic costs are likely to be far greater than even the maximum fines imposed by the model WHS laws.

The overall objective of the penalties in the model WHS laws is to increase compliance with the WHS Act and decrease the resort to prosecution to achieve this aim.

Because of the differences in the current value of penalty units among jurisdictions and the potential for further variations to occur, the WHS Act and the Regulations specify monetary fines for offences. Jurisdictions have agreed it would be confusing to adopt a unique penalty unit figure for national uniform legislation.

Incorporation of documents

Section 276(3)(d) provides that regulations made under the WHS Act may incorporate material from other instruments as in force from time to time. Regulation 13 makes it clear that a reference to a document incorporated or applied in the Regulations is a reference to that document as in force at the time the document was applied, adopted or incorporated. Where an inconsistency between a document incorporated, and the Regulations arises, the Regulations are to prevail (regulation 14).

The Regulations adopt technical material such as Australian Standards and other published documents that set out detailed specifications, exposure standards and guidance on safe ways of undertaking particular types of work. This material is subject to regular revision as risk management practices evolve over time. Moreover, this material is specific to particular industries and undertakings (for example, the storage of hazardous chemicals) and should be well known to duty holders in those industries and undertakings. It is incumbent upon duty holders to have regard to the most up to date information and best practice. This detailed technical material should be read in conjunction with the applicable legislation.

Australian Standards may be purchased at a cost and are subject to copyright, while other documents incorporated by the draft WHS Regulations are freely available online. While a cost may be incurred by businesses and undertakings that engage in activities to which the Australian Standards apply, the cost is considered minimal given the overall budgets of Commonwealth departments, Commonwealth public authorities and non-Commonwealth licensees.

Abbreviations

AAT	Administrative Appeals Tribunal
ACD	Asbestos contaminated dust
ACM	Asbestos containing material
Commission	Safety, Rehabilitation and Compensation Commission established under section 89A of the <i>Safety Rehabilitation and Compensation Act 1989</i> .
GHS	Globally Harmonised System of Classification and Labelling of Chemicals, Third revised edition, published by the United Nations.
OHS Act	<i>Occupational Health and Safety Act 1991</i>
OHS Regulations	<i>Occupational Health and Safety (Safety Standards) Regulations 1994</i>
MHF	Major Hazard Facility
PCBU	Person conducting a business or undertaking
WHS Act	<i>Work Health and Safety Act 2011</i>
WHS (T&C) Act	<i>Work Health and Safety (Transitional and Consequential Provisions) Act 2011</i>

Chapter 1 – Preliminary

Chapter 1 sets out preliminary matters including commencement dates, authorising provisions and definitions.

Part 1.1 – Introductory matters

Regulation 1 – Name of Regulations

Regulation 1 names the Regulations the *Work Health and Safety Regulations 2011*.

Regulation 2 – Commencement

Regulation 2 provides that the Regulations (except regulation 164) commence on 1 January 2012.

Regulation 164 and Part 4.8 commence on 1 January 2013.

A number of provisions in these Regulations will commence on 1 January 2013, but will not immediately impose duties on a person as a result of transitional arrangements set out in Chapter 12.

Regulation 3 – Authorising provisions

Regulation 3 provides that the Regulations are made under section 276 of the *Work Health and Safety Act 2011*, Schedule 3 to that Act and the *Work Health and Safety (Transitional and Consequential Provisions) Act 2011*.

Regulation 5 – Definitions

Definitions in the WHS Act also apply to these Regulations. Examples of relevant definitions include:

- corresponding regulator;
- corresponding WHS law (see also regulation 6A);
- employee record;
- health and safety representative;
- notifiable incident;
- WHS entry permit

Regulation 5 provides a list of definitions relevant to the Regulations. Key definitions include:

‘competent person’

The term ‘competent person’ is used throughout the Regulations to define a person who has acquired through training, qualification or experience the knowledge and skills to carry out specific tasks.

Paragraph (a) sets out who is a ‘competent person’ for electrical work on energised electrical equipment or energised electrical installations in relation to these Regulations (and in particular Regulations 155, 168 and 161).

To ensure consistent application of both the Commonwealth and state and territory law to situations where these Regulations may apply concurrently with a corresponding WHS law, these Regulations cross reference the corresponding definition in the corresponding State or Territory WHS law.

Subparagraph (a)(i) provides that a competent person for electrical work on energised electrical equipment would be a person who is ‘competent’ within the meaning of the equivalent provision in the corresponding WHS law.

Where there is not a corresponding definition because that jurisdiction has not enacted the provisions of the model WHS Regulations, subparagraph (a)(ii) provides that a person who is licensed or permitted under a law of the relevant State relating to electrical safety or occupational licensing is a ‘competent person’. State is defined in section 4 of the WHS Act to include a Territory.

For example, a person who holds a licence under the *Electricity Licensing Regulations 1991* (WA) to undertake electrical work would be competent by virtue of this definition if subparagraph (a)(ii) applies.

Subparagraph (a)(iii) makes it clear that while a member of the Defence Force is not bound by any law of a State or Territory that would require the member to have permission (e.g. a licence) to do anything in the course of his or her duties as a member of the Defence Force by virtue of section 123 of the *Defence Act 1903*, an equivalent level of competency is required. A member of the Defence Force will be a ‘competent person’ when they have acquired through training, qualification or experience the knowledge and skills to carry out the task.

A PCBU is required to ensure that specified work is only undertaken by a competent person in the following chapters:

- Chapter 4 – Hazardous work (Part 4.3 – Confined spaces; Part 4.7 – General Electrical Safety in Workplace and Energised Electrical Work; and Part 4.8 – Diving Work);
- Chapter 5 – Plant and structures; and
- Chapter 8 – Asbestos

‘Commission’

The term ‘commission’ means the Safety Rehabilitation and Compensation Commission established by section 89A of the *Safety Rehabilitation and Compensation Act 1989*.

‘electricity supply authority’

The term ‘electricity supply authority’ is used throughout Part 4.7 (General Electrical Safety in Workplaces and Energised Electrical Work) to refer to an authority that supplies electricity to places of work.

To ensure consistent application of both the Commonwealth and state and territory law to situations where these Regulations may apply concurrently with a corresponding WHS law, these Regulations cross reference the corresponding definition in a corresponding state or territory WHS law.

Paragraph(a) provides that an ‘electricity supply authority’ is a person or body that is an electricity supply authority under a corresponding WHS law.

Where there is no relevant corresponding WHS law definition because that jurisdiction has not enacted the provisions of the model WHS Regulations, paragraph (b) provides that an ‘electricity supply authority’ is a person or body permitted or licensed under a law of a State regulating the electricity industry to distribute, generate or transmit electricity.

For example, a supply authority permitted or licensed under the *Electricity Act 1945* (WA) would be an ‘electricity supply authority’ if paragraph (b) applied.

‘emergency service organisation’

The term ‘emergency services organisation’ is used throughout Part 4.6 (Demolition Work) and Part 4.7 (General Electrical Safety in Workplaces and Energised Electrical Work) in relation to exemptions from certain requirements in the Regulations.

The definition is consistent with the definition of ‘emergency service worker’ as found in the WHS Act.

‘excavation’

The term ‘excavation’ means a trench, tunnel or shaft but does not include the following:

- A mine;
- A bore to which a law mentioned in the definition of ‘excavation’ in a corresponding WHS law applies, or to which a state or territory law applies if there is no corresponding WHS law; or
- A trench for use as a place of interment.

To ensure consistent application of both the Commonwealth and state and territory law to situations where these Regulations may apply concurrently with a corresponding WHS law, these Regulations cross reference the corresponding definition in the corresponding State or Territory WHS law.

Subparagraph (b)(i) provides that the definition of ‘excavation’ does not include a bore to which a law mentioned in the definition of excavation in a corresponding WHS law applies.

Where there is no relevant law specified in the definition of ‘bore’ in the corresponding State or Territory WHS law because that jurisdiction has not enacted the provisions of the model WHS Regulations, subparagraph (b)(ii) provides that the definition of ‘excavation’ does not include a bore which is

regulated under another law of the State. State is defined in section 4 of the WHS Act to include a Territory.

For example, a bore that is regulated under the *Health (Underground Water Supply) Regulations 1959* (WA) would not fall within the definition of excavation if subparagraph (b)(ii) applies.

The term ‘excavation’ is part of the term ‘excavation work’, which is subject to Division 3 of Part 6.3 of Chapter 6.

‘general construction induction training card’

The term ‘general construction induction training card’ is used within Division 2 of Part 6.5 (General construction induction training requirements) and refers to cards issued by the regulator to persons who have successfully completed general construction induction training.

The Commonwealth scheme of general construction induction training cards is to be administered by the regulator.

‘GHS’

The term ‘GHS’ refers to the Globally Harmonised System of Classification and Labelling of Chemicals, Third revised edition, published by the United Nations.

The GHS can be purchased at a cost from the United Nations Economic Commission for Europe website

(http://www.unece.org/trans/danger/publi/ghs/ghs_pubdet.html).

‘OHS Act’

The term ‘OHS Act’ means the *Occupational Health and Safety Act 1991*.

‘OHS Regulations’

The term ‘OHS Regulations’ means the *Occupational Health and Safety (Safety Standards) Regulations 1994*.

‘pressure piping’

The term ‘pressure piping’ means an assembly of pipes, pipe fittings, valves and pipe accessories subject to internal or external pressure and used to convey liquid or to transmit liquid pressure, and includes distribution headers, bolting, gaskets, pipe supports and pressure containing accessories.

The definition does not include a boiler or pressure vessel, or any piping that is regulated under either a law mentioned in the definition of ‘pressure piping’ in a corresponding WHS law or, in the absence of a corresponding WHS law, another relevant law of a State.

To ensure consistent application of both the Commonwealth and state and territory law to situations where these regulations may apply concurrently with a

corresponding WHS law, these regulations cross reference the corresponding definition in a corresponding WHS law.

Subparagraph (d)(i) provides that the definition of ‘pressure piping’ does not include any piping that is regulated under a law mentioned in the definition of ‘pressure piping’ in a corresponding WHS law.

Where there is no relevant corresponding WHS law definition because that jurisdiction has not enacted the provisions of the model WHS Regulations, subparagraph (d)(ii) provides that the definition of ‘pressure piping’ does not include pressure piping that is regulated under a law of a State and is used for transmission or distribution of water, gas or oil or other fluid.

For example, pressure piping that is regulated under the *Pipelines Act 2005* (Vic) would not fall within the definition of pressure piping if subparagraph (d)(ii) applies.

‘primary emergency services organisation’

The term ‘primary emergency services organisation’ is used in regulation 359 (Part 7 – Hazardous Chemicals) to identify the organisation that is most likely to attend in an emergency.

To ensure consistent application of Commonwealth, state and territory WHS laws, this definition cross references the definition in the corresponding state or territory law. The definition in the corresponding WHS law will generally prescribe the relevant fire service.

‘relevant fee’

The term ‘relevant fee’ used throughout the Regulations refers to the fees specified in Schedule 2 to these Regulations.

Regulation 6 – Determination of safety management system

Regulation 6 provides that the regulator may make a determination for the purposes of defining the term ‘certified safety management system’.

Regulation 6A – Meaning of *corresponding WHS law*

Regulation 6A provides for the State and Territory laws that constitute a ‘corresponding WHS law’ for the purposes of section 4 of the WHS Act.

Regulation 6B – Meaning of *court*

Regulation 6B prescribes the courts of a State or Territory that apply to paragraph (d) of the definition of ‘court’ in section 4 of the WHS Act. This includes a district court, a local court, a magistrates court and the Industrial Relations Court of South Australia.

Regulation 6C – Meaning of *public authority*

Regulation 6C prescribes the bodies corporate that apply to paragraph (c) of the definition of ‘public authority’ in section 4 of the WHS Act.

Regulation 7 – Meaning of *person conducting a business or undertaking* – persons excluded

Regulation 7 clarifies that, for the purposes of section 5 of the WHS Act, the following are not deemed to be a PCBU:

- a strata body corporate that is responsible for any common areas used only for residential purposes; and
- an incorporated association consisting of a group of volunteers working together for one or more specified community purposes.

Regulation 8 – Meaning of *supply*

Regulation 8 clarifies the meaning of ‘supply’ for the purposes of paragraph 6(3)(b) of the WHS Act, by specifying that the supply of a thing does not include the situation where a thing is supplied by a person, such as an auctioneer or a real estate agent, who does not control the supply and has no authority to make decisions about the supply.

Regulation 9 – Provisions linked to health and safety duties in the Act

Regulation 9 provides that if a note in a foot of a provision of these Regulations states ‘WHS Act’ followed by a reference to a section number of the WHS Act, then the regulation sets out the way in which a person’s duty or obligation under the section of the WHS Act referred to in the regulation is to be performed in relation to the matters and to the extent set out in the regulation provision. A failure to comply with a duty or obligation under the section of the WHS Act referred to in a regulation linked to the WHS Act is an offence to which a penalty applies.

Part 1.2 – Application

Regulation 11 – Application of these Regulations

Regulation 11 specifies that a duty imposed on a person under a provision of the Regulations in relation to health and safety does not limit or affect any duty the person has under the WHS Act or, unless otherwise expressly provided, any other provision of the Regulations.

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

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

Part 1.3 – Incorporated documents

Regulation 13 – Documents incorporated as in force when incorporated

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

Regulation 14 – Inconsistencies between provisions

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

Regulation 15 – References to standards

Regulation 15 clarifies what is meant by references made to Australian Standards and Australia/New Zealand Standards in the Regulations.

Chapter 2 – Representation and participation

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

This Chapter prescribes matters for Part 5 of the WHS Act – Consultation, representation and participation and Part 7 of the WHS Act – Workplace entry by WHS entry permit holders.

Part 2.1 – Representation

Division 1 – Work groups

Regulation 16 – Negotiations for and determinations of work groups

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

Regulation 16 also notes that under subsection 51(3) of the WHS Act, a work group may be determined so as to include workers at more than one workplace. Under Subdivision 3 of Division 3 of Part 5 of the WHS Act, a work group may also be determined to include workers who carry out work for two or more PCBUs at one or more workplaces.

Regulation 17 – Matters to be taken into account in negotiations

Regulation 17 prescribes the matters to be taken into account when negotiating for and determining work groups, as well as varying agreements concerning work groups, for the purposes of subsections 52(6) and 56(4) of the WHS Act. This regulation provides that all relevant matters must be taken into account, including the thirteen matters set out in the regulation.

The list includes matters such as the number of workers, and the nature and type of work carried out by the workers.

Division 2 – Health and safety representatives

Regulation 18 – Procedures for election of health and safety representatives

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

Subsection 42(2) of the WHS Act requires the person conducting the election to take all reasonable steps to ensure that:

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

Regulation 19 – Persons conducting business or undertaking must not delay election

Regulation 19 provides that it is an offence for a PCBU to unreasonably delay the election of a health and safety representative.

Regulation 20 – Removal of health and safety representatives

Regulation 20 outlines how a majority of members of a work group may remove a health and safety representative as allowed under subparagraph 64(2)(d) of the WHS Act.

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

Subregulation 20(2) provides that a member of the work group nominated by the members who signed the declaration removing the health and safety representative, must, as soon as practicable, inform the removed health and safety representative and each PCBU with a worker in the work group of the removal. The nominated member must also, as soon as practicable, take all reasonable steps to inform all members of the work group of the removal.

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

Regulation 21 – Training for health and safety representatives

Regulation 21 sets out the training entitlements of health and safety representatives as provided by subsection 72(1) of the WHS Act.

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

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

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

Regulation 21 also notes that in addition to the entitlements set out in this section, the health and safety representative and the relevant PCBU may agree that the representative will attend or receive further training. It is further noted that the power to approve a course of training includes a power to revoke or vary the approval.

Part 2.2 – Issue resolution

Regulation 22 – Agreed procedure – minimum requirements

Subsection 81(2) of the WHS Act provides that when a health or safety issue arises at a workplace, the parties must make reasonable efforts to resolve the issue in accordance with the relevant agreed procedure if there is one in place. *Regulation 22* sets out the minimum requirements for an agreed procedure for issue resolution at a workplace. An agreed procedure may include any matters that the parties agree to. However, subregulation 22(2) provides that an agreed procedure must include all of the steps set out in the default procedure at subregulation 22(3).

Subregulation 22(3) places an obligation on a PCBU at a workplace to ensure that any agreed procedure for issue resolution complies with subregulation 22(2), is set out in writing, and is communicated to all workers to whom the agreed procedure applies.

Regulation 23 – Default procedure

Subsection 81(2) of the WHS Act provides that when a health or safety issue arises at a workplace, the parties must make reasonable efforts to resolve the issue in accordance with the relevant agreed procedure if there is one in place, or if there is no agreed procedure, the default procedure prescribed in the regulations.

Regulation 23 sets out the default procedure for issue resolution for the purposes of Subsection 81(2) of the WHS Act.

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

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

In attempting to resolve the issue, subregulation 23(4) requires the parties to have regard to all relevant matters including:

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

Subregulation 23(5) provides that a party who is involved in resolving the issue may nominate a person to assist or represent them.

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

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

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

Part 2.3 – Cessation of unsafe work

Regulation 24 – Continuity of engagement of worker

Section 88 of the WHS Act provides that if a worker ceases work in circumstances where they are entitled to do so, and complies with the requirements set out in that section, their action does not affect the continuity of their engagement for prescribed purposes.

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

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

Part 2.4 – Workplace entry by WHS entry permit holders

Note: A 'WHS entry permit' is defined in clause 5 of the WHS Act to mean a permit issued under Part 7 of the WHS Act or the equivalent part of a corresponding WHS law.

Regulation 25 – Training requirement for WHS entry permits

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

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

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

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

The power to approve training includes a power to revoke or vary the approval.

Regulation 26 – Form of WHS entry permit

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

Regulation 27 – Notice of entry – general

Regulation 27 provides that a notice of entry under Part 7 of the WHS Act must be written. It also sets out the information that must be included in a notice of entry.

Regulation 28 – Additional requirements – entry under section 117

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

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

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

Regulation 29 – Additional requirements – entry under section 120

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

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

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

Regulation 30 – Additional requirements – entry under section 121

Regulation 30 sets out additional requirements for a notice of entry under section 121 of the WHS Act (entry to consult and advise workers). A notice of entry in relation to section 121 must also include:

- a declaration stating:
 - that the union is entitled to represent the industrial interests of a worker who carries out work at the workplace proposed to be entered, and that the worker is a member, or eligible to be a member, of that union; and

- the provision in the union's rules that entitles the union to represent the industrial interests of that worker.

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

Regulation 31 – Register of WHS entry permit holders

Regulation 31 provides that for the purposes of section 151 of the WHS Act, the authorising authority must publish on its website an up to date register of persons who hold a WHS entry permit issued under Part 7 of the WHS Act and the date the register was last updated.

Corresponding duties will be imposed on State and Territory authorities to maintain a register of persons who hold an entry permit that is issued under the State or Territory WHS laws.

Chapter 3 – General risk and workplace management

Part 3.1 – Managing risks to health and safety

Part 3.1 imposes risk management duties on PCBUs who have duties under these Regulations to manage risks to health and safety. It requires duty holders to manage risks to health and safety by identifying hazards, applying a hierarchy of risk control measures and, in specified circumstances, requires a review of risk control measures.

Duty holders under this Part also have duties under section 17 of the WHS Act to manage risks, and duties under Part 5 Division 2 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part.

There are additional Regulations about management of risk in Part 4.1 – *Noise*; Part 4.2 – *Hazardous manual tasks*; Part 4.3 – *Confined spaces*; Part 4.4 – *Falls*; Part 4.7 – *General electrical safety in workplaces and energised electrical work*; Part 4.8 – *Diving work*; Chapter 5 – *Plant and Structures*; Chapter 6 – *Construction Work*; Part 7.1 – *Hazardous Chemicals*; Part 7.2 – *Lead*; Chapter 8 – *Asbestos*; and Chapter 9 – *Major Hazard Facilities*.

Defined terms in Chapter 1 which are relevant to this Part include *administrative control*, *control measure*, *duty holder*, *engineering control*, and *personal protective equipment*.

Regulation 32 – Application of Part 3.1

Regulation 32 specifies that Part 3.1 applies to a PCBU who has a duty under the Regulations to manage risks to health and safety.

Regulation 33 – Specific requirements must be complied with

Regulation 33 provides that any specific requirements under the Regulations for the management of risk must be complied with when implementing the requirements of Part 3.1.

Regulation 34 – Duty to identify hazards

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

Regulation 35 – Managing risks to health and safety

Regulation 35 specifies the ways in which a duty holder must manage risks to health and safety. Risks to health and safety must first be eliminated so far as is reasonably practicable. If it is not reasonably practicable to eliminate risks to

health and safety, then the risks must be minimised so far as is reasonably practicable.

Regulation 36 – Hierarchy of control measures

Regulation 36 sets out the hierarchy of control measures to be implemented to minimise risks to health and safety if it is not reasonably practicable for a duty holder to eliminate risks to health and safety. Administrative controls must be implemented if a risk remains after implementing risk control measures. A duty holder may use a combination of controls to minimise a risk so far as is reasonably practicable if a single control is not sufficient for the purpose.

This regulation refers to the term ‘administrative control’, which is defined in regulation 5.

This regulation refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Regulation 37 – Maintenance of control measures

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

Regulation 38 – Review of control measures

Regulation 38 requires a duty holder to review and revise control measures implemented under the Regulations in certain circumstances so as to maintain, so far as is reasonably practicable, a work environment that is without risks to health or safety. Health and safety representatives may request a review of control measures under circumstances set out in subregulation 38(4).

Part 3.2 – General workplace management

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

Duty holders under this Part may also have health and safety duties under sections 19, 20, 21, 28 or 29 of the WHS Act. PCBUs may have duties under Part 5 Division 2 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part.

There are additional Regulations about emergency plans in Part 4.3 – *Confined spaces*; Part 4.4 – *Falls*; Part 4.8 – *Diving work*; Part 7.1 – *Hazardous chemicals*; and Chapter 9 – *Major hazard facilities*.

Additional Regulations about personal protective equipment are contained in Part 4.3 – *Confined spaces*; Part 4.4 – *Falls*; Chapter 6 – *Construction work*; and Chapter 8 – *Asbestos*.

Additional Regulations about workplace environmental conditions relate to Part 4.2 – *Hazardous manual tasks*; Part 4.3 – *Confined spaces*; Part 4.4 – *Falls*; Part 4.7 – *General electrical safety in workplaces and energised electrical work*; Chapter 6 – *Construction work*; Chapter 8 – *Asbestos*; and Chapter 9 – *Major hazard facilities*.

Regulations about training, information and instruction are also included in Part 4.3 – *Confined spaces*; Part 4.4 – *Falls*; Part 4.8 – *Diving work*; Chapter 6 – *Construction work*; Part 7.1 – *Hazardous chemicals*; Part 7.2 – *Lead*; Chapter 8 – *Asbestos*; and Chapter 9 – *Major hazard facilities*.

Defined terms in Chapter 1 which are relevant to this Part include:

- *combustible liquid*
- *combustible substance*
- *contaminant, control measure*
- *emergency service organisation*
- *emergency service worker*
- *essential services*
- *exposure standard*
- *flammable gas*
- *gas cylinder*
- *hazardous area*
- *ignition source*
- *lower explosive limit (LEL)*
- *personal protective equipment, and*
- *safe oxygen level.*

Division 1 – Information, training and instruction

Regulation 39 – Provision of information, training and instruction

Regulation 39 requires a PCBU to ensure that information, training and instruction provided to a worker are suitable and adequate, and takes into account the nature of the work being carried out, the natures of the risks associated with the work and the control measures that are implemented.

Division 2 – General working environment

Regulation 40 – Duty in relation to general workplace facilities

Regulation 40 sets out the requirements for a PCBU at a workplace to ensure that the workplace layout and maintenance allows persons to enter, exit and move about without risk to health and safety in normal working conditions and in an emergency.

Regulation 40 also sets out similar requirements in relation to space for work to occur, floors and other surfaces, lighting, ventilation, work undertaken in extremes of heat or cold, and work on or near essential services.

This regulation refers to the term ‘essential services’, which is defined in regulation 5.

Regulation 41 – Duty to provide and maintain adequate and accessible facilities

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

Division 3 – First aid

Regulation 42 – Duty to provide first aid

Regulation 42 provides that a PCBU at a workplace must ensure the provision of first aid equipment, access to first aid facilities and access by each worker to the equipment. A PCBU is also required to ensure that an adequate number of workers are trained to administer first aid or given access to an adequate number of other persons who have been trained to administer first aid. The PCBU is required to consider a number of listed relevant matters in determining the adequacy of first aid facilities and equipment.

Division 4 – Emergency plans

Regulation 43 – Duty to prepare, maintain and implement emergency plan

Regulation 43 requires a PCBU at a workplace to prepare an emergency plan for the workplace which provides for specified requirements, such as emergency procedures, the testing of emergency procedures and information, training and instruction to relevant workers in relation to implementing the emergency procedures. All relevant matters must be considered when preparing the plan, and the PCBU is required to implement the emergency plan in the event of an emergency.

Note: Regulation 717 provides that the duties imposed on a person under regulation 43 do not apply until 1 January 2013.

Division 5 – Personal protective equipment

This Division refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Regulation 44 – Provision and use of personal protective equipment

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

Regulation 44 provides that the PCBU who directs the carrying out of work must ensure that the personal protective equipment provided is selected to minimise risk to health and safety is suitable for the work and associated hazards, and is of a suitable size and fit and reasonably comfortable for the worker. The personal protective equipment must also be maintained so that it is clean and hygienic and in good working order. The PCBU must also ensure that the appropriate personal protection equipment is worn by the worker. The PCBU must provide the worker with training, information and instruction in the proper use, wearing, storage and maintenance requirements.

Regulation 45 – Personal protective equipment used by other persons

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

Regulation 46 – Duties of worker

Regulation 46 applies if a PCBU provides a worker with personal protective equipment. In such a case, the worker is required to:

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

Regulation 47 – Duty of person other than worker

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

Division 6 – Remote or isolated work

Regulation 48 – Remote or isolated work

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

This regulation defines the terms ‘assistance’ and ‘remote or isolated work’.

Note: Regulation 716 provides that the duties imposed on a person under regulation 48 do not apply until 1 January 2013.

Division 7 – Managing risks from airborne contaminants

This division refers to the term ‘airborne contaminant’, which is defined in regulation 5 to mean a contaminant in the form of a fume, mist, gas, vapour or dust, and includes microorganisms.

Regulation 49 – Ensuring exposure standards for substances and mixtures not exceeded

Regulation 49 requires a PCBU at a workplace to ensure that no person at the workplace is exposed to a substance or mixture in an airborne concentration that exceeds the relevant exposure standard.

Regulation 50 – Monitoring airborne contaminant levels

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

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

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

Division 8 – Hazardous atmospheres

Regulation 51 – Managing risks to health and safety

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

This regulation defines the term ‘hazardous atmosphere’.

Regulation 52 – Ignition sources

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

Division 9 – Storage for flammable or combustible substances

Regulation 53 – Flammable and combustible material not to be accumulated

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

This regulation defines the term ‘flammable or combustible substances’.

This regulation refers to the term ‘gas cylinder’, which is defined in regulation 5.

Division 10 – Falling objects

Regulation 54 – Management of risk of falling objects

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

Regulation 55 – Minimising risk associated with falling objects

Regulation 55 requires a PCBU to minimise the risk of an object falling by providing adequate protection against the risk if it is not reasonably practicable to eliminate the risk referred to in regulation 54. It describes adequate protection against the risk as the provision and maintenance of a safe system of work, including preventing an object from falling freely, so far as is reasonably practicable. If it is not reasonably practicable to prevent an object from falling, a system to arrest the fall of a falling object must be provided, so far as is reasonably practicable.

Chapter 4 – Hazardous Work

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

Part 4.1 – Noise

Part 4.1 imposes duties upon a PCBU regarding the exposure of workers to noise at the workplace. Duty holders under this Part may also have health and safety duties under sections 19, 20 or 21 of the WHS Act, and duties under Part 5 Division 2 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part.

Defined terms in Chapter 1 which are relevant to this Part include:

- *control measure*
- *designer*
- *hazardous manual task*
- *importer*
- *manufacturer*
- *personal protective equipment*, and
- *supplier*.

Regulation 56 – Meaning of exposure standard for noise

Regulation 56 provides the meaning of the exposure standard for noise.

Regulation 57 – Managing risk of hearing loss from noise

Regulation 57 provides that, in accordance with Part 3.1 of these Regulations, a PCBU at a workplace must manage the risks to health and safety relating to hearing loss associated with noise. Subregulation 57(1) refers to section 19 of the WHS Act and clarifies that Part 3.1 of these Regulations contains general risk management requirements.

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

Regulation 58 – Audiometric testing

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

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

Subregulation 58(2) provides that a PCBU who provides this personal protective equipment must also provide audiometric testing for the worker within 3 months of the worker commencing the work and, in any event, at least every 2 years.

Subregulation 58(3) provides the meaning of ‘audiometric testing’.

This regulation refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Note: Regulation 718 provides for the phasing in of the duties in subregulation 58(2).

Regulation 59 – Duties of designers, manufacturers, importers and suppliers of plant

Regulation 59 provides for the duties of designers, manufacturers, importers or suppliers of plant.

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

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

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

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

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

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

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

Subregulation 59(6) requires a supplier of plant to take all reasonable steps to obtain the information the designer, manufacturer or importer is required to provide to a supplier under subregulations 59(2), 59(4) and 59(5), and give that information to any person the supplier supplies the plant to.

Note: Regulations 719 to 722 provide for the phasing in of the duties in regulation 59.

Part 4.2 – Hazardous manual tasks

Part 4.2 imposes duties on a PCBU to manage the risk of a musculoskeletal disorder associated with a hazardous manual task. It specifies the duties placed on designers, manufacturers, importers and suppliers of plant or structures for hazardous manual tasks. Duty holders under this Part also have health and safety duties under sections 19 – 26 of the WHS Act, and duties under Part 5 Division 2 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part. There are additional regulations about management of risk in Part 3.1 – Managing risks to health and safety and about workplace environmental conditions in Part 3.2 – General Workplace Management.

Defined terms in Chapter 1 which are relevant to this Part include:

- *control measure*
- *designer*
- *hazardous manual task*
- *Importer*
- *manufacturer*
- *musculoskeletal disorder* and
- *supplier*.

Regulation 60 – Managing risks to health and safety

Regulation 60 specifies that a PCBU must manage the risk of a musculoskeletal disorder associated with a hazardous manual task. The general risk management requirements are outlined in part 3.1 of these Regulations.

The PCBU must have regard to all relevant matters that may contribute to a musculoskeletal disorder when determining what control measures must be implemented to manage the risk of the musculoskeletal disorder. The matters that must be regarded in this process are listed in this regulation.

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

Regulation 61 provides that designers, manufacturers, importers and suppliers of plant or structure must eliminate or, if it is not reasonably practicable to do so, minimise the need for a hazardous manual task to be carried out in relation to the plant or structure when it is being designed, manufactured, imported or supplied.

Subregulations (4), (5) and (6) provide that a manufacturer of plant or a structure must take all reasonable steps, including by providing adequate information, to eliminate or minimise the need for any hazardous manual task to be carried out in connection with the plant or structure.

Subregulations (7) and (8) provide that an importer or a supplier of plant or a structure must take all reasonable steps to obtain the relevant information about the features of the plant or structure from the manufacturer. The importer or supplier must give this information to any person to whom the plant or structure is supplied.

Note: Regulations 723 to 726 provide for the phasing in of the duties in regulation 61.

Part 4.3 – Confined spaces

Part 4.3 applies to any confined space that is or could be entered by a person. It imposes duties upon a PCBU to minimise the need to enter confined spaces where entry to a confined space is required. A PCBU must put in place known safe working practices including risk assessments, control measures, training, emergency response and record keeping. It also imposes duties upon a PCBU who designs, manufactures, supplies or imports plant in relation to confined spaces.

Duty holders under this Part also have health and safety duties under sections 20, 21, 22, 23 or 25 of the WHS Act, and duties under Part 5 Division 2 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part.

There are additional Regulations about management of risk in Part 3.1 – Managing risks to health and safety, about workplace environmental conditions and information, training and instruction in Part 3.2 – General Workplace Management and about construction work involving confined spaces in Chapter 6 – Construction work. Additional regulations imposing duties on designers, manufacturers and suppliers about plant and structures are included in Chapter 5 – Plant and structures.

Defined terms in Chapter 1 which are relevant to this Part include:

- *airborne contaminant*
- *competent person*
- *confined space*
- *confined space entry permit*
- *contaminant*
- *control measure*
- *designer*
- *emergency service organisation*
- *emergency service worker*
- *entry*
- *flammable gas*
- *head or upper body*
- *ignition source*
- *importer*

- *lower explosive limit (LEL)*
- *manufacturer*
- *personal protective equipment*
- *safe oxygen level, and*
- *supplier.*

Division 1 – Preliminary

Regulation 62 – Confined spaces to which this Part applies

Regulation 62 provides that Part 4.3 of these Regulations applies to any confined space that is or could be entered by a person. It also clarifies that the person with management or control of the confined space is the PCBU for the purposes of Part 4.3.

Regulation 63 – Application to emergency service workers

Regulation 63 exempts an emergency service worker from the requirements for an entry permit and signage requirements prescribed in regulations 67 and 68 if they are either rescuing or providing first aid to a person in a confined space at the direction of the emergency service organisation.

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

Regulation 64 – Duty to eliminate or minimise risk

Regulation 64 applies to plant or structures that include a space that is, or is intended to be, a confined space.

Paragraph 64(2)(a) imposes a duty on a designer, manufacturer, importer or supplier of the plant or structure, and a person who installs or constructs the plant or structure to ensure that the need for any person to enter the space and the risk of a person inadvertently entering the space are eliminated, so far as is reasonably practicable.

Paragraph 64(2)(b) prescribes that if elimination is not possible, the need to enter the space or the risk of a person inadvertently entering the space should be minimised so far as is reasonably practicable. The confined space should be designed with a safe means of entry and exit, and the risk to health and safety of any person who enters the space must be eliminated so far as is reasonably practicable and if that is not possible, minimised so far as is reasonably practicable.

Division 3 – Duties of person conducting business or undertaking

Regulation 65 – Entry into confined space must comply with this Division

Regulation 65 provides that a PCBU must ensure that a worker does not enter a confined space before the duties in Division 3 of Part 4.3 have been complied with.

Regulation 66 – Managing risks to health and safety

Regulation 66 requires a PCBU to manage risks to health and safety associated with a confined space at a workplace by having the risks assessed by a competent person, and results recorded in writing, which includes all relevant matters, including a specified list of matters.

A competent person is defined in regulation 5 to mean a person who has acquired through training, qualification or experience, the knowledge and skills to carry out the task.

This regulation requires the PCBU to ensure that this risk assessment is revised to reflect any review and revision of control measures.

Regulation 67 – Confined space entry permit

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

Regulation 68 – Signage

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

Regulation 69 – Communication and safety monitoring

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

Regulation 70 – Specific control – connected plant and services

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

Regulation 71 – Specific control – atmosphere

Regulation 71 requires a PCBU to ensure that purging or ventilation of any contaminant in the atmosphere of the space is carried out, and pure oxygen or gas mixtures with oxygen in a concentration exceeding 21% by volume are not used for purging or ventilation. The PCBU must also ensure that while work is being carried out in a confined space, the atmosphere of the space has a safe oxygen level, and if this is not reasonably practicable to comply with paragraph (a) and the atmosphere in the space has an oxygen level less than 19.5% by volume – any worker carrying out work in the space is provided with air supplied respiratory equipment.

This regulation also clarifies that in this regulation, purging means the method used to displace any contaminant from a confined space

This regulation refers to the term ‘contaminant’, which is defined in regulation 5 to mean any substance that may be harmful to health or safety.

Regulation 72 – Specific control – flammable gases and vapours

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

This regulation refers to the term ‘flammable gas’, which has the same meaning as it has in the GHS.

Regulation 73 – Specific control – fire and explosion

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

Regulation 74 – Emergency procedures

Regulation 74 requires a PCBU to establish first aid and rescue procedures to be followed in the event of an emergency in a confined space, and to ensure that the procedures are practised to ensure that they are efficient and effective. The PCBU is required to ensure that first aid and rescue procedures are initiated from outside the confined space as soon as practicable in an emergency.

Furthermore, the PCBU must ensure that access is large enough to facilitate emergency access, that access is not obstructed, and that plant, equipment and personal protective equipment provided for first aid or emergency rescue are maintained in good working order.

This regulation refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Regulation 75 – Personal protective equipment in emergencies

Regulation 75 applies to a worker who is to enter a confined space in order to carry out first aid or rescue procedures in an emergency.

This regulation requires the PCBU to take all reasonable steps to ensure that air supplied respiratory equipment is provided to and available for use by the worker in an emergency where the atmosphere in the confined space does not have a safe oxygen level, or has a harmful concentration of an airborne contaminant, or there is a serious risk of the atmosphere developing such a condition while the worker is in the space.

The PCBU is required to ensure that suitable personal protective equipment is provided and available for use by the worker in an emergency in which an engulfment has occurred inside the confined space, or there is a serious risk of an engulfment occurring while the worker is in the space.

This regulation refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Regulation 76 – Information, training and instruction for workers

Regulation 76 requires a PCBU to ensure that relevant workers are provided with suitable and adequate information, training and instruction in relation to particular listed issues. The PCBU is also required to keep a record of this training for 2 years.

This regulation clarifies the meaning of relevant worker to include workers (and their supervisors) who may enter the confined space, or carry out regulated confined space functions (including emergency procedures), whether they enter the confined space or not.

This regulation refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Regulation 77 – Confined space entry permit and risk assessment must be kept

Regulation 77 states that if a PCBU prepares a risk assessment under regulation 66, or issues a confined space entry permit under regulation 67, the PCBU must keep a copy of the risk assessment for at least 28 days after the work to which it relates is completed, and keep a copy of the confined space entry permit until the work to which it relates is completed. In addition to this, the PCBU must keep the copy of the assessment or permit (as the case requires) for at least 2 years after the occurrence of a notifiable incident in connection with the work to which the assessment or permit relates.

This regulation also requires the PCBU to ensure that, for the period for which the assessment or permit must be kept under this regulation, a copy is available for inspection under the WHS Act, and by any relevant worker on request.

Part 4.4 – Falls

Part 4.4 applies to situations where a person could fall from one level to another, where that fall is reasonably likely to cause injury to the person or any other person. This part also establishes requirements for control measures to eliminate or minimise the risk, and establishes more onerous requirements where the risk of a fall is not eliminated.

Duty holders under this Part may also have health and safety duties under sections 19, 20 or 21 of the WHS Act, and duties under Part 5 Division 2 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part.

There are additional Regulations about management of risk in Part 3.1 – Managing risk to health and safety, about workplace environmental conditions in Part 3.2 – General Workplace Management and about construction work involving risk of a person falling in Chapter 6 – Construction work. Part 4.5 – High risk work may apply in respect of some work involving risk of falls.

Defined terms in Chapter 1 which are relevant to this Part include *building maintenance equipment*, *building maintenance unit*, *fall arrest system*, *temporary work platform*, *theatrical performance* and *work positioning system*.

Regulation 78 – Management of risk of fall

Regulation 78 requires a PCBU at a workplace to manage, in accordance with Part 3.1, the risk of a fall by a person from one level to another, where that fall is reasonably likely to cause injury to the person or any other person.

Subregulation 78(2) explains that a fall from one level to another includes a potential fall in or on an elevated workplace, or in the vicinity of an opening or edge through which or over which a person could fall, or a surface through which a person could fall, or any other place from which a person could fall.

Subregulation 78(3) requires the PCBU to ensure, so far as is reasonably practicable, that any work that involves the risk of a fall is carried out on the ground or on a solid construction.

Subregulation 78(4) requires the PCBU to provide safe means of access to, and exit from, the workplace or areas where there is a risk of a fall within the workplace.

Subregulation 77(5) defines the term solid construction for the purpose of these Regulations.

Regulation 79 – Specific requirements to minimise risk of fall

Regulation 79 applies if it is not reasonably practicable to eliminate the risk of a fall referred to in regulation 78. This regulation requires a PCBU to minimise the risk of a fall by providing adequate protection against the fall risk.

Subregulation 79(3) explains that adequate protection is taken to be provided if the PCBU provides and maintains a safe system of work, including:

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

Subregulation 79(4) clarifies that regulation 79 does not apply to the performance of stunt work, acrobatics, theatrical performance, a sporting or athletic activity or horse riding.

Subregulation 79(5) provides examples of fall prevention devices which include a secure fence, edge protection, working platforms and covers.

Regulation 80 – Emergency and rescue procedures

Regulation 80 requires a PCBU who implements a fall arrest system as a control measure to establish emergency and rescue procedures in relation to the use of the system,

Subregulation 80(3) provides that the PCBU must also ensure that the emergency and rescue procedures are tested so that they are effective.

Subregulation 80(4) provides that a PCBU is also required to provide relevant workers with suitable and adequate information, training and instruction in relation to the emergency and rescue procedures.

Subregulation 80(5) defines relevant worker as including both a worker who uses or is required to use a fall arrest system, as well as a worker who may be involved in initiating or implementing the emergency and rescue procedures.

Part 4.5 – High risk work

Part 4.5 outlines the licensing requirements for the following classes of work:

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

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

Schedules 3 and 4 of these Regulations apply to this Part. Part 4.4 – Falls and Chapter 6 – Construction work may also apply to some classes of high risk work.

Defined terms in Chapter 1 which are relevant to this Part include:

- *accredited assessor*
- *boiler*
- *boom-type elevating work platform*
- *bridge crane*
- *certification*
- *class*
- *competency assessment*
- *concrete placing boom*
- *conveyor*
- *crane*
- *derrick crane*
- *direct fired process heater*
- *dogging work*
- *external review*
- *forklift truck*
- *gantry crane*
- *heritage boiler*

- *high risk work*
- *high risk work licence*
- *hoist*
- *licence holder*
- *mast climbing work platform*
- *materials hoist*
- *non-slewing mobile crane*
- *notice of satisfactory assessment*
- *order-picking forklift truck*
- *personnel and materials hoist*
- *portal boom crane*
- *pressure equipment*
- *reach stacker*
- *reciprocating steam engine*
- *registered training organisation (RTO)*
- *relevant fee*
- *rigging work*
- *scaffold*
- *scaffolding work*
- *self-erecting tower crane*
- *slewing mobile crane*
- *slinging techniques*
- *suspended scaffold*
- *tower crane, turbine*
- *vehicle loading crane, and*
- *VET course.*

Division 1 – Licensing of high risk work

Division 1 of this Part outlines how to apply for a high risk work licence and places certain requirements on the regulator relating to the granting or refusing an application. It contains provisions covering the replacement, surrender, renewal and suspension and cancellation of licences.

As per regulation 83, a reference to a high risk work licence in this subdivision includes a reference to an equivalent licence that is granted under a corresponding WHS law and is being used in accordance with the terms and conditions under which it was granted.

Subdivision 1 – Requirement to be licensed

Regulation 81 – Licence required to carry out high risk work

Regulation 81 specifies that a person must not carry out a class of high risk work prescribed in schedule 3 unless the person holds a high risk work licence for that particular class of high risk work.

Note: Subregulation 727(1) provides that regulation 81 does not apply to certain persons until 1 July 2014. The persons listed are members of the Defence Force, a person who has been exempted by a corresponding regulator, and a person otherwise exempt by a law of a corresponding jurisdiction.

Regulation 82 – Exceptions

Regulation 82 identifies the specific and limited circumstances in which a person is not required to hold a high risk work licence for carrying out high risk work.

This regulation refers to the terms ‘boiler’, ‘certification’ and ‘heritage boiler’, which are defined in regulation 5.

Regulation 83 – Recognition of high risk work licences in other jurisdictions

Regulation 83 clarifies that a reference to a high risk work licence in subdivision 1 includes a reference to an equivalent licence that was granted by a corresponding regulator under a corresponding WHS law and is being used according to the terms and conditions under which it was granted.

Subregulation 83(2) stipulates that this regulation does not apply to a licence that is suspended or cancelled, or has expired in the corresponding jurisdiction.

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

Regulation 84 provides that a PCBU must ensure that a person who is carrying out high risk work as part of training towards a high risk work certification is directly supervised except in the limited circumstances stated in subregulation 84(2), such as if the nature or circumstances of a particular task make direct supervision impracticable or unnecessary and if the reduced level of supervision will not place the health or safety of the supervised person or any other person at risk.

Subregulation 84(3) also provides the meaning of direct supervision for the purpose of regulation 84.

Regulation 85 – Evidence of licence – duty of person conducting business or undertaking

Regulation 85 requires a PCBU to sight specific written evidence that the worker has the relevant high risk licence for that work before directing or allowing a worker to carry out or supervise high risk work.

This regulation refers to the term ‘certification’, which is defined in regulation 5.

Subdivision 2 – Licensing process

Regulation 86 – Who may apply for a licence

Regulation 86 specifies that only a person who holds a qualification set out in Schedule 4 to these Regulations may apply for a high risk work licence.

Regulation 87 – Application for high risk work licence

Regulation 87 sets out the requirements for an application for a high risk work licence. The application must be made in the approved form, include certain information listed in subregulation 87(2) and be accompanied by the relevant fee.

This regulation refers to the term ‘certification’, which is defined in regulation 5.

Regulation 88 – Additional information

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

Subregulation 88(2) requires that the request for additional information must be made in writing and specify the date by which the information is to be given.

Subregulation 88(3) provides that the application is taken to be withdrawn if the additional information is not provided by the specified date.

Subregulation 88(4) allows the regulator to make more than one request for additional information.

Regulation 89 – Decision on application

Regulation 89 requires the regulator to award a high risk work licence if the regulator is satisfied about the matters listed in subregulation 89(2).

Subregulation 89(2) and (3) sets out the matters that the regulator must be satisfied of before deciding to grant or refuse a high risk work licence. The regulator must notify the applicant within 14 days after making a decision to grant the high risk work licence.

Subregulation 89(5) provides that an application is taken to have been refused if the regulator does not make a decision within 120 days after receiving the application or the additional information requested under regulation 88.

This regulation refers to the term ‘certification’, which is defined in regulation 5.

A note provides that a refusal to grant a licence under this regulation is a reviewable decision under regulation 676.

Regulation 90 – Matters to be taken into account

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

The matters to be considered include the cancellation or suspension of any equivalent licence held by the applicant or any refusal to issue an equivalent licence to the applicant under the WHS Act, these Regulations or any other law of the Commonwealth or a State or corresponding WHS law dealing with an OHS matter, including a law that may have been repealed upon the commencement of the new WHS laws. Other matters include any enforceable undertakings the applicant has entered into and the applicant's record.

Regulation 91 – Refusal to grant high risk work licence – process

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

A note provides that a refusal to issue a licence under this regulation is a reviewable decision under regulation 676.

Regulation 92 – Duration of licence

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

Regulation 93 – Licence document

Regulation 93 provides that if the regulator grants a high risk work licence, the applicant must be issued with a licence document that contains the name of the licence holder, a copy of the licence holder's signature, a recent photograph of the licence holder, the date of birth of the licence holder, and the date on which the licence was granted.

Subregulation 93(2) prescribes the information that must be included in the licence document.

Subregulation 93(3) provides that the licence document must contain a description of each class of licence and the work that is within the scope of each licence if more than one class of high risk work licence is granted to a person.

Subregulation 93(4) provides that if the licence holder holds more than one high risk work licence, the licence holder may be issued one licence document in relation to some or all of those licences.

If a licence document is issued under subregulation 93(4), then the licences to which that licence document relates will expire on the date that the first of those licences expires.

Regulation 94 – Licence document to be available

Regulation 94 requires the licence holder to keep the licence document available for inspection under the WHS Act.

Subregulation 94(2) clarifies that the requirement in subregulation 94(1) does not apply if the licence document is not in the licence holder's possession because it has been returned to the regulator to be amended under regulation 97 or the

licence holder has applied for, but has not yet received, a replacement licence document under regulation 98.

Regulation 95 – Reassessment of competency of licence holder

Regulation 95 allows the regulator to direct a licence holder to obtain a reassessment of their competency to carry out the high risk work covered by the licence, if the regulator reasonably believes that the licence holder may not be competent to carry out that work (for example, if the regulator receives information that the licence holder has carried out high risk work incompetently).

Subdivision 3 – Amendment of licence document

Regulation 96 – Notice of change of address

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

Regulation 97 – Licence holder to return licence

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

Regulation 98 – Replacement licence document

Regulation 98 sets out the requirements for a licence holder to notify the regulator, as soon as practicable, if the original licence document is lost, stolen or destroyed and to apply for a replacement licence document.

Subregulation 98(5) requires the regulator to issue a replacement licence document if the regulator is satisfied that the original licence document was lost, stolen or destroyed.

Subregulation 98(6) provides that if the regulator refuses to issue a replacement licence document, the regulator must notify the licence holder in writing of this decision, within 14 days after making the decision.

A note provides that a refusal to issue a replacement licence document under this regulation is a reviewable decision under regulation 676.

Regulation 99 – Voluntary surrender of licence

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

Subdivision 4 – Renewal of high risk work licence

Regulation 100 – Regulator may renew licence

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

Regulation 101 – Application for renewal

Regulation 101 sets out the requirements for an application for renewal of a high risk work licence, such as the name of the applicant, a recent photograph of the applicant and a declaration that he or she has maintained his or her competency to carry out the high risk work.

Subregulations 101(3) and (4) provides that the application must be made before the expiry of the licence and be accompanied by the relevant fee.

Regulation 102 – Licence continues in force until application is decided

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

Regulation 103 – Renewal of expired licence

Regulation 103 allows a person who has an expired high risk work licence to apply for the licence to be renewed within 12 months of the licence expiring, or a longer time if the regulator is satisfied that exceptional circumstances exist. As the licence has expired, the applicant cannot carry out the work covered by the licence until the licence is renewed. If the licence lapses beyond the time periods stated in this regulation, the applicant is required to apply for a new licence under regulation 87.

Regulation 104 – Provisions relating to renewal of licence

Regulation 104 provides that the following requirements also apply in relation to the requirements to renew a licence:

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

Subregulation 104(2) provides that the regulator may renew a high risk work licence granted to a person under a corresponding WHS law if that licence has not been renewed under that law.

A note provides that a refusal to renew a licence under this regulation is a reviewable decision under regulation 676.

Regulation 105 – Status of licence during review

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

Subregulation 105(6) stipulates that the licence continues to have effect under this regulation even if its expiry date passes.

Subdivision 5 – Suspension and cancellation of high risk work licence

Regulation 106 – Suspension or cancellation of licence

Regulation 106 establishes the power of the regulator to suspend or cancel a high risk work licence. It provides that the regulator may suspend or cancel a high risk work licence if the regulator is satisfied about certain matters and specifies the action the regulator may take if the regulator suspends or cancels a licence.

Subregulation 106(2) provides that the regulator may disqualify the licence holder from applying for further high risk work licence of the same class or another licence under the regulations to carry out work which requires skills which are the same as or similar to those required for the work authorised by the licence that has been suspended or cancelled.

A note provides that the suspension, cancellation or disqualification of a licence under this regulation is a reviewable decision under regulation 676.

This regulation refers to the term 'certification', which is defined in regulation 5.

Regulation 107 – Matters taken into account

Regulation 107 provides that the regulator must consider submissions made by the licence holder under regulation 108 and advice received by from a corresponding regulator before making a decision under regulation 106 to suspend or cancel a high risk work licence.

Regulation 108 – Notice to and submissions by licence holder

Regulation 108 prescribes what the regulator must do before suspending or cancelling a high risk work licence, including giving the licence holder a written notice of the proposed suspension or cancellation and any proposed disqualification that outlines all relevant allegations, facts and circumstances known to the regulator.

Regulation 109 – Notice of decision

Regulation 109 requires the regulator to notify the licence holder in writing of the decision to cancel or suspend a high risk work licence under regulation 106 within 14 days after making the decision.

Subregulation 109(2) prescribes the information which must be included in the written notice.

Regulation 110 – Immediate suspension

Regulation 110 allows the regulator to immediately suspend a high risk work licence without providing notice under regulation 109 in circumstances where the work carried out under the high risk work licence should cease because the work may involve an immediate serious risk to the health or safety of an person.

Subregulation 110(2) prescribes the steps that the regulator must take if it proposes to suspend a licence including providing the licence holder with the reasons for the suspension and the date the suspension takes effect.

Regulation 111 – Licence holder to return licence document

Regulation 111 provides that a licence holder must return the licence document to the regulator in accordance with a notice received under regulation 109.

Regulation 112 – Regulator to return licence document after suspension

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

Part 4.6 – Demolition work

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

Defined terms in Chapter 1 which are relevant to this Part include *demolition work*, *emergency service organisation* and *emergency service worker*.

Regulation 142 – Notice of demolition work

Regulation 142 requires a PCBU to give the regulator written notice, in a manner and form required by the regulator, of the following types of proposed demolition work at least 5 days prior to the commencement of the work:

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

Subregulation 142(3) prescribes different notification requirements for emergency service organisations that may have carried out demolition work for the purposes of rescuing a person or providing first aid to a person. These organisations must give the regulator notice as soon as is practicable after carrying out the work.

Note: Regulation 728 provides that the duties imposed on a person under regulation 142 do not apply until 1 January 2013.

Part 4.7 – General Electrical Safety in Workplaces and Energised Electrical Work

This Part sets out how risks to health and safety associated with electrical work are to be managed at the workplace.

This Part also includes specific duties in relation to PCBUs:

- with management or control of electrical equipment in a workplace:
- to minimise the risks associated with the carrying out of electrical work; and
- to minimise the risks associated with their carrying out work in the vicinity of overhead or underground electric lines by following the specified steps set out in the regulation.

In relation to general electrical safety in the workplace, this Part includes requirements for inspecting and testing electrical equipment in certain high risk environments and requirements to provide and use effective residual current devices in the prescribed circumstances.

Duty holders under this Part may also have health and safety duties under sections 19, 20 and 21 of the WHS Act. PCBUs may have duties under Divisions 1 and 2 of Part 5 of the WHS Act to consult another duty holder and with workers about matters in this Part.

Defined terms in Chapter 1 which are relevant to this Part include:

- *amusement device*
- *competent person*
- *control measure*
- *electrical risk*
- *electricity supply authority*
- *extra-low voltage*
- *person with management or control of a workplace*
- *personal protective equipment*, and
- *safe work method statement*.

Division 1 – Preliminary

Regulation 144 – Meaning of *electrical equipment*

Regulation 144 defines the term ‘electrical equipment’ for this Part.

Regulation 145 – Meaning of *electrical installation*

Regulation 145 defines the term ‘electrical installation’ for this Part, for the avoidance of doubt, to clarify that this Part covers electrical installations – which are essentially grouped items of electrical equipment as defined by the regulation.

Regulation 146 – Meaning of electrical work

Regulation 146 defines the term ‘electrical work’ for this Part. This regulation does this by broadly describing electrical work in subregulation 146(1), and then setting out what work is *not* electrical work for the purposes of this Part in subregulation 147(2). Electrical work does not include work such as replacing a light bulb, assembling electrical equipment as part of a manufacturing process, or certain work done as part of a person’s training to obtain an electrical licence.

Division 2 – General risk management

Regulation 147 – Risk management

Regulation 147 provides that a PCBU at a workplace must manage risks to health and safety associated with electrical risks at the workplace, in accordance with Part 3.1 of the Regulations.

Division 3 – Electrical equipment and electrical installations

Regulation 148 – Electrical equipment and electrical installations to which this division applies

Regulation 148 ensures that the duties placed on a PCBU in relation to electrical equipment or an electrical installation under Division 3 only arise if the electrical equipment or an electrical installation is under the person’s management or control.

Regulation 149 – Unsafe electrical equipment

Regulation 149 requires a PCBU to ensure that any unsafe electrical equipment at a workplace is disconnected or isolated from its electricity supply and is not reconnected until it is repaired or tested and found to be safe, or is replaced or permanently removed from use.

Subregulation 149(2) clarifies that for the purposes of regulation 149, electrical equipment is unsafe if there are reasonable grounds for believing it to be unsafe.

Regulation 150 – Inspection and testing of electrical equipment

Regulation 150 sets out the requirements for when a PCBU must ensure that electrical equipment used in certain high risk environments is regularly inspected and tested by a competent person.

Subregulation 150(2) provides that when equipment is new or unused at a workplace, a PCBU is not required to comply with subregulation (1) but must ensure that the equipment is inspected for obvious damage before being used.

Subregulation 150(3) provides that a PCBU must retain any record of testing carried out until the next test, or the equipment is permanently removed from the workplace or disposed of.

Subregulation 150(4) includes requirements for the content of records of testing.

Regulation 151 – Untested electrical equipment not to be used

Regulation 151 stipulates that a PCBU must ensure, so far as is reasonably practicable, that electrical equipment is not used if the equipment is required to be tested under regulation 150 but has not been tested.

Division 4 – Electrical work on energised electrical equipment

This Division refers to the term ‘electric equipment’, which is defined in regulation 144.

Regulation 152 – Application of Division 4

Regulation 152 provides that division 4 does not apply to work carried out by or on behalf of an ‘electricity supply authority’ on the electrical equipment, including electric line-associated equipment, controlled or operated by the authority to generate, transform, transmit or supply electricity.

Regulation 153 – Persons conducting a business or undertaking to which this Division applies

Regulation 153 provides that the duties placed on a PCBU in relation to ‘electrical work’ under this Division only apply to a PCBU who is carrying out the electrical work, except for the duties under regulations 156, 159 and 160 which apply more broadly.

Regulation 154 – Electrical work on energised electrical equipment – prohibited

Regulation 154 requires a PCBU to ensure that electrical work is not carried out on electrical equipment – including electrical equipment that forms part of an electrical installation – while it is energised (or ‘live’), unless the requirements in relation to energised electrical work under the Division are met.

Regulation 155 – Duty to determine whether equipment is energised

Regulation 155 provides that a PCBU must ensure that before electrical work is carried out on electrical equipment, the equipment is tested by a competent person to determine if it is energised.

‘Competent person’ is a defined term and a person is required to be licensed or permitted to carry out work (including testing) on energised electrical equipment.

Subregulation 155(2) requires the PCBU to ensure that each exposed part is treated as energised until it is isolated and determined not to be energised and each high-voltage exposed part is earthed after being de-energised.

This regulation is intended to give effect to the ‘test before you touch’ principle of electrical safety.

Regulation 156 – De-energised equipment must not be inadvertently re-energised

Regulation 156 provides that a PCBU must ensure that electrical equipment that has been de-energised so that work can be carried out on it is not inadvertently re-energised while the work is being carried out.

Regulation 157 – Electrical work on energised electrical equipment – when permitted

Regulation 157 provides that a PCBU must ensure that electrical work on energised electrical equipment is not carried out unless one or more of the circumstances listed in subregulation 157(1) applies.

Regulation 158 – Preliminary steps

Regulation 158 sets out the preliminary steps a PCBU must ensure have been completed before work on energised electrical equipment commences. It includes (among other things) a requirement that a risk assessment be carried out by a competent person and recorded.

Regulation 159 – Unauthorised access to equipment being worked on

Regulation 159 provides that a PCBU must ensure that only persons authorised by the PCBU enter the immediate area where energised electrical work is being carried out.

Regulation 160 – Contact with equipment being worked on

Regulation 160 provides that a PCBU must ensure that – while energised electrical work is being carried out – persons (including the person carrying out the work) are prevented from inadvertently contacting an exposed energised component of the electrical equipment

Regulation 161 – How the work is to be carried out

Regulation 161 sets out requirements for carrying out energised electrical work, including requirements in relation to equipment used in carrying out the work (including Personal Protective Equipment) and requirements for a safety observer in the prescribed circumstances.

Regulation 161 also requires work to be carried out in accordance with a safe work method statement (SWMS) prepared for the work. The requirements for safe work

method statements in subregulation 161(3) are aligned as far as possible with equivalent requirements under the construction regulations.

This regulation refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Regulation 162 – Record keeping

Regulation 162 sets out record keeping and access requirements in relation to risk assessments and safe work method statements prepared under this Part.

Division 5 – Electrical equipment and installations and construction work – additional duties

This Division refers to the term ‘electric equipment’, which is defined in regulation 144.

Regulation 163 – Duty of person conducting business or undertaking

Regulation 163 requires a PCBU that carries out construction work to comply with AS/NZS 3012:2010.

Subregulation 163(2) and (3) set out interpretation rules if the AS/NZS is inconsistent with key definitions or requirements under this Part.

Division 6 – Residual current devices

Regulation 164 – Use of socket outlets in hostile operating environment

Regulation 164 sets out requirements for residual current devices (RCDs) in higher risk environments, as defined in subregulation 164(1). The duty to ensure an appropriate RCD is used in these environments is qualified by what is reasonably practicable. For example the RCD may be either portable or non-portable depending on what is reasonably practicable in the circumstances.

If an RCD is required under subregulation 164(2) then subregulation (3) sets out minimum requirements in relation to the tripping current the RCD must have if electricity is supplied to the equipment through a socket outlet not exceeding 20 amps.

Subregulation 164(4) sets out the circumstances in which an RCD is not required.

Note: this regulation imposes new duties on PCBUs and a 12 month transition period has therefore been provided. While the remainder of these Regulations will commence on 1 January 2012, this regulation will not commence until 1 January 2013.

Regulation 165 – Testing of residual current devices

Regulation 165 requires a person with management or control of a workplace to take all reasonable steps to ensure that RCDs used at the workplace are tested

regularly by a competent person to ensure the devices are operating effectively. It also requires records of all such testing (other than a daily test) to be kept until the device is next tested or is permanently removed from use.

Division 7 – Overhead and underground electric lines

Regulation 166 – Duty of person conducting business or undertaking

Regulation 166 requires a PCBU to ensure, so far as is reasonably practicable, that no person, plant or thing at the workplace comes within an unsafe distance of an overhead or underground electric line. Further provision on what constitutes an 'unsafe distance' may be made separately under general electrical safety laws, relevant codes of practice or guidance material.

Subregulation 166(2) sets out the requirements that apply if it is not reasonably practicable to ensure that the safe distance is observed including a risk assessment requirement. The provision requires the relevant work to be carried out in accordance with any control measures determined in accordance with the risk assessment, and also any relevant requirement of an electricity supply authority with responsibility for the electric line.

Part 4.8 – Diving work

Part 4.8 sets out how the risks associated with diving work are to be managed. Specifically, this part requires a PCBU to ensure:

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

Part 4.8 prohibits workers from carrying out specified diving work unless relevant competency requirements are met (as set out in Division 2).

Duty holders under this Part may also have health and safety duties under section 19 or 28 of the WHS Act. PCBUs may have duties under Divisions 1 and 2 of Part 5 of the WHS Act to consult with other PCBUs and workers about matters in this Part. This Part prescribes required qualifications for section 44 of the WHS Act. Section 27 of the WHS Act applies to officers in respect of this Part.

There are additional Regulations about management of risk in Part 3.1 – Risk Management, about provision of information in Part 3.2 – General workplace management and about construction work involving diving work in Chapter 6 – Construction Work.

Defined terms in Chapter 1 which are relevant to this Part include incidental diving work, limited diving and limited scientific diving work.

Defined terms in Chapter 1 which are relevant to this Part include:

- *appropriate training in underwater medicine*
- *certificate of medical fitness*
- *competent person*
- *current certificate of medical fitness*
- *EANx*
- *fitness criteria*
- *general diving work*
- *high risk diving work*
- *incidental diving work*
- *limited diving*
- *limited scientific diving work*
- *registered medical practitioner, and*
- *VET course.*

Note: Regulation 729 provides that the duties in this Part do not apply until 1 January 2013.

Division 1 – Preliminary

Regulation 167 – Purpose of Part 4.8

Regulation 167 provides that the purpose of Part 4.8 is to impose duties on a person carrying out a business or undertaking at a workplace to ensure the fitness, competence, and health and safety of persons who carry out general diving work and high risk diving work, as well as the health and safety of other persons at workplaces where general diving work or high risk diving work is carried out.

Division 2 – General diving work – Fitness and competence of worker

Regulation 168 – Person conducting business or undertaking must ensure fitness of workers

Regulation 168 prohibits a PCBU at a workplace from directing or allowing a worker to carry out (or undergo training for) general diving work if the worker does not hold a current certificate of medical fitness. Subregulation 168(2) further provides that a PCBU must not direct or allow a worker to carry out diving work unless the diving work or training complies with any conditions on the current certificate of medical fitness of the worker.

Regulation 169 – Certificate of medical fitness

Regulation 169 provides that a certificate of medical fitness must be issued by a registered medical practitioner with appropriate training in underwater medicine and sets out the details that must be included in the certificate.

This regulation refers to the term ‘appropriate training in underwater medicine’, which is defined in regulation 5 to mean training that results in knowledge of the matters specified in clause M3 of Appendix M to AS/NZS 2299.1:2007 (Occupational diving operations – Standard operational practice).

Regulation 170 – Duty to keep certificate of medical fitness

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

Regulation 171 – Competence of worker – general diving work

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

This regulation refers to the term ‘incidental diving work’, which is defined in regulation 5.

Regulation 172 – Competence of worker – incidental diving work

Regulation 172 provides that a person must not carry out incidental diving work unless the person has the training, qualification or experience and relevant diving experience referred to in paragraph 171(b).

Subregulation 172(2) specifies the meaning of relevant diving experience for this regulation.

Regulation 173 – Competence of worker – limited scientific diving work

Regulation 173 provides that a person who is not permanently resident in Australia must not carry out limited scientific diving work unless the person has the listed training, qualification or experience and relevant diving experience obtained outside Australia.

Subregulation 173(2) specifies the meaning of relevant diving experience for this regulation.

Regulation 174 – Competence of competent person supervising general diving work

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

Regulation 175 – Evidence of competence – duty of person conducting business or undertaking

Regulation 175 prohibits a PCBU from directing or allowing a worker to carry out general diving work unless the person sees written evidence that the worker has

the relevant competence. Subregulation 175(3) provides that the written evidence must be kept for at least 1 year after the diving work is performed.

Subregulation 175(2) similarly prohibits a PCBU from directing or allowing a person appointed as a competent person to supervise diving work (under regulation 177) to supervise diving work unless the PCBU sees written evidence that the person appointed has the competence required under regulation 174. Subregulation 175(3) provides that the written evidence must be kept for at least 1 year after the last occasion that supervision work is performed.

Division 3 – Managing risks – general diving work

Regulation 176 – Management of risks to health and safety

Subregulation 176(1) provides that a PCBU must manage risks to health and safety associated with general diving work in accordance with Part 3.1.

Subregulations 176(2) and (3) provide that a PCBU must ensure that a risk assessment is conducted by a competent person and recorded in writing.

Regulation 177 – Appointment of competent person to supervise diving work

Regulation 177 requires a PCBU to appoint one or more competent persons to supervise general diving work carried out in the business or undertaking, and to perform other functions required in Division 3 of Part 4.8 of these Regulations.

Regulation 178 – Additional control – dive plan

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

Regulation 179 – Dive plan must be complied with

Regulation 179 requires a PCBU to ensure, so far as is reasonably practicable, that general diving work is carried out in accordance with the dive plan prepared for that work, and that a competent person is appointed (under regulation 177) to brief workers on the dive plan before commencing work under the plan.

Regulation 180 – Additional control – dive safety log to be kept

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

Regulation 181 – Use of dive safety log

Regulation 181 applies to a PCBU at a workplace where general diving work is carried out. A PCBU is required to:

- ensure that, after each dive, the return of each diver is verified in the dive safety log, by both the diver and the competent person appointed under regulation 177 to supervise the diving work;
- ensure that the competent person appointed under regulation 177 to supervise the diving work makes and verifies entries in the dive safety log of the number of workers and other persons, if diving from a vessel, before the dive work commences and before the vessel leaves the location after the dive work is completed; and
- ensure that a dive safety log is kept for at least 1 year after the last entry is made.

Subregulation 181(5) provides that an event is verified in the dive safety log by signing the log or, if the log is electronic, by entering the verifier's unique identifier.

Regulation 182 – Record keeping

Regulation 182 applies if a PCBU prepares a risk assessment or dive plan (under regulations 176 or 178). This regulation sets out record keeping requirements for these documents, namely:

- the PCBU must keep the risk assessment for at least 28 days after the work is completed and the dive plan until the dive work is completed;
- if a notifiable incident occurs, the PCBU must keep the relevant documents for at least 2 years after the incident occurs; and
- the PCBU must make the record readily accessible to any worker involved in the work, and available for inspection under the WHS Act during the period for which the relevant record must be kept.

Division 4 – High risk diving work

Regulation 183 – Duties of person conducting business or undertaking

Regulation 183 requires a PCBU to ensure that the fitness and competence of persons carrying out high risk diving work, and the undertaking of that high risk diving work, meets the requirements of AS/NZS 2299.1:2007, or an alternative standard approved by the regulator where in force.

Subregulation 183(2) provides that the regulator may approve a standard for the carrying out of high risk diving work by a member of the Defence Force. Where an approved standard is in force, members of the Defence Force must comply with that standard and the duty to comply with the Australian Standard as specified in subregulation 183(1) will not apply.

Subregulation 183(3) is intended to provide the regulator with flexibility to approve an alternative standard that has regard to the unique diving activities undertaken

by members of the Defence Force, both within and outside Australian territorial waters.

The Defence Force currently draws on a mix of Australian and international diving standards to manage the risks associated with diving activities undertaken by members of the Defence Force.

Regulation 184 – Duty of worker – competence

Regulation 184 provides that a worker must not carry out high risk diving work unless the worker has the qualifications, knowledge, skills and experience required by AS/NZS 2299.1:2007 for the kind of work they intend to carry out.

Subregulation 184(2) applies to members of the Defence Force. If a standard is in force that has been approved by the Regulator, a member of the Defence Force must not carry out high risk diving work unless the member has the qualifications, knowledge, skills and experience required by that standard for the high risk diving work.

Chapter 5 – Plant and Structures

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

Duty holders under this Chapter may have health and safety duties under sections 21, 22, 23, 24, 25 and 26 of the WHS Act, and duties under Part 5, Division 1 and Division 2 of the WHS Act to consult with other duty holders and workers about matters in this Chapter. This Chapter requires authorisation of plant and plant design for section 42 of the WHS Act. Section 27 of the WHS Act applies to officers in respect of this Chapter.

There are additional Regulations about the provision of information in Part 3.2 – *General Workplace Management*. There are additional Regulations imposing duties on designers, manufacturers and suppliers in respect of plant and structures in Part 4.3 – *Confined Spaces* and imposing duties on designers of structures and PCBUs that commission a structure in Chapter 6 – *Construction work*.

Defined terms in Chapter 1 which are relevant to this Part include:

- *amusement device*
- *boom-type elevating work platform*
- *building maintenance equipment*
- *building maintenance unit*
- *competent person*
- *concrete placement unit with delivery boom*
- *control measure*
- *crane*
- *designer*
- *direct fired process heater*
- *earthmoving machinery*
- *external review*
- *fault*
- *gantry crane*
- *gas cylinder*
- *hazardous chemical*
- *hoist*
- *importer*
- *industrial lift truck*

- *industrial robot*
- *lift*
- *manufacturer*
- *mast climbing work platform*
- *mobile crane*
- *operator protective device*
- *person with management or control of plant at a workplace*
- *plant*
- *powered mobile plant*
- *presence-sensing safeguarding system*
- *pressure equipment*
- *pressure piping*
- *pressure vessel*
- *relevant fee*
- *scaffold*
- *self-erecting tower crane*
- *supplier*
- *suspended scaffold*
- *theatrical performance*
- *tower crane*
- *tractor*
- *vehicle hoist, and*
- *work box.*

Part 5.1 – General duties for plant and structures

The note to Part 5.1 states that in some States and Territories, provisions will be included in Schedule 1 to the WHS Act to extend the operation of this Part to plant outside the workplace.

Division 1 – Preliminary

Regulation 185 – Application of Part 5.1 to plant

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

Regulation 186 – Application of Part 5.1 to structures

Regulation 186 provides that this Part applies to structures.

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

Regulation 187 – Provision of information to manufacturer

Regulation 187 requires a designer of plant to ensure that, when a design is made available to the manufacturer, the manufacturer is provided with information to enable the plant to be manufactured in accordance with the design specifications. This regulation also lists other information about the plant that must be made available to the manufacturer, if applicable, and notes that a designer also has duties under section 22 of the WHS Act.

Regulation 188 – Hazard identified in design during manufacture

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

Note: Regulation 730 provides that the duties imposed on a designer of plant under regulation 188 only apply in relation to the plant if the manufacturer of the plant advises the designer of the plant, on or after 1 January 2012, that there is a hazard in the design of the plant.

Regulation 189 – Guarding

Regulation 189 provides that, if a designer of plant uses guarding to control risk, the designer must ensure, as far as reasonably practicable, that the guarding prevents access to the danger point or area of the plant, by designing the guarding as specified in the regulation. This regulation also requires the designer to ensure that guarding would withstand impact or shock, that it is difficult to bypass or disable, and that, if the plant contains moving parts that may break or be ejected, guarding would control any risks.

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

Note: Regulation 731 provides for the phasing in of the duties in regulation 189.

Regulation 190 – Operational controls

Regulation 190 lists requirements for the design of operator's controls for plant. If the need to operate plant during maintenance or cleaning cannot be eliminated, the designer is required to design operator's controls that cannot be operated by anyone other than the person maintaining or cleaning the plant, and that the plant can be operated without risk, or with minimal risk, during maintenance or cleaning.

Note: Regulation 731 provides for the phasing in of the duties in regulation 190.

Regulation 191 – Emergency stop controls

Regulation 191 requires that for plant that is designed to be operated or attended by more than one person, and with more than one emergency stop control, the designer must ensure that the design provides for stop controls of the ‘stop and lock off’ type so that the plant cannot be restarted unless they are reset after use. This regulation also lists additional requirements for the design of emergency stop controls.

Note: Regulation 731 provides for the phasing in of the duties in regulation 191.

Regulation 192 – Warning devices

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

Note: Regulation 731 provides for the phasing in of the duties in regulation 192.

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

Regulation 193 – Control of risk

Regulation 193 requires a manufacturer of plant to ensure that the plant is manufactured, inspected and tested, if required, in accordance with the information provided by the designer of the plant under the WHS Act and these Regulations. This regulation also sets out the steps a manufacturer must take when a hazard is identified in the design of the plant during the manufacturing process for which the designer has not provided a control measure.

Note: Regulation 732 provides that the duties imposed on a manufacturer of plant under regulation 193 only apply in relation to any process associated with the manufacture of the plant that is undertaken on or after 1 January 2012.

Regulation 194 – Guarding

Regulation 194 requires a manufacturer of plant to ensure that guarding used to control risk would withstand impact or shock. This regulation also requires a manufacturer to ensure that guarding is removable to allow repair, servicing and maintenance when the plant is not in normal operation, and that the plant cannot be restarted unless the guarding is replaced.

Note: Regulation 733 provides for the phasing in of the duties in regulation 194.

Regulation 195 – Information must be obtained and provided

Regulation 195 requires a manufacturer of plant to take all reasonable steps to obtain the information the designer of plant is required to provide under section 22(4)(a) and (c) of the WHS Act and regulations 187 and 188. This regulation also requires the manufacturer to provide a person to whom the manufacturer supplies the plant, the information supplied by the designer under section 22(4) of the WHS

Act and regulation 187. If the manufacturer identifies a hazard during the manufacturing process, the manufacturer must ensure that the person to whom the plant is supplied receives the information the designer is required to provide under section 22(4) of the WHS Act and regulation 188.

Note: Regulation 733 provides for the phasing in of the duties in regulation 195.

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

Regulation 196 – Information to be obtained and provided by importer

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

Note: Regulation 734 provides for the phasing in of the duties in regulation 196.

Regulation 197 – Control of risk

Regulation 197 requires an importer of plant to ensure that the plant is inspected, having regard to the information provided by the manufacturer, and if that information requires the plant to be tested, that it is tested in accordance with the information.

This regulation also provides that, if any hazards are identified, the importer must not supply the plant until the risks have been eliminated. If it is not reasonably practicable to eliminate the risks, the importer must advise the person to whom the plant is supplied of the risks and take all reasonable steps to ensure that the designer and manufacturer are consulted regarding any alteration made to the plant to control the risk.

Note: Regulation 734 provides for the phasing in of the duties in regulation 197.

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

Regulation 198 – Information to be obtained and provided by supplier

Regulation 198 requires a supplier of plant to take all reasonable steps to obtain the information to be provided by the manufacturer, and to ensure that the person to whom the plant is supplied is given the information when the plant is supplied.

Note: Regulation 735 provides for the phasing in of the duties in regulation 198.

Regulation 199 – Supply of second-hand plant – duties of supplier

Regulation 199 requires a supplier of second-hand plant to ensure, as far as reasonably practicable, that any faults in the plant are identified. The supplier

must ensure that written notice is provided to the person to whom the plant is to be supplied, before the plant is supplied, advising of the condition of the plant, of any faults identified, and if appropriate, that the plant should not be used until the faults are rectified. This requirement does not apply to plant to be used as scrap or spare parts.

Note: Regulation 735 provides for the phasing in of the duties in regulation 199.

Regulation 200 – Second-hand plant to be used for scrap or spare parts

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

Note: Regulation 735 provides for the phasing in of the duties in regulation 200.

Division 6 – Duties of persons conducting businesses or undertakings that install, construct or commission plant

Regulation 201 – Duties of persons conducting businesses or undertakings that install, construct or commission plant

Regulation 201 requires a PCBU that installs, constructs or commissions plant to be used, or expected to be used, as or at, a workplace, to ensure that the plant is installed, constructed or commissioned having regard to the information provided by the designer or manufacturer under the WHS Act and these Regulations, or instructions provided by a competent person, to the extent that these instructions relate to health and safety.

Note: Regulation 736 provides that the duties imposed on a PCBU that installs, constructs or commissions plant under regulation 201 do not apply in relation to any plant or structure if the person started or completed any process associated with the installation, construction or commissioning of the plant or structure before 1 January 2012.

Regulation 202 – Duties of persons conducting businesses or undertakings that install, construct or commission structures

Regulation 202 requires a PCBU that installs, constructs or commissions a structure to be used, or expected to be used, as or at, a workplace, to ensure that the structure is installed, constructed or commissioned having regard to the information provided by the designer or manufacturer under the WHS Act and these Regulations, or instructions provided by a competent person, to the extent that these instructions relate to health and safety.

Note: Regulation 736 provides that the duties imposed on a PCBU that installs, constructs or commissions plant under regulation 202 do not apply in relation to any plant or structure if the person started or completed any process associated with the installation, construction or commissioning of the plant or structure before 1 January 2012.

Division 7 – General duties of persons conducting a business or undertaking involving the management or control of plant

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

Subdivision 1 – Management of risks

Regulation 203 – Management of risks to health and safety

Regulation 203 requires a person with management or control of plant to manage risks to health and safety associated with plant.

Subdivision 2 – Additional control measures for general plant

Regulation 204 – Control of risks arising from installation or commissioning

Regulation 204 provides that a person with management or control of plant at a workplace must not commission the plant unless the person has established, so far as is reasonably practicable, that the plant is without risks to health and safety. The person must not decommission or dismantle the plant unless this can be carried out, so far as is reasonably practicable, without risks to health and safety.

A person with management or control of plant at the workplace must ensure that a person who installs, assembles, constructs, commissions or decommissions or dismantles the plant is a competent person, and that the person is provided with the information available for eliminating or minimising risks to health or safety. The processes for the installation, construction, commissioning, decommissioning and dismantling must include inspections that ensure, so far as is reasonably practicable, that risks are monitored.

Regulation 205 – Preventing unauthorised alterations to or interference with plant

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

Regulation 206 – Proper use of plant and controls

Regulation 206 requires the person with management or control of plant at a workplace to take reasonable steps to ensure that plant is used only for the purpose for which it was designed, unless the person has determined that the proposed use does not increase the risk to health or safety. In making that determination, the person must ensure that the risk is assessed by a competent person. The person must take reasonable steps to ensure that health and safety

features and warning devices are used in accordance with the instructions and information provided under regulation 39.

Regulation 207 – Plant not in use

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

Regulation 208 – Guarding

Regulation 208 provides that, if guarding is used to control risk associated with plant at a workplace, a person with management or control of the plant must ensure, as far as reasonably practicable, that the guarding prevents access to the area of the plant requiring guarding, by using the guarding specified in the regulation for particular circumstances.

The guarding must withstand impact or shock, difficult to bypass or disable, does not create risks in itself and is reasonably maintained. If the plant contains moving parts that may break or be ejected, the guarding must control any risk, as far as is reasonably practicable.

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

Regulation 209 – Guarding and insulation from heat and cold

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

Regulation 210 – Operational controls

Regulation 210 lists requirements for operator's controls on plant at a workplace. If the need to operate plant during maintenance or cleaning cannot be eliminated, the person with management or control of the plant at a workplace must ensure that the operator's controls cannot be operated by anyone other than the person maintaining or cleaning the plant, or a person authorised by the person with management or control, and that the plant can be operated without risk, or with minimal risk, during maintenance or cleaning.

Regulation 211 – Emergency stops

Regulation 211 requires that if plant at a workplace is designed to be operated or attended by more than one person and more than one emergency stop control is fitted, the person with management or control of the plant must ensure that the emergency stop controls are of the 'stop and lock-off' type so that the plant cannot

be restarted unless they are reset after use. This regulation also lists additional requirements for the emergency stop controls.

Regulation 212 – Warning devices

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

Regulation 213 – Maintenance and inspection of plant

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

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

Subdivision 3 – Additional control measures for certain plant

Regulation 214 – Powered mobile plant – general control of risk

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

- the plant overturning;
- things falling on the operator of the plant;
- the operator being ejected from the plant;
- the plant colliding with any person or thing; or
- mechanical failure of pressurised elements of plant that may release fluids that pose a risk to health and safety.

Regulation 215 – Powered mobile plant – specific control measures

Regulation 215 requires a PCBU with management or control of powered mobile plant at a workplace to ensure, as far as reasonably practicable, that a suitable combination of operator protective devices for the plant is provided, maintained and used. The PCBU must ensure, as far as is reasonably practicable, that no one other than the operator rides on the plant unless they are provided with a level of protection equivalent to that provided to the operator. The PCBU must also ensure that the plant does not collide with pedestrians or other powered mobile plant.

Subregulation 215(5) provides that, if there is a possibility of the plant colliding with pedestrians or other powered mobile plant, it must have a warning device that will warn persons who may be at risk from the movement of the plant.

Regulation 216 – Roll-over protection on tractors

Regulation 216 requires a person with management or control of a tractor at a workplace to ensure that the tractor is not used, unless it is securely fitted with a rollover protective structure. Subregulation 216(2) provides that, if a tractor is used in a place that is too low for the tractor to work while it is fitted with a roll-over protective structure, the structure may be lowered or removed while the tractor is used in such a situation (but only if other measures to minimise the risk of roll-over are in place).

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

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

This regulation includes definitions of ‘roll-over protective structure’ and ‘historical purpose or activity’, and notes that regulations 214 and 215 also applies to a tractor.

Regulation 217 – Protective structures on earthmoving machinery

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

Subregulation 217(2) clarifies that this provision does not apply to earthmoving machinery that has a weight of less than 1,500 kilograms (not including attachments to the machinery) and is not designed to have a seated operator.

This regulation includes a definition of ‘protective structure’ and notes that regulations 214 and 215 also apply to earthmoving machinery.

Regulation 218 – Industrial lift trucks

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

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

Regulation 219 – Plant that lifts or suspends loads

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

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

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

Subregulations 219(4) to (7) specify how the person must ensure lifting and suspension are carried out.

Regulation 220 – Exception – Plant not specifically designed to lift or suspend a person

Regulation 220 provides an exception to the requirement in regulation 219 for a person with management or control of plant at a workplace to ensure that plant not specifically designed to lift or suspend persons, or things, does not cause a greater risk than if specifically designed plant were used. The exception applies to plant that is not specifically designed to lift or suspend a person.

This regulation provides that the person with management or control of this type of plant at a workplace must ensure that:

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

Regulation 220(2) provides that this regulation does not apply to plant used in connection with stunt work, acrobatics or theatrical performances, which are governed by Part 4.4.

Regulation 221 – Plant used in connection with tree lopping

Regulation 221 includes an exception to the requirements in regulation 220 in relation to work boxes used to lift or suspend people that are used in connection with tree lopping. Further detail in relation to carrying out tree lopping will be included in a Code of Practice.

Note: Regulation 737 provides that duties imposed under regulation 221 do not apply until a code of practice for the use of plant in connection with tree lopping takes effect.

Regulation 222 – Industrial robots

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

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

Regulation 223 – Lasers

Regulation 223 requires a person with management or control at a workplace of laser equipment that may create a risk to health and safety to ensure that laser equipment intended for use on plant is designed, constructed and installed so as to prevent accidental irradiation.

This regulation requires the person to ensure laser equipment on plant is protected so that any operator of the plant or other person is not exposed to the radiation specified in the regulation. In addition, the person must ensure that the visual equipment used for the observation or adjustment of laser equipment on plant causes no risk to health or safety from laser rays. Furthermore, the person must ensure that the workers operating the laser equipment are trained in the proper operation of the equipment.

Subregulation 223(6) requires the person to ensure that Class 3B and Class 4 lasers (within the meaning of Australian Standard 2397: “Safe Use of Lasers in the Building and Construction Industry”) are not used in construction work.

Regulation 224 – Pressure equipment

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

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

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

This regulation refers to the term ‘gas cylinder’, which is defined in regulation 5.

This regulation refers to the term ‘pressure equipment’, which is defined in regulation 5 to mean boilers, pressure vessels and pressure piping.

Regulation 225 – Scaffolds

Regulation 225 applies to:

- a suspended scaffold;
- a cantilevered scaffold;
- a spur scaffold;
- a hung scaffold; and
- any other scaffold from which a person or thing could fall more than 4 metres.

Subregulation 225(2) provides that the person with management or control of a scaffold at a workplace must ensure that the scaffold is not used unless the person receives written confirmation from a competent person that construction of the scaffold has been completed.

Subregulation 225(3) provides that the person with management or control of a scaffold at a workplace must ensure that the scaffold and its supporting structure are inspected by a competent person at the times specified in the subregulation.

Subregulation 225(4) states that, if an inspection indicates that a scaffold at a workplace, or its supporting structure, creates a risk to health or safety, the person with management or control of the scaffold must ensure that any necessary work is carried out, and that the scaffold and its supporting structure are inspected by a competent person before the scaffold is used again.

Subregulation 225(5) requires the person with management or control of a scaffold at a workplace to prevent authorised access to the scaffold while it is incomplete or unattended, for example, by danger tags.

Regulation 226 – Plant with presence sensing safeguarding system – records

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

Part 5.2 – Additional duties relating to registered plant and plant designs

The note to Part 5.2 clarifies that a person with management or control of plant at a workplace is the PCBU to the extent that the business or undertaking involves the management or control of plant in whole or in part at the workplace. The note also clarifies that Part 5.2 applies in addition to Part 5.1, and specifies that, in this

Part, ‘plant’ includes a structure, as per the definition of ‘plant’ in subregulation 5(1).

Division 1 – Application of Part 5.2

Regulation 227 – Application of Part 5.2

Regulation 227 states that Part 5.2 applies to plant that is required to be registered under Part 5.3 or plant the design of which is required to be registered under Part 5.3.

Division 2 – Duty of persons conducting a business or undertaking who design plant to record plant design

Regulation 228 – Records and information

Regulation 228 states that, if the design of plant requires registration under Part 5.3, the designer of the plant must make a record containing the method used to determine the control measures for the plant, and the control measures resulting from that determination, and copies of the information that is provided to a manufacturer:

- under section 22 of the WHS Act;
- under regulation 187; and
- under regulation 188.

Note: Regulation 738 provides for the phasing in of the duties in regulation 229.

Regulation 229 – Record of standards or engineering principles used

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

Note: Regulation 738 provides for the phasing in of the duties in regulation 229.

Regulation 230 – Records to be available for inspection

Regulation 230 requires a designer of plant to keep the records made under regulations 228 and 229 available for inspection under the WHS Act, for the design life of the plant.

Division 3 – Duties of persons conducting a business or undertaking

Regulation 231 – Duty of persons conducting businesses or undertakings that manufacture plant

Regulation 231 provides that a manufacturer must not supply plant specified in Part 1 of Schedule 5 unless the design of that plant is registered under Part 5.3.

Regulation 232 – Duty of persons conducting businesses or undertakings that import plant

Regulation 232 states that an importer must not supply plant specified in Part 1 of Schedule 5 unless the design of that plant is registered under Part 5.3.

Regulation 233 – Duty of persons conducting businesses or undertakings that supply plant

Regulation 233 states that a supplier must not supply plant specified in Part 1 of Schedule 5 unless the design of that plant is registered under Part 5.

Regulation 234 – Duty of persons conducting businesses or undertakings that commission plant

Regulation 234 states that a PCBU that commissions plant must not commission an item of plant that is specified in Part 2 of Schedule 5 for use in a workplace unless that item of plant is registered under Part 5.3.

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

Division 4 – Duties of persons conducting a business or undertaking involving the management or control of plant

Subdivision 1 – Control measures for registered plant

Regulation 235 – Major inspection of registered mobile cranes and tower cranes

Regulation 235 requires a person with management or control of a registered mobile crane or tower crane at a workplace to ensure that a competent person carries out the maintenance, repair, inspection and, if necessary testing of the crane. This regulation requires that the crane must be inspected:

- at the end of the design life recommended by the manufacturer for the crane;

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

Subregulation 235(4) defines 'competent person' for the purposes of regulation 235.

Regulation 236 – Lifts

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

This regulation requires the person with management or control of a lift to ensure that there is a safe means of entry to and exit from the base of the lift well. In addition, the person with management or control of a lift must ensure a sign is fixed prominently in the lift stating the safe working load specified in the design of the lift.

Regulation 237 – Records of plant

Regulation 237 applies to plant that is required to be registered under Part 5.3. This regulation requires the person with management or control of the plant at the workplace to keep a record of all tests, inspections, maintenance, commissioning, decommissioning, dismantling and alterations of the plant for the period specified in the regulation. This regulation specifies that the person must keep the record available for inspection and make it available to any person to whom the person relinquishes control of the plant.

Subdivision 2 – Control measures for amusement devices

This subdivision refers to the term 'amusement device', which is defined in regulation 5.

Regulation 238 – Operation of amusement devices

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

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

- the amusement device is checked on the day, before it is operated;

- the amusement device is tested without passengers, before being operated with passengers; and
- the daily checks and operation of the amusement device without passengers are properly and accurately recorded in the log book for the amusement device.

Regulation 239 – Storage of amusement devices

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

Regulation 240 – Maintenance, inspection and testing of amusement device

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

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

Regulation 241 – Annual inspection of amusement device

Regulation 241 requires the person with management or control of an amusement device at a workplace to ensure that a detailed inspection of the device is carried out at least once every 12 months by a competent person. This regulation lists the checks that must be carried out at the annual inspection, and includes a requirement for a detailed inspection of the amusement device to ensure compliance with the WHS Act and these Regulations.

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

Subregulation 241(5) defines 'competent person' for the purpose of this regulation.

Regulation 242 – Log book and manuals for amusement device

Regulation 242 provides that the person with management or control of an amusement device at a workplace must, in addition to keeping records as required under regulation 237, record the dates and details of the erection or storage of the amusement device in the log book for the amusement device, and ensure the log

book and operating and maintenance manuals are kept with the amusement device.

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

Part 5.3 – Registration of plant designs and items of plant

The note to Part 5.3 states that, in this Part, ‘plant’ includes a structure.

Note: Regulation 743 provides that the duties imposed under Part 5.3 of the WHS Regulations to register plant or the design of plant do not apply to the Australian Defence Organisation (ADO) if a special licence mentioned in subregulation 743(1) is in force.

Division 1 – Plant designs to be registered

Regulation 243 – Plant design to be registered

Regulation 243 states that the design of plant specified in Part 1 of Schedule 5 must be registered under this Part.

Regulation 244 – Altered plant designs to be registered

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

Regulation 245 – Recognition of designs registered by corresponding regulator

Regulation 245 relates to the recognition of designs registered elsewhere in Australia. It specifies that a design of plant, or an altered design of plant, registered by a corresponding regulator under a corresponding WHS law, is not required to be registered under this Part.

Note: Regulation 739 provides for the phasing in of the duties in Part 5.3 in relation to the designs of concrete placement units with delivery booms and prefabricated formwork. Regulation 740 provides that the duties imposed on a person under Part 5.3 do not apply in relation to lifts (including escalators and moving walkways) until 1 January 2013.

Division 2 – Items of plant to be registered

Regulation 246 – Items of plant to be registered

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

Regulation 247 – Recognition of plant registered by corresponding regulator

Regulation 247 states that an item of plant registered by a corresponding regulator under a corresponding WHS law is not required to be registered under this Part.

Note: Regulation 741 provides for the preservation of existing registrations of plant and plant design under the OHS Regulations.

Division 3 – Registration process for plant designs

Regulation 248 – Application of Division 3

Regulation 248 states that this Division applies to the registration of a plant design specified in Part 1 of Schedule 5 as requiring registration.

Regulation 249 – Who can apply to register a plant design

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

Regulation 250 – Application for registration

Regulation 250 sets out requirements for how an application for registration of a plant design must be made and the information required. This regulation also provides that the application must be accompanied by the relevant fee.

Regulation 251 – Design verification statement

Regulation 251 specifies the content and the inclusions required in the design verification statement for a design of plant, such as the name, business address and qualifications of the applicant.

Regulation 252 – Who can be the design verifier

Regulation 252 specifies who is eligible to be a design verifier for a design of plant. This regulation states that a person is not eligible to be the design verifier if the person was involved in the production of the design, or engaged by the PCBU that produced the design at the time the design was produced, unless the PCBU uses the quality system specified in subregulation 252(3).

Regulation 253 – Duty of design verifier

Regulation 253 states that a design verifier of a design of plant specified in Part 1 of Schedule 5 must document the design verification process and the results of that process.

Regulation 254 – Design verification statements not to be made in certain circumstances

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

Regulation 255 – Additional information

Regulation 255 enables the regulator to ask an applicant to provide additional information so that the regulator can make a decision on whether or not to grant the registration. This regulation also provides that if the applicant did not provide the additional information by the date specified, the application is taken to be withdrawn.

Regulation 256 – Decision on application

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

A note provides that a refusal to grant a registration under this regulation is a reviewable decision under regulation 676.

Regulation 257 – Refusal of registration – process

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

A note provides that a refusal to grant a registration under this regulation is a reviewable decision under regulation 676.

Regulation 258 – Conditions of registration

Regulation 258 enables the regulator to impose conditions on the registration of plant design when granting the registration.

A note states that a person must comply with the conditions of registration, and provides that a decision to impose a condition on a registration is a reviewable decision under regulation 676.

Regulation 259 – Duration of registration of plant design

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

Regulation 260 – Plant design registration number

Regulation 260 sets out the obligations to be met relating to the plant design registration number issued by the regulator if the regulator registers a plant design. These obligations are on the regulator, the person to whom the plant design registration number is issued, and the person with management and control of the workplace.

Regulation 261 – Registration document

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

Regulation 262 – Registration document to be available

Regulation 262 requires a registration holder to keep the registration document available for inspection under the WHS Act, other than when the registration document is not in the registration holder's possession as provided for under regulation 287.

Regulation 263 – Disclosure of design information

Regulation 263 prohibits the regulator from disclosing to any person any confidential information provided by an applicant for registration of a design of an item of plant, except in the circumstances set out in this regulation. This regulation also provides that the regulator may provide a copy of the design verification statement to the people specified in the regulation.

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

Division 4 – Registration process for an item of plant

Regulation 264 – Application of Division 4

Regulation 264 provides that this Division applies to the registration of an item of plant specified in Part 2 of Schedule 5 as requiring registration.

Regulation 265 – Who can apply to register an item of plant

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

Regulation 266 – Application for registration

Regulation 266 sets out the requirements for an application for registration of an item of plant. This regulation also provides that the application must be accompanied by the relevant fee.

Regulation 267 – When is a person competent to inspect plant

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

Regulation 268 – Additional information

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

Regulation 269 – Decision on application

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

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

A note provides that a refusal to register an item of plant under this regulation is a reviewable decision under regulation 676.

Regulation 270 – Refusal of registration – process

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

A note provides that a refusal to register an item of plant under this regulation is a reviewable decision under regulation 676.

Regulation 271 – Conditions of registration

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

A note provides that the imposition of a condition when renewing registration of an item of plant under this regulation is a reviewable decision under regulation 676.

Regulation 272 – Duration of registration

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

Regulation 273 – Plant registration number

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

Regulation 274 – Registration document

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

Regulation 275 – Registration document to be available

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

Regulation 276 – Regulator may renew registration

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

Regulation 277 – Application for renewal

Regulation 277 sets out how an application for renewal of registration of an item of plant must be made and the information required. This regulation also provides that the application must be accompanied by the relevant fee.

Regulation 278 – Registration continues in force until application is decided

Regulation 278 states that, if a registration holder applies under regulation 277 for the renewal of a registration, the registration is taken to continue in force from the day it has ended until the registration holder is given notice of the decision on the application.

Regulation 279 – Decision on application

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

A note provides that refusal to renew registration of an item of plant under this regulation is a reviewable decision under regulation 676.

Regulation 280 – Status of registration during review

Regulation 280 provides that if the regulator gives a registration holder written notice before the plant registration expires, that it proposes to refuse to renew the registration, and the registration holder seeks a review, the registration continues to have effect in accordance with this regulation.

Note: Regulation 742 provides for the preservation of pending applications for registration of plant and plant designs under the OHS Regulations.

Division 5 – Changes to registration and registration documents

Regulation 281 – Application of Division

Regulation 281 provides that this Division applies to the registration of a plant design and the registration of an item of plant.

Regulation 282 – Changes to information

Regulation 282 requires a registration holder to give the regulator written notice of any change to specified information the registration holder has given to the regulator within 14 days after the registration holder became aware of the change. This regulation also requires a registration holder of an item of plant to give written notice to the regulator if the item of plant is altered such that the plant requires new control measures; or if the plant is usually fixed and is relocated; or if the registration holder no longer has management or control of the item of plant.

Regulation 283 – Amendment of registration imposed by regulator

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

A note provides that an amendment of registration on the regulator's initiative under this regulation is a reviewable decision under regulation 676.

Regulation 284 – Amendment on application by registration holder

Regulation 284 enables the regulator to amend a registration at the request of the registration holder. This regulation also specifies the process the regulator must follow if the regulator proposes to refuse to amend the registration.

A note provides that a refusal to amend registration on application, or a decision to make a different amendment, under this regulation is a reviewable decision under regulation 676.

Regulation 285 – Minor corrections to registration

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

Regulation 286 – Regulator to give amended registration document

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

Regulation 287 – Registration holder to return registration document

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

Regulation 288 – Replacement registration document

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

A note provides that a refusal to issue a replacement registration document under this regulation is a reviewable decision under regulation 676.

Chapter 6 – Construction Work

This Chapter imposes duties on persons in relation to construction work as defined in regulation 6.1.1 and high risk construction work as defined in the regulation 6.1.2.

This Chapter requires PCBUs that commission construction work in relation to a structure to consult with the designer and requires designers of structures to provide a written report regarding health and safety.

This Chapter also requires PCBUs to control risks associated with construction work and high risk construction work and imposes duties in respect of safe work method statements, excavation work and trenches. It also imposes duties upon principal contractors, including a duty to prepare a written WHS management plan, signage obligations and obligations to ensure compliance with other regulations at the workplace.

This Chapter sets out the requirements for general induction training and the requirement that workers undertaking construction work hold a general construction induction training card.

Duty holders under this Chapter may also have health and safety duties under sections 19, 20, 21, 22, 26, 28 or 29 of the WHS Act, and duties under Part 5 Division 1 and Division 2 of the WHS Act to consult with other duty holders and workers about matters in this Chapter. This Chapter prescribes required qualifications for section 44 of the WHS Act. Section 27 of the WHS Act applies to officers in respect of this Chapter.

There are additional regulations in other Chapters which may apply to construction work, including:

- Part 3 – General risk and workplace management;
- duties on designers in Part 4.3 – Confined spaces and on designers and PCBUs who commission a structure in Chapter 5 – Plant and Structures;
- Part 4.3 – Confined spaces;
- Part 4.4 – Falls;
- Part 4.7 – General electrical safety in workplaces and energised electrical work;
- Part 4.8 – Diving work;
- Chapter 5 – Plant and structures;
- Part 7.1 – Hazardous chemicals; and
- Chapter 7A – Asbestos.

Defined terms in Chapter 1 which are relevant to this Chapter include:

- *airborne contaminant*
- *asbestos*
- *card holder*

- *confined space*
- *contaminant*
- *control measure*
- *designer*
- *essential services*
- *excavation*
- *excavation work*
- *general construction induction training*
- *general construction induction training card*
- *general construction induction training certification*
- *person with management or control of a workplace*
- *pipeline*
- *powered mobile plant*
- *registered training organisation (RTO)*
- *relevant fee*
- *safe work method statement*
- *shaft*
- *specified VET course*
- *trench*
- *tunnel, and*
- *WHS management plan.*

Part 6.1 – Preliminary

Part 6.1 sets out the meaning of terms used in this part. Terms defined include construction work, structure, high risk construction work, construction project, and principal contractor.

This Part refers to the term ‘excavation’, which is defined in regulation 5.

Regulation 289 – Meaning of *construction work*

Regulation 289 sets out the meaning of construction work. Subregulation 289(3) states what construction work does not include. This includes activities such as the manufacture of plant, the construction or assembly of a structure that once constructed or assembled is intended to be transported to another place, testing of a minor nature carried out in relation to a structure, or mining in the exploration for or extraction of minerals.

Regulation 290 – Meaning of *structure*

Regulation 290 states that the meaning of structure in Chapter 6 has the same meaning as it has in the WHS Act. However, subregulation 290(2) provides that Chapter 6 does not apply to plant unless the plant is of a kind listed in subparagraph (a), work on the plant is carried out in connection with construction work, or the plant is fixed and work on the plant may involve 5 or more PCBUs at any point in time.

Regulation 291 – Meaning of *high risk construction work*

Regulation 291 sets out what kind of work is ‘high risk construction work’ for the purposes of Chapter 6. Examples of high risk construction work include construction work that involves a risk of a person falling more than 2 metres, work carried out on a telecommunication tower, or construction work that involves the demolition of an element of a structure that is load-bearing or otherwise related to the physical integrity of the structure.

This regulation refers to the term ‘trench’, which is defined in regulation 5.

Regulation 292 – Meaning of *construction project*

Regulation 292 provides that for the purposes of Chapter 6, a ‘construction project’ is a project that involves construction work where the cost of the construction work is \$250,000 or more.

Regulation 293 – Meaning of *principal contractor*

Regulation 293 provides that for the purposes of Chapter 6 the ‘principal contractor’ for a construction project is:

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

Subregulation 293(3) also states that the principal contractor for a construction project in relation to residential premises is the PCBU directly or indirectly engaged by the owner of the premises to undertake a construction project and who has management or control of the workplace.

Subregulation 293(4) clarifies that there is only one principal contractor for a construction project at any specific time.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

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

Part 6.2 sets out the duties placed on designers of structures, and the duties that apply to a PCBU who commissions construction work in relation to a structure.

Regulation 294 – Person who commissions work must consult with designer

Regulation 294 provides that a PCBU who commissions construction work in relation to a structure, or part of the structure, must consult with the designer of the structure so far as is reasonably practicable about how to ensure that risks to health and safety arising from the design during construction are eliminated so far as is reasonably practicable, or if this is not possible, minimised so far as is reasonably practicable.

Subregulation 294(2) states that consultation must include any information that the person who commissions the construction work has in relation to the hazards and risks at the workplace where the construction work is to be carried out.

Note: Regulation 744 provides that the duties imposed on a person under regulation 294 do not apply until 1 January 2013.

Regulation 295 – Designer must give safety report to person who commissions design

Regulation 295 requires the designer of a structure or any part of a structure that is to be constructed to give a written report to the PCBU who commissioned the design. The report must address the matters specified in the regulation.

Subregulation 295(2) provides that if the PCBU who commissions a construction project did not commission the design of the project, the PCBU must take all reasonable steps to obtain a copy of the written report in relation to that design.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Note: Regulation 744 provides that the duties imposed on a person under regulation 295 do not apply until 1 January 2013.

Regulation 296 – Person who commissions project must give information to principal contractor

Regulation 296 provides that if a PCBU who commissions a construction project engages a principal contractor for the construction project, the PCBU must give the principal contractor any relevant information that the person has about hazards and risks at or in the vicinity of the workplace where the construction work is to be carried out.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Note: Regulation 744 provides that the duties imposed on a person under regulation 296 do not apply until 1 January 2013.

Part 6.3 – Duties of Person Conducting Business or Undertaking

Part 6.3 sets out the duties of a PCBU carrying out construction work. As a principal contractor is also a PCBU, this part also applies to a principal contractor.

It sets out general requirements relating to managing risks and security of the workplace, as well as requirements related to safe work method statements for high risk construction work and requirements associated with excavation work.

Division 1 – General

Regulation 297 – Management of risks to health and safety

Regulation 297 requires a PCBU to manage risks associated with carrying out construction work in accordance with Part 3.1 of the regulations.

Regulation 298 – Security of workplace

Regulation 298 provides that a person with management or control of a workplace at which construction work is carried out must ensure so far as is reasonably practicable that the workplace is secured from unauthorised access.

Subregulation 298(2) sets out the matters the PCBU must have regard to when complying with this duty.

Note: Regulation 745 provides that the duties imposed on a person under regulation 298 do not apply until 1 January 2013.

Division 2 – High risk construction work – safe work method statements

Regulation 299 – Safe work method statement required for high risk construction work

Regulation 299 applies to a PCBU whose business or undertaking involves high risk construction work. The PCBU must prepare, or ensure that another person has prepared, a safe work method statement for the high risk construction work before the work is carried out. Subregulation 299(2) and (3) require the safe work method statement to state certain information prescribed in the regulation, and be written in a way that can be accessed and understood by the people who will use it.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Regulation 300 – Compliance with safe work method statement

Regulation 300 states that a PCBU whose business or undertaking involves high risk construction work must have arrangements in place to ensure that the high risk construction work is carried out in accordance with the relevant safe work method statement.

Subregulation 300(2) also specifies that the PCBU must ensure that the work is stopped immediately or as soon as it is safe to do so and is resumed only in

accordance with the statement if the high risk construction work is not being carried out in accordance with the safe work method statement.

Regulation 301 – Safe work method statement – copy to be given to principal contractor

Regulation 301 applies to a PCBU whose business or undertaking involves high risk construction work. The PCBU must, before the work commences, ensure that a copy of the relevant safe work method statement is given to the principal contractor.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Regulation 302 – Review of safe work method statement

Regulation 302 provides that a PCBU must ensure a safe work method statement is reviewed and revised as necessary if relevant control measures under regulation 38 are revised.

Regulation 303 – Safe work method statement must be kept

Regulation 303 states that a PCBU must keep a copy of the safe work method statement until the high risk construction work to which it relates is completed. However, subregulation 303(2) provides that the PCBU must keep the statement for a period of 2 years if a notifiable incident occurs in connection with the high risk construction work to which the statement relates.

Subregulations 303(3) and (4) provide that a copy of the statement must be readily accessible to any worker engaged by the PCBU to carry out the high risk construction work and be kept available for inspection under the WHS Act.

Division 3 – Excavation work

This Division refers to the term ‘excavation’, which is defined in regulation 5.

Regulation 304 – Excavation work – underground essential services information

Regulation 304 applies to a part of a workplace where excavation work is being carried out and any adjacent areas. Subregulation 304(2) and (3) set out what a person with management or control of the workplace must do in relation to obtaining and providing to other people current underground essential services information before directing or allowing excavation work to start.

Subregulation 304(4) applies to both a person with management or control of the workplace, and a PCBU who has been given essential services information, and sets out how the information is to be used.

Subregulations 304(5) and (6) provide that a person with management or control of the workplace must ensure that the information is available for inspection under the WHS Act, and specify how long it must be kept available.

This regulation also defines ‘underground essential services’ and ‘underground essential services information’ for the purposes of the regulation.

This regulation refers to the term ‘essential services’, which is defined in regulation 5.

Regulation 305 – Management of risk to health and safety associated with excavation work

Subregulation 305(1) provides that a PCBU must manage risks to health and safety associated with excavation work in accordance with Part 3.1.

Subregulation 305(2) sets out some examples of the kind of risks that are associated with excavation work, such as the risk that a person may fall into an excavation or become trapped by the collapse of an excavation.

Subregulation 305(3) specifies some of the matters that a PCBU must consider when managing risks to health and safety associated with excavation work. Matters include the nature of the excavation, the range of possible methods of carrying out the work, and the means of entry into and exit from the excavation, if applicable.

This regulation refers to the term ‘airborne contaminant’, which is defined in regulation 5 to mean a contaminant in the form of a fume, mist, gas, vapour or dust, and includes microorganisms.

Regulation 306 – Additional controls – trenches

Regulation 306 applies to a PCBU who proposes to excavate a trench at least 1.5m deep. Subregulation 306(1) provides that the PCBU must ensure so far as is reasonably practicable that the work area is secured to prevent unauthorised access. Subregulation 306(2) sets out the matters a PCBU must have regard to when complying with this obligation.

Subregulation 306(3) requires a PCBU to ensure all sides of the trench are adequately supported by shoring, benching or battering to minimise the risk to any person from the collapse of the trench. Subregulations 306(4) and (5) however provide an exception to this subregulation 306(3) does not apply if a geotechnical engineer has provided written advice that all sides of the trench are safe from collapse.

This regulation refers to the term ‘trench’, which is defined in regulation 5.

Note: Regulation 746 provides that the duties imposed on a person under regulation 306 do not apply until 1 January 2013.

Part 6.4 – Additional Duties of Principal Contractor

Part 6.4 imposes additional duties on a principal contractor for a construction project. These duties are in addition to those imposed by the WHS Act and the Regulations on a person with management or control of a workplace, or a PCBU generally.

Regulation 307 – Application of Part 6.4

Regulation 307 provides that Part 6.4 applies in relation to a construction project and imposes duties on the principal contractor for the project that are additional to the duties imposed under Part 6.3.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Regulation 308 – Specific control measure – signage identifying principal contractor

Regulation 308 provides that the principal contractor for a construction project must install signs that are clearly visible from outside the workplace and display certain information about the principal contractor.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Note: Regulation 747 provides that the duties imposed on a person under regulation 308 do not apply until 1 January 2013.

Regulation 309 – WHS management plan – preparation

Regulation 309 requires the principal contractor for a construction project to prepare a written WHS management plan for the workplace before work on the project starts.

The WHS management plan must include the specific information prescribed in subregulation 309(2), such as arrangements for consultation and cooperation between PCBUs and any site specific health and safety rules.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Note: Regulation 748 provides for the phasing in of the duties in regulation 309.

Regulation 310 – WHS management plan – duty to inform

Regulation 310 provides that the principal contractor for a construction project must ensure so far as reasonably practicable that each person who will carry out construction work is made aware of the content of the WHS management plan and the person’s right to inspect the WHS plan under regulation 313.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Note: Regulation 748 provides for the phasing in of the duties in regulation 310.

Regulation 311 – WHS management plan – review

Regulation 311 provides that a principal contractor for a construction project must review and revise the WHS management plan when necessary, and ensure that each person carrying out construction work for the project is made aware of the changes.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Note: Regulation 748 provides for the phasing in of the duties in regulation 311.

Regulation 312 – High risk construction work – safe work method statements

Regulation 312 requires the principal contractor of a construction project to take all reasonable steps to obtain a copy of the safe work method statement relating to high risk construction work before the work commences.

A note to this regulation alerts the reader to regulation 309 which requires that a WHS management plan contain arrangements for cooperation between PCBUs at the construction project workplace, including in relation to the preparation of SWMS.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Note: Regulation 748 provides for the phasing in of the duties in regulation 312.

Regulation 313 – Copy of WHS management plan must be kept

subregulation 313(1) provides that a principal contractor keep a copy of the WHS management plan until the project to which it relates is completed. Subregulation 313(2) provides an exception to this, and requires that if a notifiable incident occurs in connection with the construction project to which the plan relates, the plan must be kept for 2 years. Subregulation 313(3) and subregulation 313(4) provide that a copy of the plan must be readily accessible to any person who is to carry out construction work in connection with the project, and must be available for inspection under the WHS Act.

Subregulation 313(5) clarifies, by including a definition of WHS management plan for the purpose of this regulation, that both the initial plan and all revised plans must be kept

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Note: Regulation 748 provides for the phasing in of the duties in regulations 313.

Regulation 314 – Further health and safety duties – specific regulations

Regulation 314 provides that the principal contractor for a construction project must put in place arrangements for ensuring compliance at the workplace with the following provisions:

- general working environment (Division 2 of Part 3.2)
- provision of first aid (Division 3 of Part 3.2)
- preparation and implementation of emergency plans (Division 4 of Part 3.2)
- provision and use of personal protective equipment (Division 5 of Part 3.2)
- managing risks from airborne contaminants (Division 7 of Part 3.2)
- managing risks from hazardous atmospheres (Division 8 of Part 3.2)
- storage of flammable or combustible substances (Division 9 of Part 3.2)
- falling objects (Division 10 of Part 3.2)
- falls (Part 4.4)

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Note: Regulation 748 provides for the phasing in of the duties in regulations 314.

Regulation 315 – Further health and safety duties – specific risks

Regulation 315 provides that the principal contractor for a construction project must, in accordance with Part 3.1, manage risks to health and safety in relation to waste at the workplace, storage of plant that is not in use, traffic in the vicinity of the workplace that may be affected by the work, and essential services. This regulation refers to the term ‘essential services’, which is defined in regulation 5.

This regulation refers to the term ‘construction project’, which is defined in regulation 292.

Part 6.5 – General Construction Induction Training

Part 6.5 sets out the requirements for general construction induction training.

Division 1 – General construction induction training requirements

Regulation 316 – Duty to provide general construction induction training

Regulation 316 places an obligation on a PCBU to ensure that general construction induction training is provided to a worker engaged by the person who is to carry out construction work. The obligation arises if the worker has not successfully completed general construction induction training, or has successfully completed general construction induction training more than 2 years previously and has not carried out construction work in the preceding 2 years.

Note: Regulation 749 provides that the duties imposed on a person under regulations 316 do not apply until 1 January 2013.

Regulation 317 – Duty to ensure worker has been trained

Subregulation 317 prohibits a PCBU from allowing or directing a worker to carry out construction work unless the worker is appropriately trained. A worker must have successfully completed general construction induction training and, if the training was completed more than 2 years previously, have carried out construction work since that time.

Subregulation 317(2) requires a PCBU to ensure that the worker holds a general construction induction training card or the appropriate certification that was issued within the preceding 60 days.

Note: Regulation 749 provides that the duties imposed on a person under regulations 317 do not apply until 1 January 2013.

Regulation 318 – Recognition of general construction induction training cards issued in other jurisdictions

Regulation 318 provides for the mutual recognition of construction induction training cards in different jurisdictions. Subregulation 318(1) provides that a reference in Division 1 to a general construction induction card includes a reference to a card issued under a corresponding WHS law that is being used in accordance with any relevant terms and conditions. This means, for example, that if a worker holds a current general construction induction card, a PCBU does not need to provide general construction induction training, regardless of which jurisdiction the card was issued in. Subregulation 318(2) ensures that this regulation, and mutual recognition, does not apply to a card that is suspended or cancelled or has expired in the corresponding jurisdiction.

Note: Regulation 749 provides that the duties imposed on a person under regulations 318 do not apply until 1 January 2013.

Division 2 – General construction induction training cards

Regulation 319 – Issue of card

Regulation 319 sets out how a person who has successfully completed general construction induction training may apply to the regulator for a general construction induction card. Subregulations 319(2) (3) and (4) set out specific information that must be included in an application, and the manner and form in which the application must be made.

Subregulations 319(6) to (8) set out how a decision is to be made by the regulator. The regulator must issue a general construction induction training card to the applicant if the regulator is satisfied with certain things. If the regulator has not made a decision on the application within 60 days then the applicant is taken to hold a general construction induction training card until a decision is made.

Note: Regulation 749 provides that the duties imposed on a person under regulations 319 do not apply until 1 January 2013.

Regulation 320 – Content of card

Regulation 320 sets out the information that must be included on a general construction induction training card.

Note: Regulation 749 provides that the duties imposed on a person under regulations 320 do not apply until 1 January 2013.

Regulation 321 – Replacement card

Regulation 321 sets out how a card holder may apply to the regulator for a replacement general construction induction training card if the original card is lost, stolen or destroyed.

Subregulation 321(4) provides that if the regulator is satisfied that the card was lost, stolen or destroyed; the regulator may issue a replacement card.

Note: Regulation 749 provides that the duties imposed on a person under regulations 321 do not apply until 1 January 2013.

Regulation 322 – Refusal to issue or replace card

Regulation 322 sets out the circumstances in which the regulator may refuse to issue a general construction induction training card or a replacement general construction induction training card.

A note provides guidance for the reader that a refusal to issue a general construction induction training card or a replacement general construction induction training card under this regulation is a reviewable decision under regulation 676.

Note: Regulation 749 provides that the duties imposed on a person under regulations 322 do not apply until 1 January 2013.

Regulation 323 – Cancellation of card – grounds

Regulation 323 sets out the grounds on which the regulator may cancel a general construction induction training card that was issued by the regulator.

A note provides guidance for the reader a decision to cancel a general construction induction training card under this regulation is a reviewable decision under regulation 676.

Note: Regulation 749 provides that the duties imposed on a person under regulations 323 do not apply until 1 January 2013.

Regulation 324 – Cancellation of card – process

Regulation 324 sets out the process that the regulator must follow before cancelling a general construction induction training card.

Subregulation 324(2) sets out the information that must be provided to the card holder in writing if the regulator has made a decision to cancel a general construction induction training card.

Note: Regulation 749 provides that the duties imposed on a person under regulations 324 do not apply until 1 January 2013.

Regulation 325 – RTO may enter agreement to issue cards

Regulation 325 permits the regulator to enter into an agreement with an RTO to exercise the powers of the regulator under regulations 318, 319, 320 and 321.

Subregulation 325(3) provides that under such an agreement, the exercise of the powers and functions by an RTO have the same effect as if they had been exercised by the regulator.

Subregulation 325(4) clarifies that nothing in an agreement made under the regulation prevents the regulator from exercising its functions and powers under Division 2.

Note: Regulation 749 provides that the duties imposed on a person under regulations 325 do not apply until 1 January 2013.

Division 3 – Duties of workers

Regulation 326 – Duties of workers

Regulation 326 provides that workers carrying out construction work must:

- keep general construction induction training cards or the appropriate certification as set out in regulation 319(5) available for inspection under the WHS Act; and
- return the general construction induction training card to the regulator on receiving a cancellation notice under regulation 324(2).

Note: Regulation 749 provides that the duties imposed on a person under regulations 326 do not apply until 1 January 2013.

Regulation 327 – Alteration of general construction induction training card

Regulation 327 provides that a person who holds a general construction induction training card must not intentionally or recklessly alter the card.

Note: Regulation 749 provides that the duties imposed on a person under regulations 327 do not apply until 1 January 2013.

Chapter 7 – Hazardous Chemicals

This Chapter imposes duties upon importers and manufacturers of hazardous chemicals in relation to the classification, packing and labelling, safety data sheets and disclosure of chemical identities. It imposes complementary duties upon suppliers of hazardous chemicals about packing, labelling and safety data sheets and prohibits supply of certain carcinogenic substances. It imposes duties upon PCBUs at a workplace about the use, handling and storage of hazardous chemicals, control of risk and information, training and supervision for workers. It requires health monitoring by a PCBU in respect of workers carrying out specified work for the business or undertaking. It imposes duties upon owners, builders and operators of certain pipelines.

Duty holders under this Part may also have health and safety duties under sections 19, 20, 21, 22, 23, 24, 25 or 26 of the WHS Act, and duties under Part 5 Division 1 and Division 2 of the WHS Act to consult with other duty holders and workers about matters in this Part. This Part prescribes requirements for authorisation of work for section 43 of the WHS Act. Section 27 of the WHS Act applies to officers in respect of this Part.

Schedules 7 – 14 of the Regulations applies to this Part. There are additional Regulations about:

- managing risk in Part 3.1 – *Managing risks to health and safety*,
- provision of information in Part 3.2 – *General Workplace Management*,
- construction work which may involve hazardous chemicals in Chapter 6 – *Construction work* and
- hazardous chemicals in Chapter 8 – *Major hazard facilities*.

Defined terms in Chapter 1 which are relevant to this Chapter include:

- *ADG code*
- *article*
- *bulk*
- *capacity*
- *chemical identity*
- *class label*
- *consumer product*
- *control measure*
- *correct classification*
- *emergency service organisation*
- *emergency service worker*
- *exposure standard*
- *fire risk hazardous chemical*
- *flammable gas*
- *flammable liquid*
- *genuine research*

- *GHS*
- *hazard category*
- *hazard class*
- *hazard pictogram*
- *hazard statement*
- *hazardous area*
- *hazardous chemical*
- *Hazchem Code*
- *health monitoring*
- *ignition source*
- *importer*
- *intermediate bulk container (IBC)*
- *in transit*
- *lead*
- *manifest*
- *manifest quantity*
- *manufacturer*
- *mixture*
- *packaged hazardous chemicals*
- *pipeline*
- *pipe work*
- *placard*
- *placard quantity*
- *personal protective equipment*
- *precautionary statement*
- *primary emergency services organisation*
- *product identifier*
- *prohibited carcinogen*
- *quantity*
- *registered medical practitioner*
- *research chemical*
- *restricted carcinogen*
- *retailer*
- *safety data sheet*
- *Schedule 11 hazardous chemical*
- *signal word*
- *substance*
- *supplier*
- *technical name*
- *UN number*

Regulation 759 provides for the phase in of the requirements of the GHS over a period of 5 years. When a regulation makes provision for a matter by reference to

compliance with the GHS, a person will be taken to comply with the provision if the person complies with either the GHS or a ‘transitional standard’ to the extent that the standard is relevant. The transitional standards include the current NOHSC standards for the classification and labelling of hazardous substances, the AGD Code, the Code of Practice for Labelling Agricultural Chemical Products, and the Code of Practice for Labelling Veterinary Chemical Products.

On the 1 January 2017, all duty holders must comply with the GHS where a provision of these regulations requires them to do so.

Part 7.1 – Hazardous Chemicals

This Part refers to the term ‘mixture’, which is defined in regulation 5 to mean a combination of, or a solution composed of, two or more substances that do not react with each other.

This Part refers to the term ‘substance’, which is defined in regulation 5.

Division 1 – Application of Part 7.1

Regulation 328 – Application of Part 7.1

Regulation 328 sets out the application of Part 7.1 to the use, handling, storage and generation of hazardous chemicals at a workplace. The application of Part 7.1 also extends to pipelines which convey hazardous chemicals, but does not apply to a pipeline which is regulated under a relevant law of a State specified in a corresponding WHS law, or for which no relevant law of a State is specified in a corresponding WHS law.

This regulation also sets out the other areas which are exempt from the application of Part 7.1.

This regulation refers to the term ‘consumer product’, which is defined in regulation 5.

Division 2 – Obligations relating to safety data sheets and other matters

This Division imposes duties upon importers and manufacturers of hazardous chemicals about classification, packing and labelling, safety data sheets and disclosure of chemical identities. Duties are imposed on suppliers of hazardous chemicals regarding the safety data sheets and the supply of hazardous chemicals. This division also imposes obligations on PCBU's in respect of labelling and safety data sheets.

This division refers to the term ‘article’, which is defined in regulation 5.

Subdivision 1 – Obligations of manufacturers and importers

Regulation 329 – Classification of hazardous chemicals

Regulation 329 requires a manufacturer or importer to determine whether a substance, mixture or article manufactured or imported was a hazardous chemical and, if so, to correctly classify the hazardous chemical as required under Part 1 of Schedule 9 before supplying it to a workplace.

Regulation 330 – Manufacturer or importer to prepare and provide safety data sheets

Regulation 330 provides that a manufacturer or importer of a hazardous chemical must prepare a safety data sheet before manufacturing or importing the hazardous chemical for the first time. If that is not practicable, the manufacturer or importer must prepare the safety data sheet as soon as practicable after manufacturing or importing the hazardous chemical and before supplying it to a workplace for the first time. The safety data sheet is required to include the information outlined in clause 1 of Schedule 7 unless the hazardous chemical is a research chemical, waste product or sample for analysis to which regulation 331 applies.

The manufacturer or importer is responsible for reviewing the safety data sheet every 5 years and amending it as required under this regulation. They must also provide the safety data sheet to any person who is likely to be affected by the hazardous chemical and asks for the data sheet. However, these two requirements do not apply to a manufacturer or importer who has not manufactured or imported the hazardous chemical in the past 5 years.

Regulation 331 – Safety data sheets – research chemical, waste product or sample for analysis

Regulation 331 requires the manufacturer or importer of a hazardous chemical which is a research chemical, waste product or sample for analysis to prepare a safety data sheet that complies with clause 2 of Schedule 7, if it is not reasonably practicable to comply with clause 1 of Schedule 7.

This regulation refers to the term 'research chemical', which is defined in regulation 5.

Regulation 332 – Emergency disclosure of chemical identities to registered medical practitioner

Regulation 332 places a responsibility on the manufacturer or importer of a hazardous chemical to provide the chemical identity of an ingredient of the hazardous chemical as soon as practicable to a registered medical practitioner who has requested the information if the medical practitioner reasonably believes that knowing the chemical identity may help to treat a patient. Such a medical practitioner must give undertakings to the manufacturer or importer that the chemical identity of the ingredient will be used only to help treat the patient and

that the medical practitioner will give a written statement to the manufacturer or importer as soon as practicable about the need to obtain the information.

This regulation refers to the term ‘chemical identity’, which is defined in regulation 5 to mean a name, in accordance with the nomenclature systems of the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service, or a technical name, that gives a chemical a unique identity.

Regulation 333 – Emergency disclosure of chemical identities to emergency service worker

Regulation 333 requires the manufacturer or importer of a hazardous chemical to provide the chemical identity of an ingredient of the hazardous chemical to an emergency service worker as soon as practicable after the worker requests it.

Schedule 8 on the disclosure of ingredients does not apply to this regulation.

This regulation refers to the term ‘chemical identity’, which is defined in regulation 5 to mean a name, in accordance with the nomenclature systems of the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service, or a technical name, that gives a chemical a unique identity.

Regulation 334 – Packing hazardous chemicals

Regulation 334 provides that the manufacturer or importer of a hazardous chemical must ensure that it is correctly packed in accordance with Part 2 of Schedule 9 as soon as practicable after manufacturing or importing the hazardous chemical.

Regulation 335 – Labelling hazardous chemicals

Regulation 335 requires the manufacturer or importer of a hazardous chemical to ensure that the hazardous chemical is correctly labelled in accordance with the GHS and in compliance with Part 3 of Schedule 9 as soon as practicable after manufacturing or importing the hazardous chemical.

This regulation does not apply to hazardous chemicals which are:

- consumer products and labelled in accordance with the Standard for the Uniform Scheduling of Medicines and Poisons 2011 and which also comply with the requirements set out in subregulation 335(3);
- in transit; or
- a therapeutic goods under the *Therapeutic Goods Act 1989* and intended for human consumption, or for the administration to or use by a person, or use by a person for therapeutic purposes and are labelled according to that Act.

This regulation refers to the terms ‘consumer product’ and ‘in transit’, which are defined in regulation 5.

Subdivision 2 – Obligations of suppliers

Regulation 336 – Restriction on age of person who can supply hazardous chemicals

Regulation 336 prohibits a PCBU from directing or allowing a worker to supply a hazardous chemical that is a flammable gas or flammable liquid to another person into any container or vehicle provided by that other person (for example, in situations such as refuelling a car or decanting fuel into a fuel container) unless the worker is at least 16 years of age.

This regulation refers to the term ‘flammable gas’, which has the same meaning as it has in the GHS.

Regulation 337 – Retailer or supplier packing hazardous chemicals

Regulation 337 prevents a supplier of a hazardous chemical from supplying that chemical to another workplace if the supplier knows or ought reasonably to know that the hazardous chemical is not correctly packed. This regulation also requires that a retailer who supplies a hazardous chemical in a container provided by a person must ensure that the hazardous chemical is correctly packed.

Regulation 338 – Supplier labelling hazardous chemicals

Regulation 338 prevents a supplier of a hazardous chemical from supplying that chemical to another workplace if the supplier knows or ought reasonably to know that the hazardous chemical is not correctly labelled in accordance with regulation 335.

Regulation 339 – Supplier to provide safety data sheets

Regulation 339 requires that the supplier of a hazardous chemical to a workplace ensure that the current safety data sheet for the hazardous chemical is provided at the time the hazardous chemical is first supplied to the workplace. If the safety data sheet is amended, the amended version must be provided at the time when the hazardous chemical is first supplied to the workplace after the amendment.

A hazardous chemical is taken to be first supplied to a workplace if the supply is the first supply of the hazardous chemical for 5 years. In addition, a supplier of a hazardous chemical must provide a current safety data sheet to a person at the workplace on request. A supplier of a hazardous chemical is exempt from this regulation if the hazardous chemical is a consumer product or the supplier is a retailer.

This regulation refers to the term ‘consumer product’, which is defined in regulation 5.

Regulation 340 – Supply of prohibited and restricted carcinogens

Regulation 340 deals with the supply of prohibited and restricted carcinogens.

Subregulation 340(1) prevents supplier of a prohibited carcinogenic substance (set out in table 10 of Schedule 10) from supplying the substance unless evidence is provided that the person has been authorised by the regulator to use, handle or store the substance for genuine research or analysis (see regulation 384) or the person has received an exemption under Part 11.2 by the regulator for this purpose.

Subregulation 340(2) prevents the supplier of a restricted carcinogenic substance (set out in column 2 of table 10.2 of Schedule 10) from supplying the substance for a use under column 3 of table 10.2 of Schedule 10, unless evidence is provided that the person has been authorised by the regulator to use, handle or store the substance under regulation 384 or the regulator has granted an exemption to the person under Part 11.2 for this purpose.

This regulation requires the supplier under subregulations 340(1) and (2) to keep a record of the name of the person supplied and the name and quantity of the substance supplied for a period of 5 years after the substance was supplied.

This regulation refers to the term ‘genuine research’, which is defined in regulation 5.

Subdivision 3 – Obligations of persons conducting businesses or undertakings

Regulation 341 – Labelling hazardous chemicals – general requirement

Regulation 341 requires the PCBU to ensure that a hazardous chemical used, stored or handled at the workplace is correctly labelled as required under regulation 335.

Regulation 342 – Labelling hazardous chemicals – containers

Regulation 342 provides that a PCBU at a workplace must ensure that a hazardous chemical is correctly labelled if the hazardous chemical is manufactured at the workplace or transferred or decanted from its original container at the workplace. The hazardous chemical container must be correctly labelled and provided only for the use, handling or storage of the hazardous chemical. However this regulation does not apply if the hazardous chemical in the container is used immediately after it is put into the container and the container is thoroughly cleaned immediately after use to remove any trace of the hazardous chemical.

Regulation 343 – Labelling hazardous chemicals – pipe work

Regulation 343 requires a PCBU at a workplace to ensure that a hazardous chemical in pipe work is identified as far as is reasonably practicable by a label, sign or by another method on or near the pipe work.

Note: Regulation 750 provides that the duties imposed on a person under regulation 343 do not apply until 1 January 2013.

Regulation 344 – Person conducting business or undertaking to obtain and give access to safety data sheets

Regulation 344 provides that a PCBU must obtain the current safety data sheet for a hazardous chemical prepared by an Australian manufacturer, importer or supplier of the hazardous chemical when or before the hazardous chemical is first supplied to the workplace or as soon as practicable after the hazardous chemical has been supplied but before it is used in the workplace. If the safety data sheet has been amended, it must be obtained when or before the hazardous chemical is first supplied to the workplace after the amendment. A hazardous chemical is considered to be first supplied to a workplace where it is the first supply for 5 years.

Subregulation 344(3) requires a current safety data sheet for a hazardous chemical to be accessible to a worker involved in using, handling or storing a hazardous chemical at a workplace and an emergency service worker or anyone else who is likely to be exposed to the hazardous chemical at the workplace.

This regulation does not apply to a hazardous chemical in transit or where the PCBU is a retailer and the hazardous chemical is a consumer product intended for supply to other premises only or to be used in the workplace in quantities and methods that are consistent with domestic use. In this case, information about the safe use, handling and storage of the hazardous chemical including the current safety data sheet must be accessible to a worker in the workplace and to an emergency service worker or anyone likely to be exposed to the hazardous chemical in the workplace.

This regulation refers to the terms ‘consumer product’ and ‘in transit’, which are defined in regulation 5.

Regulation 345 – Changes to safety data sheets

Regulation 345 prevents a PCBU from changing a safety data sheet for a hazardous chemical unless the person is an importer or manufacturer and amends the safety data sheet as allowed under regulation 330. This regulation also allows for a translation of the safety data sheet to be attached, if it is clearly stated that the translation is not part of the original safety data sheet.

Division 3 – Register and manifest of hazardous chemicals

Subdivision 1 – Hazardous chemicals register

Regulation 346 – Hazardous chemicals register

Regulation 346 requires a PCBU to prepare, keep and update a register of hazardous chemicals used, handled or stored at the workplace. The register must include the current safety data sheet for each hazardous chemical listed and be made available to a worker involved in using, handling or storing a hazardous chemical and to anyone else likely to be affected by a hazardous chemical at the workplace.

Subregulation 346(4) exempts hazardous chemicals from this regulation if they are in transit or if the hazardous chemical is a consumer product and the PCBU is not required to obtain a safety data sheet under regulation 344.

This regulation refers to the terms ‘consumer product’ and ‘in transit’, which are defined in regulation 5.

Subdivision 2 – Manifest of Schedule 11 hazardous chemicals

Regulation 347 – Manifest of hazardous chemicals

Regulation 347 states that a PCBU must prepare a manifest of hazardous chemicals if the hazardous chemicals used, handled or stored at the workplace are identified as Schedule 11 chemicals or group of chemicals that exceed the manifest quantity threshold in Schedule 11. The manifest must be amended to reflect any change in the type or quantity of Schedule 11 chemicals and must comply with Schedule 12 and be available for inspection and kept in a place acceptable to the emergency service organisation for ready access.

Regulation 348 – Regulator must be notified if manifest quantities to be exceeded

Regulation 348 requires the PCBU to provide the regulator with a written notice if the quantity of a Schedule 11 hazardous chemical or group of chemicals used, handled or stored at the workplace exceeds the manifest quantity threshold in Schedule 11.

Written notice must be given to the regulator immediately after it is first known that a Schedule 11 chemical or group of chemicals will be used, handled or stored at the workplace or at least 14 days before Schedule 11 chemicals are first used. In addition, notice must be given immediately after it is known that there is a significant change in the risk of using, handling or storing Schedule 11 chemicals at a workplace or at least 14 days before the change takes effect.

This regulation requires notice to be given as soon as practicable if a Schedule 11 chemical or group of chemicals is no longer used, handled or stored at the workplace and is unlikely to be used, handled or stored at the workplace in the future. This regulation also outlines the details required for written notice regulation 347 and requires the PCBU to provide further information to the regulator on request.

Division 4 – Placards

Regulation 349 – Outer warning placards – requirement to display

Regulation 349 states that a PCBU must ensure that an outer warning placard is displayed prominently at a workplace if the total quantity of a Schedule 11 chemical or group of chemicals exceeds the placard quantity for Schedule 11 hazardous chemicals. The outer warning placard must comply with Schedule 13 placard requirements. However, this regulation does not apply to a workplace that is a retail outlet and where Schedule 11 hazardous chemicals are used to refuel vehicles and is either a flammable gas or flammable liquid.

This regulation refers to the terms ‘flammable gas’ and ‘flammable liquid’, which have the same meaning as they have in the GHS.

Regulation 350 – Placard – requirement to display

Regulation 350 requires a PCBU to ensure that a placard is displayed prominently at a workplace if the total quantity of a Schedule 11 chemical or group of chemicals would exceed the placard quantity for Schedule 11 hazardous chemicals. The placard must comply with Schedule 13 placard requirements. This regulation does not apply where Schedule 11 hazardous chemicals are in bulk and in a container intended for transport, or where a Schedule 11 hazardous chemical is a flammable liquid stored in an underground tank at a retail outlet and used to refuel a vehicle.

This regulation refers to the terms ‘flammable gas’ and ‘flammable liquid’, which have the same meaning as they have in the GHS.

Division 5 – Control of risk – obligations of persons conducting businesses or undertakings

Subdivision 1 – General obligations relating to management of risk

Regulation 351 – Management of risks to health and safety

Regulation 351 requires a PCBU to manage the risks to health and safety associated with using, handling, generating or storing a hazardous chemical at a

workplace. In managing risks, a PCBU must take account of the hazardous properties of the chemicals, any potential chemical or physical reaction between the chemical and another substance or mixture, the nature of the work to be carried out with the hazardous chemical and any structure, plant or system of work that is used in the use, handling, generation or storage of the hazardous chemical or that could interact with the hazardous chemical at the workplace.

Regulation 352 – Review of control measures

Regulation 352 states that a PCBU must ensure that measures implemented to control risks in relation to hazardous chemicals in the workplace are reviewed and, as necessary, revised as required under regulation 38.

Control measures should be reviewed and revised in response to the circumstances set out in this regulation. Control measures should also be reviewed and revised if monitoring carried out under regulation 50 determines that the airborne concentration of hazardous chemicals at the workplace exceeds the relevant exposure standard. Otherwise control measures should be reviewed and revised every 5 years.

Regulation 353 – Safety signs

Regulation 353 requires a PCBU to display a safety sign at a workplace to warn of a particular hazard associated with hazardous chemicals at the workplace or to indicate the responsibilities of a particular person in relation to the hazardous chemicals. The safety sign must be located next to the hazard and clearly visible to a person approaching the hazard. A safety sign does not include a placard.

Regulation 354 – Identification of risk of physical or chemical reaction

Regulation 354 states that a PCBU must identify any risk of a physical or chemical reaction in relation to hazardous chemicals used, handled, generated or stored at the workplace. This does not apply where the hazardous chemical undergoes a physical or chemical reaction due to a manufacturing process or as part of a deliberate process or activity at the workplace.

Subregulation 354(3) requires a PCBU to take reasonable steps to ensure that a hazardous chemical is used, stored or handled to prevent contamination of food, food packaging or personal use products such as cosmetics or face washer. However, this regulation does not apply if the use of hazardous chemicals is for agricultural purposes in accordance with a relevant law of a state or territory which is specified in a corresponding WHS law, or for which no relevant law of a State is specified in a corresponding WHS law.

Regulation 355 – Specific control – fire and explosion

Regulation 355 provides that where there is a possibility of fire or explosion in a hazardous area caused by an ignition source being introduced into the area, a

PCBU at a workplace must exclude the ignition source from the area either outside or within the space.

This regulation refers to the term ‘hazardous area’, which is defined in regulation 5.

Regulation 356 – Keeping hazardous chemicals stable

Regulation 356 requires a PCBU at a workplace to ensure as far as is reasonably practicable that a hazardous chemical does not become unstable, decompose or change in a way which would create a hazard that is different from the hazard originally created by the hazardous chemical, or significantly increase the risk associated with any hazard in relation to the hazardous chemical as outlined in this regulation.

Subregulation 356(2) provides that where the stability of a hazardous chemical at a workplace is dependent on the maintenance of the proportions of ingredients of the hazardous chemical, the PCBU must maintain the proportions as stated in the safety data sheet or by the manufacturer of the hazardous chemical. Where a hazardous chemical is known to be unstable above a particular temperature, the PCBU must ensure that the hazardous chemical is used, handled or stored at the workplace below that temperature. However, this regulation does not apply if the hazardous chemical is allowed to change or become unstable without risk to health and safety as part of a deliberate process or activity at the workplace or undergoes a chemical reaction in a manufacturing process.

Subdivision 2 – Spills and damage

Regulation 357 – Containing and managing spills

Regulation 357 provides that where there is a risk of a spill or leak of a hazardous chemical in a solid or liquid form, the PCBU must ensure, as far as is reasonably practicable, that a spill containment system is provided to contain the spills or leaks within the workplace including any resulting effluent as outlined in this regulation. In addition, the PCBU must ensure that the spill containment system provides for the cleanup and disposal of a hazardous chemical that spills or leaks and any resulting effluent. The spill containment system provided by the PCBU must not create a hazard by bringing together incompatible hazardous chemicals to cause a fire, explosion, harmful reaction or flammable, toxic or corrosive vapour.

Regulation 358 – Protecting hazardous chemicals from damage

Regulation 358 states that a PCBU must ensure that containers of hazardous chemicals and any associated pipe work or attachments are protected against damage caused by an impact or excessive load, as far as is reasonably practicable.

Subdivision 3 – Emergency plans and safety equipment

Regulation 359 – Fire protection and firefighting equipment

Regulation 359 requires a PCBU to ensure that the workplace is provided with a sufficient quantity of fire protection and firefighting equipment designed and built for the types of hazardous chemicals at the workplace. The fire protection and firefighting equipment must take account of the matters set out in this regulation. Furthermore, the equipment must be properly installed, tested and maintained with a dated record kept of the latest testing results and maintenance.

Subregulation 359(2) states that, if a part of the fire protection and firefighting equipment provided at the workplace becomes unserviceable or inoperative, the PCBU must assess the implications, implement alternative measures to manage the risks and ensure that the equipment is returned to full operation as soon as practicable.

Regulation 360 – Emergency equipment

Regulation 360 requires a PCBU at a workplace that uses, handles, generates or stores hazardous chemicals to ensure that equipment is always available at the workplace for use in an emergency.

Regulation 361 – Emergency plans

Regulation 361 states that, where the quantity of a Schedule 11 hazardous chemical at a workplace exceeds the manifest quantity, the PCBU must give a copy of an emergency plan prepared under Division 4 of Part 3.2 to the primary emergency services organisation and where there is a written recommendation from that organisation about the content or effectiveness of the plan, revise the plan accordingly.

Regulation 362 – Safety equipment

Regulation 362 means that, where safety equipment is required to control an identified risk regarding using, handling, generating or storing hazardous chemicals at a workplace, the PCBU must ensure that the safety equipment is provided, maintained and readily accessible to persons at the workplace.

Subdivision 4 – Storage and handling systems

Regulation 363 – Control of risks from storage or handling systems

Regulation 363 requires a PCBU to ensure that a system used at the workplace for the handling, use or storage of hazardous chemicals is used only for the purpose for which it was designed, manufactured, modified, supplied or installed. Furthermore, the system must be operated, tested, maintained, installed, repaired and decommissioned having regard to the health and safety of workers and other people at the workplace. In addition, sufficient information, training and instruction

must be given to the person who operates, tests, maintains or decommissions a system used for hazardous chemicals at a workplace in order to ensure that the activity is carried out safely.

Regulation 364 – Containers for hazardous chemicals used, handled or stored in bulk

Regulation 364 requires a PCBU to ensure that a container, in which a hazardous chemical is used, handled or stored in bulk, and any associated pipe work or attachments, have stable foundations and supports to which they are secured in order to prevent any damage to the container, pipe work and attachments and prevent a notifiable incident.

This regulation refers to the term ‘bulk’, which is defined in regulation 5.

Regulation 365 – Stopping use and disposing of handling systems

Regulation 365 provides that a PCBU intending to stop using or to dispose of a system used for hazardous chemicals at a workplace must ensure, so far as is reasonably practicable, that the system is free of the hazardous chemicals when it is no longer being used or when it is disposed of. If it is not reasonably practicable to remove the hazardous chemicals from the system, the PCBU must correctly label the system.

Regulation 366 – Stopping use of underground storage and handling systems

Regulation 366 applies where a PCBU is intending to stop using or to dispose of a system used for hazardous chemicals underground must. The PCBU must ensure, so far as is reasonably practicable, that the system is removed. If it is not reasonably practicable to remove the underground system, the PCBU must ensure that the system is without risk to health and safety.

Regulation 367 – Notification of abandoned tank

Regulation 367 states that a tank used to store flammable gases and flammable liquids at a workplace, is deemed to be abandoned if the tank has not been used for this purpose for 2 years or it is not intended that the tank be used in this way again. The PCBU must notify the regulator of the abandonment of the tank as soon as practicable. A tank includes fittings, closures and other equipment attached to the container.

This regulation refers to the term ‘bulk’, which is defined in regulation 5.

This regulation refers to the terms ‘flammable gas’ and ‘flammable liquid’, which have the same meaning as they have in the GHS.

Division 6 – Health monitoring

Regulation 368 – Duty to provide health monitoring

Regulation 368 requires a PCBU to ensure that health monitoring is provided to a worker using, handling, generating or storing hazardous chemicals at a workplace in the circumstances set out in this regulation.

Regulation 369 – Duty to inform of health monitoring

Regulation 369 states that a PCBU required to provide health monitoring to a worker must give information about the health monitoring requirements to both a person who is likely to be engaged to carry out work using, handling generating or storing a hazardous chemical and a worker for the business or undertaking, before the worker commences work with the hazardous chemical.

Regulation 370 – Duty to ensure that appropriate health monitoring is provided

Regulation 370 states that a PCBU, who must provide health monitoring to a worker under regulation 368, should adopt the type of health monitoring referred to in column 3 of table 14.1 of Schedule 14 unless an equal or better type of health monitoring procedure is available and recommended by a medical practitioner with experience in health monitoring.

Regulation 371 – Duty to ensure health monitoring is supervised by registered medical practitioner with experience

Regulation 371 requires a PCBU to ensure that the health monitoring of a worker referred to in regulation 368 is carried out under the supervision of a registered medical practitioner with experience in health monitoring. The PCBU is required to consult the worker in relation to the selection of the medical practitioner.

Regulation 372 – Duty to pay costs of health monitoring

Regulation 372 provides for the PCBU to pay all expenses related to health monitoring referred to in regulation 368. This regulation also provides for an agreement to be made about sharing costs where more than one PCBU has a duty to provide health monitoring for a worker.

Regulation 373 – Information that must be provided to registered medical practitioner

Regulation 373 states that a PCBU commissioning health monitoring for a worker must provide the information outlined in this regulation to the registered medical practitioner supervising the health monitoring.

Regulation 374 – Duty to obtain health monitoring report

Regulation 374 states that a PCBU who commissions health monitoring referred to in regulation 368 is responsible for obtaining a health monitoring report from the registered medical practitioner who supervised the monitoring as soon as practicable after the monitoring has been carried out. This regulation also specifies the information to be provided in the health monitoring report.

Regulation 375 – Duty to give health monitoring report to worker

Regulation 375 requires the PCBU who commissions health monitoring to give a copy of the health monitoring report to the worker as soon as practicable after the PCBU obtains the report.

Regulation 376 – Duty to give health monitoring report to regulator

Regulation 376 sets out the circumstances in which a PCBU who commissioned the health monitoring for a worker, must give a copy of the health monitoring report to the regulator.

Regulation 377 – Duty to give health monitoring report to relevant persons conducting business or undertakings

Regulation 377 provides that a PCBU who commissions health monitoring for a worker under regulation 368 must give a copy of the health monitoring report to all other PCBUs who have a duty to provide health monitoring for the worker as soon as practicable after obtaining the report.

Regulation 378 – Health monitoring records

Regulation 378 requires a PCBU to ensure that health monitoring reports in relation to a worker are kept as a confidential record for at least 30 years after the record is made and must not be disclosed to someone else without the worker's written consent.

An exception to this is set out in subregulation (3), which provides that the requirement to obtain written consent does not apply if the health monitoring record is disclosed to a person who must keep the record confidential under a duty of professional confidentiality, such as a medical practitioner.

The exception in subregulation (3) is intended to enable a PCBU to obtain further medical advice from experts when required, although such disclosure would be subject to professional confidentiality.

Health service providers, such as doctors, dentists, nurses, physiotherapists and pharmacists, owe an ethical and legal duty of confidentiality to health consumers to prevent the use of personal health information for a purpose that is inconsistent with the purpose for which the information was provided. A legal duty of confidentiality may arise in equity, at common law or under contract. Health service providers are also often subject to confidentiality provisions in professional

codes of conduct, and may be subject to secrecy provisions in Commonwealth, state and territory privacy laws.

Health surveillance is an important control measure for managing the risk to health from hazardous substances for which there are known and acceptable health surveillance procedures.

Although the exception in subregulation (3) does not require the express consent of the worker, the information provided to the worker under regulation 369 will mean that consent will generally be able to be taken to be implied.

Regulation 369 requires a PCBU to give information about the health monitoring requirements in these regulations to a person before they commence work using handling, generating or storing a hazardous chemical.

Disclosure of information under subregulation (3) would be consistent with the purpose for which the information was collected, that is, to evaluate the effects of exposure to a hazardous chemical.

Division 7 – Induction, information, training and supervision

Regulation 379 – Duty to provide supervision

Regulation 379 requires a PCBU to provide any necessary supervision to a worker to protect them from risks to health and safety arising from circumstances set out in this regulation. The PCBU must ensure that the supervision of the worker is suitable and adequate in terms of the nature of the risks associated with the hazardous chemical and that the information, training and instruction provided is compliant with regulation 39 and paragraph 19(3)(f) of the WHS Act.

Division 8 – Prohibition, authorisation and restricted use

Note: Regulation 751 provides that the requirement to be authorised under Division 8 of Part 7.1 by the regulator to use, handle or store a prohibited or restricted carcinogen do not apply until 1 January 2013.

Regulation 380 – Using, handling and storing prohibited carcinogens

Regulation 380 prevents a PCBU from using, handling or storing or directing or allowing a worker to use, handle or store a prohibited carcinogen, referred to in Schedule 10, in circumstances set out in this regulation. The prohibited carcinogen is allowed if it is used handled or stored for genuine research and analysis and the regulator has authorised the use, handling or storing of the prohibited carcinogen under regulation 384. The note refers the reader to section 43 of the WHS Act.

This regulation refers to the term ‘genuine research’, which is defined in regulation 5.

Regulation 381 – Using, handling and storing restricted carcinogens

Regulation 381 prevents a PCBU from using, handling or storing or directing or allowing a worker to use, handle or store a prohibited carcinogen referred to in Schedule 10 unless the prohibited carcinogen is used handled or stored for genuine research and analysis and the regulator has authorised the use, handling or storing of the prohibited carcinogen under regulation 384.

Regulation 382 – Using, handling and storing restricted hazardous chemicals

Regulation 382 prevents a PCBU from using, handling or storing or directing or allowing a worker to use, handle or store a restricted hazardous chemical referred to in Schedule 10 for the purpose outlined in that Schedule.

Subregulation 382(2) prevents a PCBU from using, handling or storing or directing or allowing a worker to use, handle or store polychlorinated biphenyls unless the use, handling or storing is in relation to specific circumstances set out in the subregulation.

This regulation refers to the term ‘genuine research’, which is defined in regulation 5.

Regulation 383 – Application for authorisation to use, handle or store prohibited and restricted carcinogens

Regulation 383 outlines the requirements for the PCBU when applying in writing to the regulator for authorisation to use, handle or store a prohibited or restricted carcinogen referred to in Schedule 10 at the workplace.

Regulation 384 – Authorisation to use, handle or store prohibited and restricted carcinogens

Regulation 384 states that a regulator may grant an authorisation to a PCBU who applies under regulation 383 to use, handle or store a prohibited or restricted carcinogen at the workplace only if the carcinogen will be used, handled or stored for genuine research or analysis. In addition the regulator may authorise a PCBU to use, handle or store a restricted carcinogen at the workplace if the carcinogen will be used for the purpose referred to in Schedule 10.

Subregulations 384(2) and (5) allow the regulator to refuse to authorise the use, handling or storage of the carcinogen for a use not referred to in the regulation or to impose any conditions necessary to achieve the objectives of the WHS Act or these Regulations.

A note provides that a refusal to grant authorisation to use, handle or store a prohibited or restricted carcinogen under this regulation is a reviewable decision under regulation 676.

This regulation refers to the term ‘genuine research’, which is defined in regulation 5.

Regulation 385 – Changes to information in application to be reported

Regulation 385 states that a PCBU applying under regulation 383 for authorisation to use, handle or store a prohibited or restricted carcinogen must give the regulator written notice of any change in information given in the application as soon as practicable after the PCBU becomes aware of the change.

Regulation 386 – Regulator may cancel authorisation

Regulation 386 allows the regulator to cancel an authorisation to use, handle or store a prohibited or restricted carcinogen if the PCBU has not complied with a condition of the authorisation or the risk to the health and safety of a worker from the prohibited or restricted carcinogen has changed since the authorisation was granted.

A note provides that the cancellation of authorisation to use, handle or store a prohibited or restricted carcinogen under this regulation is a reviewable decision under regulation 676.

Regulation 387 – Statement of exposure to be given to workers

Regulation 387 requires a PCBU, authorised under regulation 384 to use, handle or store a prohibited or restricted carcinogen at the workplace, to provide the worker using, handling or storing the carcinogen a written statement at the end of their engagement containing the information required under this regulation.

Regulation 388 – Records to be kept

Regulation 388 states that a PCBU, authorised under regulation 384, must record details of each worker likely to be exposed to the carcinogen during the authorisation period and must keep a copy of each authorisation including conditions imposed on the authorisation. The PCBU must keep the records for 30 years after the authorisation ends.

Division 9 – Pipelines

Regulation 389 – Management of risk by pipeline owner

Regulation 389 provides that the owner of a pipeline that is used to transfer hazardous chemicals must manage risks associated with the transfer of the hazardous chemicals through that pipeline and ensure that activities, structures, equipment or substances that are not part of the pipeline do not affect the hazardous chemicals or the pipeline in a way that would increase risk.

Regulation 390 – Pipeline builder's duties

Regulation 390 provides that persons who intend to build pipelines must ensure that, at various stages in the construction of the pipeline, the regulator is given the necessary information about the proposed pipeline, such as its owner, the pipeline

specifications and the intended procedures for the operation, maintenance, renewal and relaying of the pipeline.

Regulation 391 – Management of risks to health and safety by pipeline operator

Regulation 391 requires a PCBU who operates a pipeline used to transfer hazardous chemicals to manage risks to health and safety arising from the activity as outlined under general risk management requirements in part 3.1.

Subregulation 391(3) requires the PCBU operating the pipeline to ensure that the hazardous chemical is identified by a label, sign or another method on or near the pipeline.

Subregulation 391(3) states that the operator of the pipeline that transfers a Schedule 11 hazardous chemical into a public place must notify the regulator of the supplier and receiver of the hazardous chemical and its correct classification.

A note directs the reader to section 19 of the WHS Act, which sets out the primary duty of care owed by a PCBU.

Part 7.2 – Inorganic Lead

This Part applies where lead processes, within the meaning of regulation 392, are carried out at a workplace.

This Part imposes duties upon a PCBU at a workplace to provide information to workers about a lead process, to control risk of lead contamination using specified measures, to identify and notify the regulator of lead risk work, within the meaning of regulation 394, and provide health monitoring of workers in respect of lead risk work.

Duty holders under this Part may also have health and safety duties under sections 19, 20 or 21 of the WHS Act, or duties under Part 5 Division 2 of the WHS Act to consult with workers about matters in this Part. Section 27 of the WHS Act applies to officers in respect of this Part.

Part 7.1 of the Regulations applies in addition to this Part. Schedule 14 to the Regulations applies to this Part. There are additional regulations about management of risk in Chapter 3 – General risk and workplace management.

Defined terms in Chapter 1 which are relevant to this Part include:

- *abrasive blasting*
- *biological monitoring*
- *blood lead level*
- *blood lead level monitoring*
- *control measure*
- *emergency service organisation*
- *emergency service worker*
- *female of reproductive capacity*

- *health monitoring*
- *lead*
- *lead process area, and*
- *personal protective equipment.*

Division 1 – Lead process

This Division refers to the term ‘lead process’, which is defined in regulation 392.

Regulation 392 – Meaning of *lead process*

Regulation 392 outlines the activities in a workplace which are defined as a lead process.

This regulation refers to the term ‘abrasive blasting’, which is defined in regulation 5 to mean propelling a stream of abrasive material at high speed against a surface using compressed air, liquid, stream, centrifugal wheels or paddles to clean, abrade, etch or otherwise change the original appearance or condition of the surface.

Regulation 393 – Regulator may decide lead process

Regulation 393 allows the regulator to decide that a process at a workplace is a lead process if the regulator decides, on reasonable grounds, that the process creates a risk to the health of a worker in relation to blood lead levels of workers or airborne lead levels at the workplace.

A note provides that deciding a process to be a lead process under this regulation is a reviewable decision under regulation 676.

Regulation 394 – Meaning of *lead risk work*

Regulation 394 states that lead risk work means work carried out in a lead process which is likely to cause the blood lead level of a worker to exceed the thresholds outlined in this regulation.

Regulation 395 – Duty to give information about health risks of lead process

Regulation 395 requires a PCBU carrying out a lead process to give information about the lead process to a person before being engaged as a worker to carry out the lead process or to a worker in the circumstances set out in this regulation. The information must contain the health risks and toxic effects of exposure to lead and the need for and details of health monitoring under Division 4 of Part 7.2.

Division 2 – Control of risk

This Division refers to the term ‘lead process’, which is defined in regulation 392.

Regulation 396 – Containment of lead contamination

Regulation 396 requires the PCBU to ensure, as far as is reasonably practicable, that contamination by lead is confined to a lead process area at the workplace.

Regulation 397 – Cleaning methods

Regulation 397 states that the PCBU must ensure that a lead process area at the workplace is kept clean and that the cleaning methods do not create a risk to the health of persons in the immediate vicinity of the area and do not have the potential to spread the contamination of lead.

Regulation 398 – Prohibition on eating, drinking and smoking

Regulation 398 provides that a PCBU must take reasonable steps to ensure that a person does not eat, drink, chew gum, smoke or carry materials used for smoking in a lead process area at the workplace. The PCBU must provide workers with an eating and drinking area that, so far as is reasonably practicable, cannot be contaminated with lead from a lead process.

Regulation 399 – Provision of changing and washing facilities

Regulation 399 requires a PCBU to provide and maintain changing rooms, washing, showering and toilet facilities in good working order at the workplace to minimise secondary lead exposure from contaminated clothing, to minimise the ingestion of lead and to avoid the spread of lead contamination. The PCBU must ensure, as far as is reasonably practicable, that workers remove clothing and equipment contaminated with lead, and wash their hands and faces, before entering an eating or drinking area at the workplace.

Regulation 400 – Laundering, disposal and removal of personal protective equipment

Regulation 400 provides that a PCBU must ensure that personal protective equipment likely to be contaminated with lead dust must be sealed in a container and disposed of at the completion of the lead process work at a site equipped to accept lead-contaminated equipment. If it is not reasonably practicable to dispose of the personal protective equipment that is clothing, the clothing should be laundered at a laundry equipped to launder lead-contaminated clothing or be kept in a sealed container until it is re-used for lead process work. If it is not reasonably practicable to dispose of the personal protective equipment that is not clothing, such as work boots, the personal protective equipment should be decontaminated before it is removed from the lead process area or be kept in a sealed container until it is re-used for lead process work.

Subregulation 400(2) states that the PCBU must ensure that the sealed container referred to in subregulation 400(1) is decontaminated before being removed from the lead process area. Under regulation 335, the container must also be labelled to indicate the presence of lead. The PCBU must take all reasonable steps to

ensure that clothing contaminated with lead-dust is not removed from the workplace unless it is to be laundered in accordance with this regulation or disposed of.

This regulation refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Regulation 401 – Review of control measures

Regulation 401 requires a PCBU to review and, if necessary, revise any measures implemented to control the health risks from exposure to lead at the workplace in the circumstances set out in this regulation. A control measure should be revised if it does not control the risks it was implemented to control and in response to the situations described in this regulation. Otherwise a review of risk control measures should occur every 5 years.

Subregulation 401(3) allows a health and safety representative to request a review of a control measure if they reasonably believe that any of the circumstances outlined in subregulation 401(1) affects or may affect the health and safety of a member of the work group and the PCBU has not adequately reviewed the control measure in response to the circumstance.

Division 3 – Lead risk work

This Division refers to the term ‘lead process’, which is defined in regulation 392.

Regulation 402 – Identifying lead risk work

Regulation 402 states that a PCBU must assess each lead process carried out at the workplace to determine whether lead risk work is carried out in the process. The assessment of lead process must include the matters listed in this regulation. The assessment of a lead process must not take into account the effect of using personal protective equipment on the health and safety of workers. If the PCBU is unable to determine whether lead risk work is carried out, the process is taken to include lead risk work unless determined otherwise.

This regulation refers to the term ‘biological monitoring’, which is defined in regulation 5.

This regulation refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Regulation 403 – Notification of lead risk work

Regulation 403 requires a PCBU who has determined that lead risk work is carried out at the workplace must give the regulator written notice within 7 days of the determination. The notice must state the type of lead process that includes lead risk work. The PCBU must keep a copy of the notice given to the regulator and

ensure a copy is readily accessible to a worker likely to be exposed to lead and to the worker's health and safety representative.

If an emergency service organisation, when rescuing or providing first aid to a person determines that the work is lead risk work, subregulation 403(4) requires the emergency service organisation to give notice to the regulator.

Note: Regulation 752 provides that the duties imposed on a person under regulation 403 do not apply until 1 January 2013.

Regulation 404 – Changes to information in notification of lead risk work

Regulation 404 states that a PCBU must give the regulator written notice of any change in the information provided in the original notice under regulation 403 before the change or as soon as practicable after the PCBU is aware of the change. The PCBU must keep a copy of the notice given to the regulator while the lead risk work is carried out and ensure a copy is readily accessible to a worker likely to be exposed to lead and to the worker's health and safety representative

Division 4 – Health monitoring

Regulation 405 – Duty to provide health monitoring before first commencing lead risk work

Regulation 405 requires a PCBU to ensure that health monitoring is provided to a worker before the worker first commences lead risk work with the PCBU and one month after the worker commences work. If work is identified as lead risk work after a worker commences work, the PCBU must ensure that health monitoring of the worker is provided as soon as practicable after the lead risk work is identified and one month after the first monitoring of the worker.

Regulation 406 – Duty to ensure that appropriate health monitoring is provided

Regulation 406 means that a PCBU must ensure that health monitoring of a worker includes health monitoring of the type referred to in table 14.2 of Schedule 14 unless an equal or better type of health monitoring is available and its use is recommended by a registered medical practitioner with experience in health monitoring.

Regulation 407 – Frequency of biological monitoring

Regulation 407 requires a PCBU to arrange biological monitoring of each worker carrying out lead risk work over specific periods. The frequency of biological monitoring and the measurement of blood lead threshold levels for different categories of workers are outlined in this regulation. Subregulation 407(2) states that the PCBU must increase the frequency of biological monitoring of a worker

who carries out lead risk work if that activity is likely to significantly change the nature or increase the duration or frequency of the worker's lead exposure.

Subregulation 407(3) allows the regulator to determine a different frequency for biological monitoring of workers carrying out lead risk work under the circumstances set out in this regulation. The regulator must give the PCBU written notice of this determination under subregulation 407(3) within 14 days after making the determination. The PCBU must arrange biological monitoring to be carried out at the frequency stated in the regulator's determination.

A note provides that determining a different frequency for biological monitoring of workers at a workplace, or a class of workers, carrying out lead risk work under this regulation is a reviewable decision under regulation 676.

This regulation refers to the term 'biological monitoring', which is defined in regulation 5.

Regulation 408 – Duty to ensure health monitoring is supervised by registered medical practitioner with relevant experience

Regulation 408 requires the PCBU to ensure that the health monitoring of a worker referred to in this Division is carried out under the supervision of a registered medical practitioner with experience in health monitoring. The PCBU must consult the worker in relation to the selection of the registered medical practitioner.

Regulation 409 – Duty to pay costs of health monitoring

Regulation 409 provides for a PCBU to pay all expenses related to health monitoring referred to in this Division. This regulation also provides for an agreement to be made about sharing costs where more than one PCBU has a duty to provide health monitoring for a worker.

Regulation 410 – Information that must be provided to registered medical practitioner

Regulation 410 states that a PCBU commissioning health monitoring for a worker must provide the information outlined in this regulation to the registered medical practitioner supervising the health monitoring.

Regulation 411 – Duty to obtain health monitoring report

Regulation 411 states that a PCBU who commissioned health monitoring referred to in this Division is responsible for obtaining a health monitoring report from the registered medical practitioner who supervised the monitoring as soon as practicable after the monitoring has been carried out. The information to be included in the health monitoring report is outlined in this regulation.

This regulation refers to the term 'biological monitoring', which is defined in regulation 5.

Regulation 412 – Duty to give health monitoring report to worker

Regulation 412 provides that the PCBU who commissioned the health monitoring report must give a copy of the report to the worker as soon as practicable after the PCBU obtains the report.

Regulation 413 – Duty to give health monitoring report to regulator

Regulation 413 sets out the circumstances in which a PCBU who commissioned health monitoring for a worker must give a copy of the health monitoring report to the regulator.

Regulation 414 – Duty to give health monitoring report to relevant persons conducting business or undertakings

Regulation 414 states that the PCBU commissioning the health monitoring report under this Division must give a copy to all other PCBUs who have a duty to provide health monitoring.

Regulation 415 – Removal of worker from lead risk work

Regulation 415 requires a PCBU to immediately remove a worker from carrying out lead risk work if biological monitoring of the worker shows that the worker's blood lead level is at or more than:

- for females not of reproductive capacity and males – 50µg/dL (2.42µmol/L); or
- for females of reproductive capacity – 20µg/dL (0.97µmol/L); or
- for females who are pregnant or breastfeeding – 15µg/dL (0.72µmol/L).

In addition, the PCBU must immediately remove the worker if the registered medical practitioner recommends that the worker must be removed from lead risk work or there is an indication that a risk control measure has failed and the worker's blood lead level is likely to reach the relevant level for the worker identified in the regulation. The PCBU must notify the regulator as soon as practicable if a worker is removed from carrying out lead risk work under subregulation 415(1).

This regulation refers to the term 'biological monitoring', which is defined in regulation 5.

Regulation 416 – Duty to ensure medical examination if worker removed from lead risk work

Regulation 416 requires the PCBU to arrange for a worker who is removed from lead risk work under regulation 415 to be medically examined by a registered medical practitioner with experience in health monitoring. The PCBU must consult the worker in the selection of the registered medical practitioner.

Regulation 417 – Return to lead risk work after removal

Regulation 417 states that a PCBU who expects a worker, removed from lead risk work under regulation 415, to return to lead risk work must arrange for health monitoring to take place by a registered medical practitioner with experience in health monitoring. The frequency of health monitoring is decided by the practitioner to determine whether the worker's blood lead level is low enough for the worker to return to carrying out lead risk work.

Subregulation 417(3) prevents the PCBU from allowing the working to return to lead risk work until the worker's blood lead level is less than:

- for females not of reproductive capacity and males – 40µg/dL (1.93µmol/L);
or
- for females of reproductive capacity – 10µg/dL (0.48µmol/L).

In addition, the registered medical practitioner with experience in health monitoring must be satisfied that the worker is fit to return to lead risk work.

Regulation 418 – Health monitoring records

Regulation 418 requires the PCBU to ensure that health monitoring reports in relation to a worker were kept as a confidential record for at least 30 years after the record is made and must not be disclosed to someone else without the worker's written consent except in the circumstances set out in the regulation.

Chapter 8 – Asbestos

The duties in this Chapter will commence on 1 January 2013 to provide PCBUs and other persons with a 12 month transition period.

This Chapter prohibits a PCBU from carrying out, directing, or allowing a worker to carry out, work involving asbestos, other than in circumstances permitted under the Regulations. It imposes a general duty upon PCBUs at a workplace to eliminate exposure to airborne asbestos at the workplace, so far as is reasonably practicable. It imposes duties upon a person with management or control of a workplace to identify asbestos or asbestos containing material (ACM) at the workplace, to prepare and keep an asbestos register and an asbestos management plan and, prior to demolition or refurbishment, to identify and remove asbestos and ensure emergency procedures are developed. It imposes duties upon a PCBU about training workers and health monitoring. It requires notification to the regulator and other persons of asbestos removal work by the person with management or control of the workplace, asbestos removalists and licensed removalists, and requires that work to be licensed.

A licensed asbestos removalist is a person who is licensed under a corresponding State or Territory law. The Commonwealth regulator will rely on the states and territories to licence asbestos removalists and assessors.

Duty holders under this Chapter may have health and safety duties under sections 19, 20, 21 or 29 of the WHS Act, and duties under Part 5 Division 1 and Division 2 of the WHS Act to consult with other duty holders and workers about matters under this Chapter. This Chapter prescribes requirements for authorisation of work for section 43 of the WHS Act and required qualifications for section 44 of the WHS Act.

Section 27 of the WHS Act applies to officers in respect of this Chapter.

There are additional regulations about the management of risks in Part 3.1 – Managing risks to health and safety, and about general workplace management and provision of information about construction work that involves or is likely to involve asbestos in Chapter 6 – Construction work.

Defined terms in Chapter 1 which are relevant to this Chapter include:

- *asbestos*
- *asbestos containing material (ACM)*
- *asbestos-contaminated dust or debris (ACD)*
- *asbestos-related work*
- *asbestos removal licence*
- *asbestos removal work*
- *asbestos removalist*
- *asbestos waste*
- *certification*
- *certified safety management system*

- *class*
- *Class A asbestos removal licence*
- *Class A asbestos removal work*
- *Class B asbestos removal licence*
- *Class B asbestos removal work*
- *competent person*
- *control measure*
- *exposure standard*
- *external review*
- *friable asbestos*
- *genuine research*
- *GHS*
- *health monitoring*
- *independent*
- *in situ asbestos*
- *licence holder*
- *licensed asbestos assessor*
- *licensed asbestos removalist*
- *licensed asbestos removal work*
- *membrane filter method*
- *NATA*
- *NATA-accredited laboratory*
- *naturally occurring asbestos*
- *non-friable asbestos*
- *person with management or control of a workplace*
- *personal protective equipment*
- *registered medical practitioner*
- *relevant fee*
- *respirable asbestos fibre*
- *specified VET course, and*
- *VET course.*

Part 8.1 – Prohibitions and authorised conduct

This Part gives effect to the national prohibition on the use of asbestos or asbestos containing material (ACM) unless it is in circumstances covered by one of the exceptions.

Regulation 419 – Work involving asbestos or ACM – prohibitions and exceptions

Regulation 419 sets out the prohibition on work involving asbestos and exceptions where the prohibition does not apply. PCBUs and their workers must not carry out work involving asbestos unless it is in circumstances which are permitted by one

or more of the exceptions. Examples of these exceptions include genuine research and analysis, the transport and disposal of asbestos waste in accordance with the relevant legislation, and laundering asbestos contaminated clothing in accordance with the regulations.

This regulation refers to the terms ‘bulk’ and ‘genuine research’, which are defined in regulation 5.

Part 8.2 – General duty

This Part provides a general duty to ensure that the exposure standard for asbestos is not exceeded at a workplace.

Regulation 420 – Exposure to airborne asbestos at workplace

Regulation 420 requires a PCBU to ensure that exposure of persons at a workplace to airborne asbestos is eliminated or minimised, so far as is reasonably practicable. In any case, the PCBU must ensure that the exposure standard for asbestos is not exceeded at the workplace. The exposure standard is contained in the *Workplace Exposure Standard for Airborne Contaminants* published by Safe Work Australia and is available on its website.

Subregulation 420(3) provides for instances where this regulation does not apply in relation to an asbestos removal area.

Part 8.3 – Management of asbestos and associated risks

This Part sets out the requirements for duty holders to manage the risk associated with any asbestos at a workplace other than naturally occurring asbestos. This Part has requirements for identifying asbestos, indicating the presence of asbestos in the workplace, and maintaining asbestos registers and asbestos management plans for workplaces.

Regulation 421 – Application of Part 8.3

Regulation 421 specifies that this Part does not apply to naturally occurring asbestos. Specific provisions dealing with naturally occurring asbestos are contained in Part 8.4.

Regulation 422 – Asbestos to be identified or assumed at workplace

Regulation 422 requires a person with management or control of a workplace to ensure, so far as is reasonably practicable, that all asbestos or ACM at the workplace is identified by a competent person. In this provision, a ‘competent person’ means a person who has acquired through training, qualification or experience the knowledge and skills to carry out the task.

This regulation also provides that if the material cannot be identified but the competent person reasonably believes the material is asbestos or ACM, the duty holder must assume the material is asbestos. Inaccessible parts of the workplace likely to contain asbestos or ACM must also be assumed to have asbestos present.

Subregulation 422(3) provides that the requirement to identify asbestos set out in subregulation 422(1) does not apply if the person with management or control of the workplace assumes that asbestos or ACM is present or has reasonable grounds to believe that asbestos or ACM is not present.

A 'person with management or control of a workplace' has the same meaning as section 20 of the WHS Act.

Regulation 423 – Analysis of sample

Regulation 423 provides that asbestos may be identified by analysing a sample. Where a sample is analysed, this can only be performed by laboratories specified in subregulation 423(2).

Regulation 424 – Presence and location of asbestos to be indicated

Regulation 424 sets out the requirements needed to ensure that the presence and location of asbestos at the workplace is clearly indicated, and, if it is reasonably practicable, to indicate the presence and location of asbestos or ACM by a label.

Regulation 425 – Asbestos register

Regulation 425 sets out the requirements for a person with management or control of a workplace to prepare and keep up to date an asbestos register at the workplace. This regulation also specifies what must be recorded in the asbestos register. The duty holder is not required to prepare an asbestos register for a workplace if a register has already been prepared for that workplace.

Subregulation 425(6) specifies that these requirements do not apply to a workplace if:

- (a) the workplace is a building that was constructed after 31 December 2003, the date on which the national ban of asbestos came into effect; and
- (b) no asbestos has been identified at the workplace; and
- (c) no asbestos is likely to be present at the workplace from time to time.

Note: Regulation 753 provides that the duties imposed on a person under regulation 425 do not apply until 1 January 2013.

Regulation 426 – Review of asbestos register

Regulation 426 requires a person with management or control of a workplace where an asbestos register is kept to ensure the register is reviewed and updated in specified circumstances, including if further asbestos is identified at the

workplace or if asbestos is removed from, disturbed, sealed or enclosed at the workplace.

Note: Regulation 753 provides that the duties imposed on a person under regulation 426 do not apply until 1 January 2013.

Regulation 427 – Access to asbestos register

Regulation 427 provides for a person with management or control of a workplace where an asbestos register is kept to ensure that the register is readily accessible to certain persons identified in subregulation 427(1). In addition, subregulation 427(2) requires the person with management or control of the workplace to give a copy of the asbestos register to a PCBU carrying out, or intending to carry out, work at the workplace that involves a risk of exposure to airborne asbestos.

Note: Regulation 753 provides that the duties imposed on a person under regulation 427 do not apply until 1 January 2013.

Regulation 428 – Transfer of asbestos register by person relinquishing management or control

Regulation 428 requires that if a person with management or control of a workplace plans to relinquish management or control, the person must ensure, so far as is reasonably practicable, that the asbestos register is given to any new person assuming management or control of the workplace.

Note: Regulation 753 provides that the duties imposed on a person under regulation 428 do not apply until 1 January 2013.

Regulation 429 – Asbestos management plan

Regulation 429 specifies, when an asbestos management plan is required, what the person with management or control of the workplace must ensure is included in the plan and the persons who must have ready access to the plan.

Note: Regulation 753 provides that the duties imposed on a person under regulation 429 do not apply until 1 January 2013.

Regulation 430 – Review of asbestos management plan

Regulation 430 requires a person with management or control of a workplace that has an asbestos management plan to ensure that the plan is reviewed and updated in specified circumstances, such as if there is a review of the asbestos register or a control measure, if asbestos is removed or disturbed at the workplace, if an HSR requests a review or once every 5 years.

Note: Regulation 753 provides that the duties imposed on a person under regulation 430 do not apply until 1 January 2013.

Part 8.4 – Management of naturally occurring asbestos

This Part sets out the requirements for duty holders at workplaces where naturally occurring asbestos is likely to be encountered. This Part provides for asbestos management plans and training for workers in these circumstances.

Regulation 431 – Naturally occurring asbestos

Regulation 431 requires a person with management or control of a workplace to manage the risks associated with naturally occurring asbestos at the workplace.

‘Naturally occurring asbestos’ is defined in regulation 5.

Note: Subregulation 754(1) provides that the duties imposed on a person under regulation 431 do not apply until 1 January 2013.

Regulation 432 – Asbestos management plan

Regulation 432 specifies the requirements for an asbestos management plan if naturally occurring asbestos is identified at a workplace or is likely to be present at a workplace. The person with management or control of the workplace must ensure that the asbestos management plan is kept up to date, covers the matters outlined in subregulation 432(3) and is readily accessible to persons specified in subregulation 432(4).

Note: Subregulation 754(1) provides that the duties imposed on a person under regulation 432 do not apply until 1 January 2013.

Regulation 433 – Review of asbestos management plan

Regulation 433 requires a person with management or control of a workplace to have an asbestos management plan about naturally occurring asbestos and to ensure that the plan is reviewed and revised if the plan is no longer adequate for managing naturally occurring asbestos at the workplace.

Note: Subregulation 754(1) provides that the duties imposed on a person under regulation 433 do not apply until 1 January 2013.

Regulation 434 – Training in relation to naturally occurring asbestos

Regulation 434 provides that training required under regulation 445 includes training in the hazards and risks associated with naturally occurring asbestos for workers who carry out work where naturally occurring asbestos is likely to be found.

Note: Subregulation 754(2) provides that the duties imposed on a person under regulation 434 do not apply until 1 July 2012.

Part 8.5 – Asbestos at the workplace

This Part sets out the requirements for duty holders in relation to health monitoring for certain workers. This Part also provides for training for workers who are

performing asbestos removal work or asbestos-related work not covered within training requirements for licensed asbestos removal work. This part also places prohibitions and limitations on the use of certain equipment on asbestos or ACM.

Division 1 – Health monitoring

Regulation 435 – Duty to provide health monitoring

Regulation 435 specifies the circumstances when a PCBU must ensure that health monitoring is provided to certain workers carrying out licensed asbestos removal work, other ongoing asbestos removal work or asbestos-related work. The PCBU is also required to ensure the worker is informed of any health monitoring requirements before the worker carries out any work that may expose the worker to asbestos.

Regulation 436 – Duty to ensure that appropriate health monitoring is provided

Regulation 436 sets out the matters that the PCBU must ensure are included in health monitoring provided to the worker.

Regulation 437 – Duty to ensure health monitoring is supervised by registered medical practitioner with relevant experience

Regulation 437 requires the PCBU to ensure the health monitoring referred to in regulation 435 is carried out under the supervision of a registered medical practitioner with experience in health monitoring. This regulation also requires the PCBU to consult the worker in relation to selecting the registered medical practitioner.

Regulation 438 – Duty to pay costs of health monitoring

Regulation 438 requires a PCBU to pay all expenses relating to health monitoring. This regulation also provides for an agreement to be made about sharing costs where more than one PCBU has a duty to provide health monitoring for a worker.

Regulation 439 – Information that must be provided to registered medical practitioner

Regulation 439 requires the PCBU commissioning health monitoring for a worker to provide certain information to the registered medical practitioner supervising the health monitoring, including the name and address of the PCBU, the name and date of birth of the worker, the work that triggered the requirement for health monitoring and how long the worker has been carrying out the work.

Regulation 440 – Duty to obtain health monitoring report

Regulation 440 provides that the PCBU commissioning health monitoring for a worker must take all reasonable steps to obtain a health monitoring report from the

registered medical practitioner as soon as practicable after the monitoring is carried out. This regulation also specifies the information to be included in the health monitoring report, including any advice that the test results indicate that the worker may have contracted a disease, injury or illness; any recommendation that the PCBU take remedial action; and whether medical counselling is required for the worker.

Regulation 441 – Duty to give health monitoring report to worker

Regulation 441 requires the PCBU who commissioned the health monitoring for a worker to give a copy of the health monitoring report to the worker as soon as practicable after the person obtains the report.

Regulation 442 – Duty to give health monitoring report to regulator

Regulation 442 sets out the circumstances in which a PCBU who commissioned health monitoring for a worker must give a copy of the health monitoring report to the regulator. This includes when the test indicates the worker may have contracted a disease out of the work that triggered the requirement for the report, or when any recommendation is given for the PCBU to take remedial measures, including whether the worker can continue to carry out the work referred to in regulation 435.

Regulation 443 – Duty to give health monitoring report to relevant persons conducting businesses or undertakings

Regulation 443 requires the PCBU who commissioned health monitoring for a worker to give a copy of the health monitoring report to all other PCBUs who have a duty to provide health monitoring for the worker as soon as practicable after obtaining the report.

Regulation 444 – Health monitoring records

Regulation 444 places requirements on the PCBU in relation to confidentiality of health monitoring reports and keeping records for at least 40 years after the record is made.

Subregulation 444(2) provides that the PCBU must ensure that health monitoring reports or results of a worker are not disclosed to another person without the worker's written consent.

Division 2 – Training

Regulation 445 – Duty to train workers about asbestos

Regulation 445 places specific requirements on PCBUs regarding training for certain workers about identification, safe handling and suitable control measures for asbestos. This training is required for workers who may be involved in asbestos removal work or carrying out asbestos-related work outside the scope of

licensed asbestos removal work. Training requirements for workers carrying out licensed asbestos removal work are specified in regulation 460.

Regulation 445 also specifies record keeping requirements in relation to the training undertaken by the worker.

Note: Regulation 755 provides that the duties imposed on a person under regulation 445 do not apply until 1 July 2012.

Division 3 – Control on use of certain equipment

Regulation 446 – Duty to limit use of equipment

Regulation 446 prohibits PCBUs and their workers from using either high-pressure water spray or compressed air on asbestos or ACM. This regulation also places limitations on the use of power tools, brooms and other implements that cause the release of airborne asbestos. A PCBU must not use, or direct or allow a worker to use this equipment on asbestos or ACM, unless the equipment is controlled in a way specified in subregulation 446(4).

Part 8.6 – Demolition and refurbishment

This Part sets out the requirements for duty holders in relation to the demolition or refurbishment of pre-31 December 2003 structures and plant at a workplace.

Regulation 447 – Application of Part 8.6

Regulation 447 provides that this Part applies to the demolition or refurbishment of a structure or plant constructed before 31 December 2003, the date on which the national ban of asbestos took effect. It also specifies that ‘demolition or refurbishment’ does not include minor or routine maintenance work, or other minor work.

Regulation 448 – Review of asbestos register

Regulation 448 sets out the requirements for the person with management or control of a workplace to review and revise an asbestos register for the workplace before demolition or refurbishment is carried out.

Regulation 449 – Duty to give asbestos register to person conducting business or undertaking of demolition or refurbishment

Regulation 449 requires the person with management or control of a workplace to ensure the PCBU who is carrying out demolition or refurbishment is given a copy of the asbestos register before demolition or refurbishment work starts.

Regulation 450 – Duty to obtain asbestos register

Regulation 450 requires the PCBU who is carrying out demolition or refurbishment work at a workplace to obtain a copy of the asbestos register before the work starts.

Regulation 451 – Determining presence of asbestos or ACM

Regulation 451 provides that where there is no asbestos register for a structure or plant to be demolished or refurbished at a workplace, the demolition or refurbishment must not start until the structure or plant has been inspected to determine whether asbestos or ACM is fixed or installed in the structure or plant. If asbestos is determined or assumed to be fixed or installed in the structure or plant, the PCBU who is to carry out the demolition or refurbishment must inform the person with management or control of the workplace. If the workplace is domestic premises, the PCBU must inform both the occupier and the owner of the domestic premises.

Regulation 452 – Identification and removal of asbestos before demolition

Regulation 452 sets out the requirements for identifying and, as far as reasonably practicable, removing asbestos before demolition starts. This provision does not apply to an emergency to which regulation 454 applies or demolition of domestic premises, which is dealt with in regulations 453 and 455.

Regulation 453 – Identification and removal of asbestos before demolition of domestic premises

Regulation 453 provides that a PCBU carrying out demolition of domestic premises must ensure that asbestos that is likely to be disturbed by the demolition is identified, and so far as is reasonably practicable, removed before demolition starts. Subregulations 453(2) and (3) set out the instances in which the regulation does not apply.

Regulation 454 – Emergency procedure

Regulation 454 specifies what must happen where a structure or plant is structurally unsound or its collapse is imminent. This provision does not apply to domestic premises as demolition of domestic premises in an emergency is dealt with in regulation 455.

Regulation 454 also specifies the responsibilities of the person with management or control of the workplace, which includes notifying the regulator before demolition starts.

Regulation 455 – Emergency procedure – domestic premises

Regulation 455 specifies what must happen if a structure or plant at domestic premises is structurally unsound or its collapse is imminent. This regulation sets

out the responsibilities of the PCBU who is to carry out the demolition, which includes notifying the regulator before demolition starts.

Regulation 456 – Identification and removal of asbestos before refurbishment

Regulation 456 sets out the requirements for a person with management or control of a workplace, or structure or plant, if the structure or plant is to be refurbished. The person must ensure that all asbestos likely to be disturbed by the refurbishment is identified, and so far as is reasonably practicable, removed before refurbishment starts. This regulation does not apply to domestic premises, which are dealt with in regulation 457.

Regulation 457 – Refurbishment of domestic premises

Regulation 457 requires a PCBU who is to carry out refurbishment of domestic premises to ensure that all asbestos likely to be disturbed by the refurbishment is identified, and so far as is reasonably practicable, removed before refurbishment starts.

Part 8.7 – Asbestos removal work

This Part sets out the requirements for duty holders in relation to carrying out asbestos removal work at a workplace.

A note informs the reader that some duties in this Part are on licensed asbestos removalists and others apply to asbestos removalists generally.

Regulation 458 – Duty to ensure asbestos removalist is licensed

Regulation 458 sets out the requirements for a PCBU commissioning the removal of asbestos to ensure that certain asbestos removal work is carried out by a licensed asbestos removalist. Where the asbestos is not required to be removed by a licensed asbestos removalist, the PCBU must ensure the work is carried out by a competent person who has been trained in accordance with the regulation.

Regulation 459 – Asbestos removal supervisor must be present or readily available

Regulation 459 sets out the requirements for a licensed asbestos removalist to ensure asbestos removal work is supervised by a nominated asbestos removal supervisor. For asbestos removal work requiring a Class A licence, the supervisor must be present at the asbestos removal area whenever the asbestos removal work is being carried out. For asbestos removal work requiring a Class B licence, the supervisor must be readily available to a worker carrying out the asbestos removal work whenever the work is being carried out.

Regulation 460 – Asbestos removal worker must be trained

Regulation 460 specifies the requirements for licensed asbestos removalists to ensure workers do not carry out licensed asbestos removal work unless the worker holds a certification in relation to the specified VET course for asbestos removal relevant to the class of licensed asbestos removal work being carried out. In addition, this regulation requires a licensed asbestos removalist to provide appropriate training to a worker carrying out licensed asbestos removal work to ensure it is carried out in accordance with the asbestos removal control plan.

This regulation refers to the term ‘certification’, which is defined in regulation 5.

Regulation 461 – Licensed asbestos removalist must keep training records

Regulation 461 requires a licensed asbestos removalist to keep records of a worker’s training and ensure training records are readily accessible at the asbestos removal area. The records must be kept for 5 years after the day the worker stopped carrying out licensed asbestos removal work for the removalist.

Regulation 462 – Duty to give information about health risks of licensed asbestos removal work

Regulation 462 provides for licensed asbestos removalists to give information about health risks and health monitoring to a person before the person is engaged to carry out licensed asbestos removal work.

Regulation 463 – Asbestos removalist must obtain register

Regulation 463 requires a licensed asbestos removalist to obtain a copy of an asbestos register for a workplace before the removalist carries out asbestos removal work. This regulation does not apply if the asbestos removal work is to be carried out at domestic premises.

Regulation 464 – Asbestos removal control plan

Regulation 464 requires a licensed asbestos removalist to prepare an asbestos removal control plan for licensed asbestos removal work. This regulation sets out what an asbestos control plan must include and also requires the licensed asbestos removalist to give a copy of the plan to the person who commissioned the licensed asbestos removal work.

This regulation refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Regulation 465 – Asbestos removal control plan to be kept and available

Regulation 465 requires a licensed asbestos removalist to ensure that a copy of the asbestos removal control plan is kept and requires that it must be kept until the asbestos removal work to which it relates is completed, or longer, if a notifiable incident occurs in connection with the work to which the plan relates.

Regulation 465 also sets out to whom a copy of the plan must be made readily accessible.

Regulation 466 – Regulator must be notified of asbestos removal

Regulation 466 requires licensed asbestos removalists to notify the regulator at least 5 days before starting licensed asbestos removal work.

Licensed asbestos removal work can start immediately if there is a sudden and unexpected event that may cause persons to be exposed to respirable asbestos fibres or an unexpected breakdown of an essential service that requires immediate rectification. If asbestos must be removed in either of these circumstances, the licensed asbestos removalist must give notice to the regulator immediately by telephone and in writing within 24 hours after notification by telephone. This regulation specifies what information the licensed asbestos removalist must provide when notifying the regulator of licensed asbestos removal work.

This regulation refers to the term ‘clearance inspection’, which is defined in regulation 473.

Regulation 467 – Licensed asbestos removalist must tell certain persons about intended asbestos removal work

Regulation 467 identifies the persons who must be informed about intended asbestos removal work by the licensed asbestos removalist and the information that must be provided.

Regulation 468 – Person with management or control of workplace must tell persons about asbestos removal work

Regulation 468 specifies that if a person with management or control of a workplace has been informed about intended asbestos removal work, the person must advise certain persons about the asbestos removal work and when it will start. In addition, the person must take reasonable steps to ensure the same information is provided to anyone conducting a business or undertaking at, or in the immediate vicinity of, the workplace or to anyone occupying premises in the immediate vicinity of the workplace.

Regulation 469 – Signage and barricades for asbestos removal work

Regulation 469 sets out the responsibilities of an asbestos removalist in relation to signs and barricades when asbestos removal work is being carried out.

Regulation 470 – Limiting access to asbestos removal area

Regulation 470 places requirements on certain duty holders to ensure, so far as is reasonably practicable, that only certain persons have access to an asbestos removal area. This regulation also requires persons who have access to an asbestos removal area to comply with directions by the licensed asbestos removalist carrying out the licensed asbestos removal work.

Regulation 471 – Decontamination facilities

Regulation 471 places requirements on an asbestos removalist to ensure facilities are available to decontaminate the asbestos removal area, plant used in that area, workers carrying out asbestos removal work and any other persons who have authorised access to the asbestos removal area. This regulation also requires an asbestos removalist to ensure that anything which is likely to be contaminated with asbestos is not removed from the asbestos removal area unless it is decontaminated first or properly sealed in a container that has been decontaminated and labelled.

Regulation 472 – Disposing of asbestos waste and contaminated personal protective equipment

Regulation 472 requires an asbestos removalist to dispose of asbestos waste properly. It specifies requirements in relation to the disposal of personal protective equipment, and in certain circumstances, the storage of personal protective equipment in sealed containers until it is re-used for asbestos removal work.

This regulation refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Regulation 473 – Clearance inspection

Regulation 473 sets out the requirements for a clearance inspection of an asbestos removal area. For licensed asbestos removal work at a workplace, responsibility for ensuring a clearance inspection is carried out rests with the person who commissioned the licensed asbestos removal work. However, for licensed asbestos removal work at domestic premises, this responsibility is placed on the licensed asbestos removalist.

For Class A asbestos removal work, the clearance inspection must be carried out by an independent licensed asbestos assessor. For Class B asbestos removal work, the clearance inspection must be carried out by an independent competent person.

‘Independent’ and ‘competent person’ are defined terms. If it is not reasonably practicable for the licensed asbestos assessor or competent person to be independent, an application may be made to the regulator for an exemption from the requirement that the assessor or competent person be independent.

This regulation refers to the term ‘clearance inspection’, which is defined in regulation 473.

Regulation 474 – Clearance certificates

Regulation 474 sets out the requirements in relation to clearance certificates following a clearance inspection carried out under regulation 473. These requirements are placed on the licensed asbestos assessor or competent person who carried out the clearance inspection.

This regulation refers to the term ‘clearance inspection’, which is defined in regulation 473.

Part 8.8 – Asbestos removal requiring Class A licence

This Part has specific requirements for asbestos removal work requiring a Class A asbestos removal licence. These includes air monitoring requirements and the action that duty holders have to take if air monitoring shows specified levels are exceeded.

Regulation 475 – Air monitoring – asbestos removal requiring Class A licence

Regulation 475 specifies the air monitoring requirements associated with asbestos removal work requiring a Class A asbestos removal licence. This includes when air monitoring must be carried out by a PCBU and to whom results of air monitoring must be given. This regulation also specifies that the independent licensed assessor must undertake air monitoring using the membrane filter method, which is defined.

Regulation 476 – Action if respirable asbestos fibre level too high

Regulation 476 specifies the action that must be taken by the licensed asbestos removalist if respirable asbestos fibre levels exceed specified levels during asbestos removal work requiring a Class A asbestos removal licence.

Regulation 477 – Removing friable asbestos

Regulation 477 provides for a licensed asbestos removalist to take specific measures, so far as is reasonably practicable, when removing friable asbestos. This regulation also sets out requirements regarding any enclosures used in removing friable asbestos.

Part 8.9 – Asbestos-related work

This Part sets out requirements for duty holders in relation to asbestos-related work carried out at a workplace.

Regulation 478 – Application of Part 8.9

Regulation 478 provides that this Part applies to asbestos-related work, which is defined.

Regulation 479 – Uncertainty as to presence of asbestos

Regulation 479 requires a PCBU who is unsure whether work to be carried out is asbestos-related work to assume either that asbestos is present or ensure a sample is analysed in order to determine if asbestos is present.

Regulation 480 – Duty to give information about health risks of asbestos-related work

Regulation 480 places responsibilities on a PCBU to give information about health risks and health monitoring to a person before the person is engaged to carry out asbestos-related work for the business or undertaking.

Regulation 481 – Asbestos-related work to be in separate area

Regulation 481 sets out requirements for the PCBU involved in carrying out asbestos-related work to ensure the asbestos-related work area is separated from other work areas, and that signs and barricades are used to indicate where the asbestos-related work is being carried out.

Regulation 482 – Air monitoring

Regulation 482 specifies the requirements for air monitoring of an asbestos-related work area if there is uncertainty as to whether the exposure standard is likely to be exceeded. This regulation also provides for the PCBU to take action in providing specific information to workers, and so far as is reasonably practicable, to other persons who were in the work area at the time, if it is determined that the exposure standard has been exceeded.

Regulation 483 – Decontamination facilities

Regulation 483 requires a PCBU carrying out asbestos-related work to ensure facilities are available to decontaminate the asbestos-related work area, the plant used in that area, and workers carrying out asbestos-related work. This regulation also requires the PCBU to ensure that anything likely to be contaminated with asbestos is not removed from the asbestos-related work area unless it is decontaminated first or properly sealed in a container that has been decontaminated and labelled.

Regulation 484 – Disposing of asbestos waste and contaminated personal protective equipment

Regulation 484 sets out the requirements for a PCBU, carrying out asbestos-related work, to dispose of asbestos waste properly. It also specifies the requirements for the PCBU in relation to the disposal of personal protective equipment, and, in certain circumstances, the storage of personal protective equipment in sealed containers until it is re-used for asbestos removal work.

This regulation refers to the term ‘personal protective equipment’, which is defined in regulation 5 to mean anything used or worn by a person to minimise risk to the person’s health and safety, including air supplied respiratory equipment.

Part 8.10 – Licensing of asbestos removalists and asbestos assessors

This Part requires a person to be licensed to carry out certain asbestos removal work.

Division 1 – Asbestos removalists – requirement to be licensed

Regulation 485 – Requirement to hold Class A asbestos removal licence

Regulation 485 provides that a person must not carry out certain friable asbestos removal work at a workplace unless they, or the person they work for, hold a Class A asbestos removal licence. This regulation also provides that a PCBU must not direct or allow a worker to carry out certain friable asbestos removal work unless the PCBU holds a Class A asbestos removal licence.

Regulation 486 – Exception to requirement to hold a Class A asbestos removal licence

Regulation 486 provides an exception permitting removal of asbestos-contaminated dust or debris in specific circumstances without holding a Class A asbestos removal licence.

Regulation 487 – Requirement to hold Class B asbestos removal licence

Regulation 487 provides that a person must not carry out certain non-friable asbestos removal work at a workplace unless they, or the person they work for, hold either a Class A or Class B asbestos removal licence. This regulation also provides that a PCBU must not direct or allow a worker to carry out certain non-friable asbestos removal work unless the PCBU holds a Class A or Class B asbestos removal licence.

Regulation 488 – Recognition of asbestos removal licences in other jurisdictions

Regulation 488 defines an asbestos removal licence to mean an asbestos removal licence granted under a corresponding WHS law that is being used in accordance with the terms and conditions under which it was granted.

Division 2 – Asbestos assessors – requirement to be licensed

Regulation 489 – Requirement to hold asbestos assessor licence

Regulation 489 provides that certain functions associated with Class A asbestos removal work can only be carried out by a person who holds an asbestos assessor licence. These functions are air monitoring, clearance inspections and issuing clearance certificates in relation to Class A asbestos removal work.

This regulation refers to the term 'clearance inspection', which is defined in regulation 473.

Regulation 490 – Recognition of asbestos assessor licences in other jurisdictions

Regulation 490 specifies that an asbestos assessor licence is a licence that is granted under a corresponding WHS law and is being used in accordance with the terms and conditions under which it was granted.

Regulation 529 – Work must be supervised by named supervisor

Regulation 529 provides that a person who holds an asbestos removal licence must ensure that asbestos removal work that is authorised by the licence is supervised by a supervisor that is named to the regulator by the licence holder.

Chapter 9 – Major hazard facilities

This Chapter regulates the operation of major hazard facilities, as defined in the Regulations. A major hazard facility (MHF) is a facility at which chemicals listed in Schedule 15 of the Regulations are present or likely to be present in a quantity that exceeds the threshold quantity listed in the Schedule, or that is determined by the regulator to be an MHF.

This Chapter sets out how a workplace may be determined to be an MHF, how a facility is licensed and what the obligations are for certain persons such as the operator, once the facility is licensed as an MHF. Specifically, this Chapter:

- requires the operator of a workplace which may be a facility to notify the regulator so that the workplace may be assessed and an authorisation process may begin;
- imposes duties upon operators of a determined MHF during the determination period to prepare a safety case outline, undertake hazard identification and risk control and prepare and test an emergency plan, and establish safety management systems in consultation with workers;
- requires MHFs to be licensed, and provides for the licensing of facilities; and
- imposes duties upon operators of a licensed MHF to provide information to visitors, the local community and the local authority.

Duty holders under this Chapter may have health and safety duties under sections 19, 20 or 28 of the WHS Act, and duties under Divisions 1 and 2 of Part 5 of the WHS Act to consult with other PCBUs and workers about matters in this Chapter. Section 27 of the WHS Act applies to officers in respect of this Chapter. This Chapter prescribes requirements for authorisation of workplaces for section 41 of the WHS Act.

Schedules 15 to 18 of the Regulations apply to this Chapter. Regulations in other Parts which may be relevant to MHFs include:

- management of risk in Part 3.1 – *Managing risk to health and safety*,
- provision of information in Part 3.2 – *General workplace management*; and
- hazardous chemicals in Part 7.1 – *Hazardous Chemicals*.

Defined terms in Chapter 1 which are relevant to this Chapter include:

- *control measure*
- *determined major hazard facility*
- *external review*
- *facility*
- *hazardous chemical*
- *licence holder*
- *licensed major hazard facility*

- *local authority*
- *local community*
- *major hazard facility*
- *major hazard facility licence*
- *major incident hazard*
- *pipeline*
- *proposed facility*
- *proposed major hazard facility*
- *relevant fee*
- *Schedule 15 chemical*
- *surrounding area; and*
- *threshold quantity.*

The duties in this Chapter will commence on 1 January 2012.

Part 9.1 – Preliminary

Division 1 – Application and interpretation

Regulation 530 – This Chapter does not apply to certain facilities

Regulation 530 provides a note to inform the reader that section 12A of the WHS Act specifies that the WHS Act does not apply in relation to a facility to which Schedule 3 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* applies.

Regulation 531 – Meaning of *major incident*

Regulation 531 states that a ‘major incident’ at an MHF is an occurrence that results from an uncontrolled event at the facility involving, or potentially involving, Schedule 15 chemicals, and exposes a person to a serious risk to health and safety emanating from an immediate or imminent exposure to the occurrence.

Subregulation 531(2) describes an occurrence as including an escape, spillage or leakage, or an implosion, explosion or fire. For example, an occurrence may be initiated by equipment such as a furnace or boiler that of itself does not involve Schedule 15 materials but could indirectly cause a loss of containment of such materials from nearby equipment at the facility by fire or explosion damage.

Regulation 532 – Meaning of hazardous chemicals that are *present or likely to be present*

Regulation 532 provides that a reference in the WHS Regulations to hazardous chemicals being ‘present or likely to be present’ at a facility is a reference to the quantity of hazardous chemicals that would, if present, meet the maximum capacity of the facility. This regulation clarifies that hazardous chemicals include Schedule 15 chemicals.

Subregulation 532(3) exempts Schedule 15 chemicals present or likely to be present in the tailings dam of a mine from being considered in determining whether a mine is an MHF.

Regulation 533 – Meaning of *operator* of a facility or proposed facility

Regulation 533 provides that the ‘operator’ of a facility is the PCBU who has management or control of the facility and the power to direct that the whole facility be shut down. The operator of a proposed facility includes the operator of an existing workplace or the operator of a facility being designed or constructed. If more than one person is an operator of the facility, one operator must be nominated as the operator of the facility for the purpose of this Chapter and their details must be given to the regulator.

Subregulation 533(4) provides that the nominated person must inform the regulator of their nomination, and may do so by including it in a notification under regulation 536. Subregulation 533(6) provides that if a nomination is not made, the operator of the facility is taken to be each operator who is an individual and each officer of the body corporate where the operator is a body corporate.

Regulation 534 – Meaning of *modification* of a facility

Subregulation 534(1) provides that a ‘modification’ of an MHF is a change or proposed change at the MHF that has or would have the effect of creating a new major incident hazard, or significantly increasing the likelihood, magnitude or severity of a major incident.

Subregulation 534(2) provides examples of changes or proposed changes at an MHF for the purposes of subregulation 534(1) such as changes to any plant, structure, process, chemical or other substance used in a process and changes to the operation of the MHF.

Division 2 – Requirement to be licensed

Regulation 535 – A major hazard facility must be licensed

Regulation 535 requires a facility at which Schedule 15 chemicals are present or likely to be present in a quantity that exceeds their threshold quantity to be licensed under Part 9.7. Subregulation 535(2) provides that a facility that is determined to be an MHF under regulation 541 must be licensed under Part 9.7. Section 41 of the WHS Act does not permit a workplace which must be licensed under the regulations to operate without the licence. Subregulation 535(4) requires the operator of a licensed MHF to hold the licence for the facility.

Subregulation 535(3) allows a determined MHF to operate during the exemption period without a licence if the operator of the facility is considered to be a suitable person to operate the facility under regulation 543 in Part 9.2. Subregulation 535(5) provides that the exemption period means the period beginning on the

determination of the facility as an MHF and ending on whichever of the following that occurs first:

- the revocation of the determination of the facility under regulation 546;
- the end of the period for applying for a licence given under regulation 549, unless an application for a licence for the facility is made within that period;
- the grant of a licence for the facility under Part 9.7; or
- if the regulator refuses to grant a licence for the facility – the end of the period for applying for an external review of that decision (unless an application for external review is made within that period) or the making of the decision on the external review.

Part 9.2 – Determinations about major hazard facilities

Regulation 536 – Operators of certain facilities must notify regulator

Regulation 536 requires the operator of a facility at which Schedule 15 chemicals are present or likely to be present in a quantity that exceeds 10% of their threshold quantity to notify the regulator of this circumstance.

Subregulation 536(2) states that notification should be given as soon as practicable but no more than three months after the operator becomes aware (or is reasonably expected to have become aware) of the circumstances in which the regulator must be notified, or a longer period determined by the regulator if the regulator is satisfied that there is a reasonable excuse for the delayed notification.

Note: Subregulations 758(1) and (2) provide that where a notification about the facility was given to the Commission before 1 January 2012, and the Commission has not decided whether to classify the facility as an MHF, the notice is taken to have been given to the regulator under regulation 536.

Regulation 537 – Notification – proposed facilities

Regulation 537 allows the operator of a proposed facility at which Schedule 15 chemicals are likely to be present in a quantity that exceeds 10% of their threshold quantity to notify the regulator of this circumstance. A ‘proposed facility’ is defined in subregulation 5(1) and the meaning of ‘likely to be present’ is described in regulation 532.

Subregulation 537(2) states that a notification under this regulation must include information required by regulation 538, with any necessary changes.

Regulation 538 – Content of notification

Regulation 538 provides information on the content of the notification required under regulation 536. Subregulation 538(2) sets out the type of information that must be contained in the notification, including information about the facility, the operator of the facility, the Schedule 15 chemicals present or likely to be present at the facility and a contact person with whom the regulator can communicate.

Subregulation 538(3) specifies the information that must be given about the operator under subregulation 538(2) such as information about the operator's name, whether or not the operator is a body corporate and any other evidence of the operator's identity required by the regulator

Subregulation 538(5) provides that if the information required to be included in a notification is information dealing with national security, the operator may give the regulator a summary of that information, in a form approved by the regulator, rather than the entire information.

Note: Subregulation 758(3) provides that if the notification provided did not include the information mentioned in regulation 538, the operator must give the information to the regulator within 3 months.

Regulation 539 – When regulator may conduct inquiry

Regulation 539 allows the regulator to conduct an inquiry under this Division if notification under regulation 536 or 537 discloses, or the regulator reasonably suspects, that the quantity of Schedule 15 chemicals present or likely to be present at a facility exceeds 10% of their threshold quantity, or the operator of the facility may not be a suitable person to operate the facility.

Regulation 540 – Inquiry procedure

Regulation 540 sets out the procedure for the regulator to conduct an inquiry.

Regulation 541 – Determination in relation to facility, on inquiry

Regulation 541 sets out the basis on which the regulator may determine a facility to be an MHF if an inquiry discloses that the quantity of Schedule 15 chemicals present or likely to be present at the facility or proposed facility exceeds 10% of their threshold quantity.

Subregulation 541(2) provides that a regulator may determine a facility or proposed facility to be an MHF if the regulator considers there is potential for a major incident to occur. This subregulation provides that the regulator may consider the quantity or combination of Schedule 15 chemicals present or likely to be present at the facility, the type of activity involving Schedule 15 chemicals, and the land use and other activities in the surrounding area.

Note 1 provides that if an inquiry discloses that the quantity of Schedule 15 chemicals present or likely to be present at a facility exceeds their threshold quantity, then the facility is an MHF.

Note 2 provides that a determination under this regulation that a facility is an MHF, or that a proposed facility is not an MHF, is a reviewable decision under regulation 676.

Regulation 542 – Determination in relation to over-threshold facility

Regulation 542 requires the regulator to make a determination that a facility or proposed facility is an MHF if a notification under regulation 536 or 537 discloses

that the quantity of Schedule 15 chemicals present or likely to be present at the facility exceeds their threshold quantity.

A note provides that a determination that a facility is an MHF under this regulation is a reviewable decision under regulation 676.

Regulation 543 – Suitability of facility operator

Regulation 543 allows the regulator to determine that the operator of an MHF or proposed MHF is not a suitable person to operate the MHF if the regulator is satisfied, on reasonable grounds, that, after conducting an inquiry under regulation 540, the operator is not a suitable person to operate the MHF or proposed MHF.

Subregulation 543(3) provides that if no determination is made under this regulation, then the operator of the MHF or proposed MHF is taken to be a suitable person to operate the MHF and to apply for an MHF licence.

A note provides that a determination that a person is not a suitable operator under this regulation is a reviewable decision under regulation 676.

Regulation 544 – Conditions on determination of MHF

Regulation 544 allows the regulator to impose any conditions it considers appropriate on a determination made under regulations 541 or 542. Subregulation 544(2) sets out the types of conditions that the regulator may impose on a determined MHF. Examples of such conditions include the implementation of additional control measures in relation to activities at the determined MHF and the provision of additional information, training and instruction to specified persons.

Subregulation 544(3) requires the operator of a determined MHF to ensure that the conditions imposed by the regulator under this regulation are complied with.

A note provides that a decision to impose a condition on a determined MHF under this regulation is a reviewable decision under regulation 676.

Regulation 545 – Notice and effect of determinations

Regulation 545 provides that if the regulator makes a determination under this Part, then the regulator must give the operator of the determined MHF a written notice of the determination stating the reasons for the determination, the date on which the determination takes effect and any conditions imposed on the determination under regulation 544. Notice must be given within 14 days of making the determination.

Subregulation 545(3) states that the effect of a determination under regulation 543 is that the operator is not taken to be a suitable person to operate the determined MHF and the exemption provided by regulation 535(3) does not apply to the determined MHF.

A note provides that the effect of a determination under regulations 541 or 542 is outlined in the definition of 'determined MHF' in subregulation 5(1).

Subregulations 545(4) and (5) provide that a determination takes effect on the date specified in the notice and has an unlimited duration unless it is revoked.

Regulation 546 – When regulator may revoke a determination

Regulation 546 allows the regulator to revoke a determination under this Part if, after consultation with the MHF's contact person or operator, the regulator is satisfied that the reasons for the determination no longer apply.

Regulation 547 – Re-notification if quantity of Schedule 15 chemicals increases

Subregulation 547(1) states that this regulation applies to a facility or proposed facility which provided notification under regulations 536 or 537 that Schedule 15 chemicals present or likely to be present at the facility exceeded 10% of their threshold quantity, and was determined not to be an MHF under regulation 541.

Subregulation 547(2) requires the operator of the facility or proposed facility to re-notify the regulator if the quantity of Schedule 15 chemicals present or likely to be present at the facility increases, or is likely to increase, to a level that exceeds the level previously notified to the regulator.

Regulation 548 – Notification by new operator

Subregulation 548(1) provides that this regulation applies to a determined MHF that is proposed to be operated by a new operator, regardless of whether a determination under regulation 543 was made in relation to the operator.

Subregulation 548(2) requires the proposed new operator to provide the regulator with a notification that contains information specified in regulation 538(2).

Regulation 549 – Time in which major hazard facility licence must be applied for

Regulation 549 requires the operator of a determined MHF to apply for an MHF licence within 24 months after the determination of the facility. Subregulation 549(2) provides that the regulator may extend the time in which an MHF license must be applied for if the operator applies for an extension and the regulator is satisfied that there has not been sufficient time to comply with Part 9.3.

A note provides that an exemption under subregulation 535(3) from the requirement to be licensed depends on an application for a licence being made within the timeframe specified by this regulation.

Part 9.3 – Duties of Operators of Determined Major Hazard Facilities

Note 1 provides that the operator of a determined MHF is required to comply with this Part for a specified period and to prepare a safety case in order to apply for an

MHF licence. Note 2 provides that the WHS Act and Chapter 7 (Hazardous chemicals) of these Regulations would continue to apply to a determined MHF.

Division 1 – Application of Part 9.3

Regulation 550 – Application of Part 9.3

Regulation 550 provides that Part 9.3 would cease to apply to a determined MHF at the end of the exemption period applying to that facility under regulation 535.

Division 2 – Safety case outline

Regulation 551 – Safety case outline must be provided

Regulation 551 requires the operator of a determined MHF to provide the regulator with a safety case outline for the MHF within 3 months after the facility was determined to be an MHF.

Regulation 552 – Content

Regulation 552 specifies the content that a safety case outline must cover. Examples of the information that a safety case outline must cover include a written plan for the preparation of the safety case and a description of the consultation with workers that will occur in the preparation of the safety case.

Regulation 553 – Alteration

Regulation 553 allows the regulator to require the operator of a determined MHF to alter a safety case outline if the regulator is not satisfied that the safety case outline would lead to the development of a safety case that complies with regulation 561.

Subregulation 553(2) requires the regulator to give the operator written notice if it proposes to require an operator to alter a safety case outline. Subregulation 553(3) sets out the procedure for the regulator to decide whether or not to require the operator to alter a safety case outline.

Subregulation 553(4) states that the operator must alter the outline as required. Subregulation 553(5) requires the operator to give the regulator a copy of the safety case outline which has either been altered under this regulation or altered by the operator under the operator's initiative. Subregulation 553(6) provides that an altered safety case outline is taken to be the safety case outline for the MHF.

Division 3 – Management of risk

Regulation 554 – Identification of major incidents and major incident hazards

Subregulation 554(1) requires the operator of a determined MHF to identify all major incidents that could occur during the operation of the facility and all major incident hazards for the facility, including major incident hazards relating to the security of the facility.

Subregulation 554(2) states that, in complying with subregulation 554(1), the operator must take into account any advice and recommendations given by the relevant emergency service organisations and any government department or agency with a regulatory role in relation to MHFs.

Subregulation 554(3) requires the operator to document all identified major incidents and major incident hazards, the criteria and methods used in identifying these incidents and hazards, and any external conditions under which the major incident hazards might give rise to the major incidents.

Regulation 555 – Safety assessment

Subregulation 555(1) requires the operator of a determined MHF to conduct a safety assessment in relation to operation of the MHF.

Subregulation 555(2) requires a safety assessment to involve a comprehensive and systematic investigation and analysis of all aspects of risks to health and safety associated with all major incidents that could occur at the MHF. This subregulation provides examples of the factors that may be investigated and analysed in a safety assessment, such as the nature of each major incident and major incident hazard and the range of control measures considered.

Subregulation 555(3) provides that in conducting a safety assessment, the operator must consider major incidents and major incident hazards cumulatively as well as individually, and use assessment methods (whether quantitative or qualitative, or both), that are suitable for the major incidents and major incident hazards being considered.

Subregulations 555(4) and (5) require the operator to document all aspects of the safety assessment (including the methods used in the investigation and analysis and the reasons for deciding which control measures to implement), and keep a copy of the safety assessment at the MHF.

Regulation 556 – Control of risk

Regulation 556 requires the operator of a determined MHF to implement control measures that eliminate the risk of a major incident occurring, as far as is reasonably practicable. If it is not reasonably practicable to eliminate that risk, the operator must minimise the risk as far as is reasonably practicable. In addition, the operator must implement risk control measures designed to minimise, in the event of a major incident occurring, its magnitude and the severity of its consequences to persons both on-site and off-site.

Regulation 557 – Emergency plan

Subregulation 557(1) requires the operator of a determined MHF to prepare an emergency plan that addresses all health and safety consequences of a major incident occurring, includes all matters specified in Schedule 16, and provides for the testing of emergency procedures including the frequency of testing.

Subregulation 557(2) states that, in preparing an emergency plan, the operator must consult with the relevant emergency service organisations and the local authority specified in state or territory occupational health and safety legislation in relation to the off-site health and safety consequences of a major incident.

Subregulation 557(3) requires the operator to ensure that the emergency plan addresses any recommendations made by the emergency service organisations consulted under subregulation 557(2) in relation to the testing of the emergency plan and the incidents or events at the MHF which should be notified to the emergency service organisations. Subregulation 557(4) requires the operator to consider any other recommendation or advice given by a person consulted under subregulation 555(2).

Subregulation 557(5) requires the operator to keep a copy of the plan at the MHF and provide a copy to the emergency service organisations consulted under subregulation 555(2) and any other relevant emergency service organisations.

Subregulation 557(6) requires the operator to test the emergency plan in accordance with recommendations made by the emergency service organisations before applying for a licence for the MHF.

Subregulation 557(7) requires the operator to immediately implement the emergency plan if a major incident occurs during the operation of the MHF or an event occurs that could reasonably be expected to lead to a major incident.

Subregulation 555(8) requires the operator to notify the emergency service organisations consulted under subregulation 557(2) of the occurrence of an incident or event referred to under subregulation 555(3).

A note provides that this regulation applies in addition to regulation 43.

Regulation 558 – Safety management system

Subregulation 558(1) requires the operator of a determined MHF to establish a safety management system for the operation of the MHF, in accordance with this regulation. Subregulation 558(2) requires the operator to implement the safety management system so far as is reasonably practicable.

Subregulation 558(3) states that the safety management system must provide a comprehensive and integrated system for the management of all aspects of risk control in relation to the occurrence and potential occurrence of major incidents at the MHF, and be designed to be used by the operator as the primary means of ensuring the safe operation of the MHF.

Subregulation 558(4) requires the safety management system to be documented and to be accessible to those using it. This subregulation specifies that the safety management system must contain information about:

- the operator's safety policy (including the operator's broad safety objectives);
- the operator's specific safety objectives;
- the systems and procedures that will be used to achieve those objectives; and
- any matters specified in Schedule 17.

Regulation 559 – Review of risk management

Regulation 559 requires the operator of a determined MHF to review and, if necessary, revise the safety assessment conducted under regulation 555 (to ensure the adequacy of control measures), the emergency plan and the safety management system.

Subregulation 559(2) requires the operator to conduct a review and revision in circumstances where:

- a modification to the MHF is proposed;
- a control measure implemented under regulation 556 does not minimise the relevant risk as much as is reasonably practicable;
- a new major hazard risk is identified;
- the results of consultation by the operator under Part 9.5 indicate that a review is necessary;
- a health and safety representative requests a review under subregulation 559(4); or
- the regulator requires the review.

Subregulation 559(3) states that, in reviewing and revising the emergency plan, the operator must consult with the emergency service organisations with which the operator consulted under subregulation 557(2) when the plan was being prepared.

Subregulation 559(4) allows a health and safety representative to request a review if the representative reasonably believes that a specified circumstance referred to in subregulation 559(2) would affect or may affect the health and safety of a member of the work group represented by the health and safety representative, and the operator has not adequately conducted a review in response to the circumstance.

Division 4 – Safety case

Regulation 560 – Safety case must be provided

Regulation 560 requires the operator of a determined MHF to provide the regulator with a completed safety case for the MHF within 24 months after the facility was determined to be an MHF.

Regulation 561 – Content

Subregulation 561(1) requires the operator to prepare the safety case in accordance with the safety case outline prepared or altered under this Division. The information that must be contained in a safety case is specified in subregulation 561(2).

Subregulation 561(3) requires the safety case to include any further information that is necessary to ensure that all information contained in the safety case is accurate and up to date. Subregulation 561(4) requires a safety case to demonstrate that the MHF's safety management system would, once implemented, control risks arising from major incidents and major incident hazards, and be adequate to control risks associated with the occurrence and potential occurrence of major incidents.

Subregulation 561(5) requires the operator to provide a signed statement that:

- the information is accurate and up-to-date;
- the operator has acquired a detailed understanding of all aspects of risk to health and safety as a result of conducting the safety assessment;
- the control measures to be implemented by the operator will eliminate or minimise the risk of a major incident occurring and, in the event of a major incident occurring, will minimise the magnitude and severity of its health and safety consequences; and
- all persons to be involved in the implementation of the safety management system have the necessary knowledge and skills to enable them to carry out their role safely and competently.

Subregulation 561(6) provides that, if the operator is a body corporate, then the safety case must be signed by the most senior executive officer of the body corporate who resides in the jurisdiction in which the facility is located.

Regulation 562 – Co-ordination for multiple facilities

Subregulation 562(1) allows the regulator to require the operators of 2 or more MHFs to co-ordinate the preparation of the safety cases for their MHFs if the regulator is satisfied on reasonable grounds that such co-ordination is necessary for the safe operation and effective safety management of any or all of those MHFs.

Subregulation 562(2) provides that if the regulator requires the co-ordinated preparation of safety cases, then each operator must provide the other operators with information about any circumstances at the operator's facility that could constitute a major incident hazard in relation to any of the other MHFs.

Subregulation 562(3) provides that in complying with this regulation, the operator would not be required to disclose information that could expose the MHF to a major incident hazard relating to the security of the MHF.

Regulation 563 – Review

Regulation 563 requires the operator of a determined MHF to review and, as necessary, revise the MHF's safety case after any review is conducted under regulation 559.

Part 9.4 – Licensed major hazard facilities – risk management

A note provides that this Part applies to an MHF that is licensed under Part 9.7

Regulation 564 – Identification of major incidents and major incident hazards

Subregulation 564(1) requires the operator of a licensed MHF to identify all major incidents that could occur during the operation of the MHF, and all major incident hazards for the MHF, including major incident hazards relating to the security of the MHF.

Subregulation 564(2) provides that, in complying with subregulation 564(1), the operator must consider any advice and recommendations given by the relevant emergency service organisations and any government department or agency with a regulatory role in relation to MHFs.

Subregulation 564(3) requires the operator to document:

- all identified major incidents and major incident hazards;
- the criteria and methods used in identifying the major incidents and major incident hazards; and
- any external conditions under which the major incident hazards might give rise to the major incidents.

Subregulation 564(4) provides that all major incidents and major incident hazards identified and documented under regulation 554 in relation to the MHF are taken to have been identified and documented under this regulation.

Regulation 565 – Safety assessment

Regulation 565 requires the operator of a licensed MHF to keep, at the facility, a copy of the safety assessment documented under regulation 555 as revised under Part 9.3 and this Part.

Regulation 566 – Control of risk

Regulation 566 requires the operator of a licensed MHF to implement risk control measures that eliminate, as far as is reasonably practicable, the risk of a major incident occurring or, if it is not reasonably practicable to eliminate that risk, to minimise that risk. In addition, the operator of a licensed MHF must implement risk control measures designed to minimise, in the event of a major incident occurring, its magnitude and the severity of its consequences to persons both on-site and off-site.

Regulation 567 – Emergency plan

Subregulation 567(1) requires the operator of a licensed MHF to keep, at the facility, a copy of the MHF's emergency plan prepared under regulation 557 as revised under Part 9.3 and this Part.

Subregulation 567(2) requires the operator to test the emergency plan in accordance with the recommendations made by the emergency service organisations consulted under subregulation 557(2) when the plan being was prepared.

Subregulation 567(3) requires the operator to immediately implement the emergency plan if a major incident occurs during the operation of the MHF or an event occurs that could reasonably be expected to lead to a major incident.

Subregulation 567(4) requires the operator to notify the emergency service organisations consulted under subregulation 557(2) of the occurrence of an incident or event referred to in subregulation 557(3) as soon as possible after the incident or event.

Regulation 568 – Safety management system

Subregulation 568(1) requires the operator of a licensed MHF to implement the MHF's safety management system established under regulation 558 as revised under Part 9.3 and this Part.

Subregulation 568(2) requires the operator to use the safety management system as the primary means of:

- ensuring the health and safety of workers engaged by the operator, or workers whose activities are influenced or directed by the operator, while the workers are at work during the operation of the MHF; and
- ensuring the health and safety of other persons is not put at risk from work carried out as part of the operation of the MHF.

A note provides that the operator of a licensed MHF is required to inform the regulator about any change in relation to certain information about the licence under regulation 588.

Regulation 569 – Review of risk management

Subregulation 569(1) requires the operator of a licensed MHF to review and, if necessary, revise the safety assessment (to ensure the adequacy of control measures), the emergency plan and the safety management system.

Subregulation 569(2) provides that the operator must conduct a review and revision in the following circumstances:

- a modification to the MHF is proposed;
- a control measure implemented under regulation 566 does not minimise the relevant risk so far as is reasonably practicable;
- a new major hazard risk is identified;

- the results of consultation by the operator under Part 9.5 indicate that a review is necessary;
- a health and safety representative requests a review under subregulation 569(5);
- the regulator requires the review; or
- at least once every 5 years.

Subregulation 569(3) requires the operator to comply with the requirements set out in subregulations 555(2) to (4) when conducting the review and revision of the safety assessment.

Subregulation 569(4) provides that, in reviewing and revising the emergency plan, the operator must consult with the emergency service organisations with which the operator consulted under subregulation 557(2) when the plan was being prepared.

Subregulation 569(5) allows the health and safety representative to request a review if the representative reasonably believes that the specified circumstances referred to in subregulation 569(2) affect or may affect the health and safety of a member of the work group represented by the health and safety representative, and the operator has not adequately conducted a review in response to the circumstance.

Regulation 570 – Safety case – review

Regulation 570 requires the operator of a licensed MHF to review and, if necessary, revise the safety case after any review is conducted under regulation 569. Note 1 provides that the operator of a licensed MHF is required to tell the regulator about any change in relation to certain information about the licence under regulation 588.

Regulation 571 – Information for visitors

Regulation 571 requires the operator of a licensed MHF to ensure that a person who enters the MHF, other than a worker, is informed about hazards at the MHF that may affect the person, as soon as possible. This regulation also provides that the person must be instructed in safety precautions, as well as the actions the person should take if the emergency plan is implemented while the person is on-site.

Regulation 572 – Information for local community and local authority – general

Subregulation 572(1) sets out the information that the operator of a licensed MHF must provide to the community and the local authority. The kind of information that must be provided includes the method by which the local community will be notified of a major incident occurring and the actions that members of the local community should take in such circumstances. The local authority is defined in regulation 5 to mean the local authority for the area in which the facility and the surrounding area are located.

Subregulation 572(2) requires the information to be readily accessible and understandable to persons who are not familiar with the operation of the MHF, reviewed and revised if any modification is made to the MHF, and sent out in writing to any community or public library serving the local community.

Subregulation 572(3), provides that in complying with subregulation 572(1), the operator is not required to disclose information that may expose the MHF to a major incident hazard in relation to the security of the MHF.

Under sections 12C and 12D of the WHS Act, the operator would not be required to disclose information that could jeopardise Australia's defence or national security.

Subregulation 572(4) provides that if the operator of a licensed MHF receives a written request from a person who reasonably believes that the occurrence of a major incident at the MHF may adversely affect his or her health or safety, then the operator must provide this person with a copy of the information provided to the local community under this regulation.

Regulation 573 – Information for local community – major incident

Regulation 573 provides that if a major incident occurs, the operator of an MHF must, as soon as possible, take all reasonable steps to provide information about the major incident to the local community (if a member of the local community was affected by the major incident), the local authority, and any government department or agency with a regulatory role in relation to MHFs.

Subregulation 573(1) sets out the information that must be provided. An example of the kind of information that must be provided is a description of the actions the operator has taken or proposes to take to prevent the major incident from taking place again.

Under sections 12C and 12D of the WHS Act, the operator would not be required to disclose information that could jeopardise Australia's defence or national security.

Part 9.5 – Consultation and Workers' Safety role

Regulation 574 – Safety role for workers

Subregulation 574(1) requires the operator of a determined MHF to implement, within the timeframe specified in the safety case outline, a safety role for the workers at the MHF to enable them to identify major incidents and major incident hazards, consider adequate control measures and conduct a review of risk management.

Subregulation 574(2) requires the operator of a licensed MHF to implement a safety role for workers at the facility so that they can contribute to a review of risk management under regulation 569.

Regulation 575 – Operator of major hazard facility must consult with workers

Paragraph 49(f) of the WHS Act requires a PCBU to consult with workers in relation to health and safety matters when carrying out activities prescribed by the regulations. Regulation 575 specifies the activities mentioned in paragraph 49(f) of the WHS Act and requires the operator of a determined or licensed MHF to consult with workers at the MHF in relation to these activities. Examples of circumstances where the operator must consult with workers include the testing and implementation of the MHF's emergency plan and the implementation of the workers' safety role under regulation 574.

Subregulation 575(1) imposes the duty to consult with workers at a determined MHF, whereas subregulation 575(2) imposes the duty to consult with workers at a licensed MHF.

Part 9.6 – Duties of Workers at Licensed Major Hazard Facilities

Regulation 576 – Duties

Subregulation 576(1) sets out the duties of a worker at a licensed major hazard. The kinds of duties specified in this subregulation include the duty to comply with any procedure in the emergency plan and the duty to immediately inform the operator if the worker thinks a particular circumstance could cause a major incident.

Subregulation 576(2) provides that a worker does not have to comply with subregulation 576(1) if it would risk the health or safety of the worker, another worker or another person.

Part 9.7 – Licensing of major hazard facilities

Note: Subregulation 756(5) provides that the duties imposed under Part 9.7 to make an application do not apply until the latter of 2 years after the facility was classified as an MHF under Division 9.2 of the OHS Regulations, or January 2012. Regulation 757 provides for the preservation of existing MHF licences under the OHS Regulations.

Division 1 – Licensing process

Regulation 577 – Who may apply for a licence

Regulation 577 provides that only an operator of a determined MHF who is taken to be a suitable operator under regulation 543 may apply for an MHF licence for that facility.

Regulation 578 – Application for major hazard facility licence

Regulation 578 sets out the information required in an application for an MHF licence.

Regulation 579 – Additional information

Regulation 579 enables the regulator to request additional information from the operator if the application for an MHF licence does not contain enough information to enable the regulator to make a decision about whether or not to grant a licence.

Subregulation 579(3) provides that if the operator does not provide the additional information by the date specified, the application is to be taken to have been withdrawn.

Subregulation 579(4) provides that if the additional information requested by the regulator is national security information, then the operator of the facility complies with this regulation by giving the regulator a summary of that information in a form approved by the regulator. Subregulation 579(6) clarifies that ‘national security information’ means information which, if disclosed, is likely to prejudice Australia’s national security.

Regulation 580 – Decision on application

Subregulations 580(1) and (2) require the regulator to grant an MHF licence if it is satisfied that the application and safety case for the facility have been correctly prepared, the operator is able to operate the MHF safely and competently, and the operator is able to comply with any conditions that applies to the licence.

Subregulation 580(3) allows the regulator to refuse to grant an MHF licence if it becomes aware of circumstances in which the operator would not be a suitable person to exercise management or control over the MHF.

Subregulation 580(4) requires the regulator to refuse to grant an MHF licence if it is satisfied that the operator has given false or misleading information in the application or failed to give any required information.

Subregulation 580(5) requires the regulator to notify the operator within 14 days after making decision to grant the licence. Subregulation 580(6) provides that if the regulator does not make a decision within 6 months after receiving the application or the additional information requested under regulation 579, then the regulator is taken to have refused to grant the licence.

A note provides that a refusal to grant a licence under this regulation is a reviewable decision under regulation 676.

Regulation 581 – Matters to be taken into account

Regulation 581 outlines the relevant matters that the regulator must take into account when considering whether or not to refuse an MHF licence under subregulation 580(3). Such matters include whether the operator has been convicted or found guilty of an offence under legislation dealing with occupational health and safety, and the details of an equivalent licence held by the operator under corresponding WHS law.

Regulation 582 – When decision is to be made

Regulation 582 requires the regulator to make a decision in relation to an application for an MHF licence within 6 months after receiving the application or the additional information requested under regulation 579.

Regulation 583 – Refusal to grant major hazard facility licence – process

Regulation 583 provides that if the regulator proposes to refuse to grant an MHF licence, it must inform the operator of the reasons for the proposed refusal and advise that the operator may make a submission to the regulator in relation to the proposed refusal. In the event that the operator makes a submission in response to the regulator's decision, the regulator must consider the submission, decide whether to grant or refuse the licence and provide written notice of the decision and reasons for the decision within 14 days of making the decision.

Regulation 584 – Conditions of licence

Regulation 584 allows the regulator to impose any conditions on an MHF which it considers appropriate. Subregulation 584(2) provides examples of the types of conditions that the regulator may impose, such as the implementation of additional control measures and the provision of additional information, training and instruction to specified persons.

Note 1 requires a person to comply with the conditions of a licence under section 45 of the WHS Act.

Note 2 provides that a decision to impose a condition on a licence is a reviewable decision under regulation 676.

Regulation 585 – Duration of licence

Regulation 585 provides that an MHF licence takes effect on the day it is granted and, unless cancelled earlier, expires on the day determined by the regulator. This regulation specifies that duration of the licence should not be more than 5 years after the day the licence was granted.

Regulation 586 – Licence document

Subregulation 586(1) requires the regulator to give the operator a licence document if it grants an MHF licence. Subregulation 586(2) specifies the information that must be contained in the licence document.

Regulation 587 – Licence document to be available

Regulation 587 requires the operator of the MHF to keep the licence document available for inspection under the WHS Act, unless the licence document has been returned to the regulator (under regulation 593) or the operator has not received a replacement licence (under regulation 594).

Division 2 – Amendment of licence and licence document

Regulation 588 – Changes to information

Regulation 588 requires the operator of a licensed MHF to give the regulator written notice of changes to information about the MHF, particularly any information given by the operator in relation to the licence. This regulation requires the notice to be provided within 14 days after the operator becomes aware of the change. An example of a change that would require written notice to be provided is a change to the content of the safety case, resulting from the identification of a new major incident hazard and a modification of the emergency plan.

Regulation 589 – Amendment imposed by regulator

Regulation 589 allows the regulator, on its own initiative, to amend an MHF licence, by varying or deleting a condition or imposing a new condition on the licence.

Subregulation 589(2) requires the regulator to give written notice outlining the proposed amendment and the reasons for it, and advising that the operator may make a submission to the regulator in relation to the proposed amendment.

Subregulation 589(3) provides that, in the event that the operator makes a submission in response to the regulator's decision, the regulator must consider the submission, decide whether to make the proposed amendment and provide written notice of the decision and reasons for the decision within 14 days of making the decision.

A note provides that a decision to amend a licence is a reviewable decision under regulation 676.

Regulation 590 – Amendment on application by operator

Regulation 590 provides that, on application by the operator of a licensed MHF, the regulator may amend the MHF licence. This regulation sets out the procedure for the regulator to either amend or refuse to amend the licence.

A note provides that a refusal to amend a licence, or a decision to make a different amendment, is a reviewable decision under regulation 676.

Regulation 591 – Minor corrections to major hazard facility licence

Regulation 591 allows the regulator to make minor amendments to an MHF licence, such as a correction to an obvious error, a change of address or a change which does not impose a significant burden on the operator.

Regulation 592 – Regulator to give amended licence document to operator

Regulation 592 provides that, if the regulator amends an MHF licence and decides that the licence document requires amendment, then the regulator must give the operator an amended licence document within 14 days after making this decision.

Regulation 593 – Operator to return licence

Regulation 593 provides that if an MHF licence is amended, the operator of the licensed MHF must return the licence document to the regulator when it receives a written request from the regulator and within the time specified in the request.

Regulation 594 – Replacement licence document

Subregulation 594(1) requires the operator of a licensed MHF to give written notice to regulator as soon as possible after licence document is lost, stolen or destroyed.

Subregulations 594(2) to (4) allow the operator to apply for a replacement licence document and set out the procedure for making this application.

Subregulation 594(5) requires the regulator to issue a replacement licence document if satisfied that the original document was lost, stolen or destroyed.

Subregulation 594(6) provides that if the regulator refuses to issue a replacement licence document, it must give the operator written notice of this decision and the reasons for the decision, within 14 days after making the decision.

A note provides that a refusal to issue a replacement licence document is a reviewable decision under regulation 676.

Division 3 – Renewal of major hazard facility licence

Regulation 595 – Regulator may renew licence

Regulation 595 allows the regulator to renew an MHF licence if the operator makes an application for renewal.

Regulation 596 – Application for renewal

Regulation 596 requires an application for renewal of an MHF licence to include a copy of the safety case for the MHF, include the relevant fee and be made within 6 months before the licence is due to expire.

Regulation 597 – Licence continues in force until application is decided

Regulation 597 provides that, if the operator of a licensed MHF applies for the renewal of an MHF licence, the licence is taken to continue in force from the day it is due to expire until the operator is given notice of the decision about the renewal application.

Regulation 598 – Provisions relating to renewal of licence

Regulation 598 provides that regulations 579, 580 (except subregulation 6), 581, 583, 584 and 585 relating to an application for a licence also apply to this Division for an application to renew a licence.

A note provides that a refusal to renew a licence is a reviewable decision under regulation 676.

Regulation 599 – Status of major hazard facility licence during review

Subregulation 599(1) provides that this regulation applies if the regulator gives the operator written notice of its decision to refuse to renew the licence.

Subregulation 599(2) provides that if the operator does not apply for an external review, then the licence continues to have effect until the expiry of the licence or the end of the period for applying for an external review (whichever occurs last).

Subregulation 599(3) provides that if the operator applies for an external review, then the licence continues to have effect until the operator withdraws the application for review or the AAT makes a decision on the review (whichever occurs first).

Subregulation 599(4) provides that the licence continues to have effect under this regulation even if its expiry date passes.

Division 4 – Transfer of major hazard facility licence

Regulation 600 – Transfer of major hazard facility licence

Subregulation 600(1) allows the regulator, on the application of the operator of an MHF, to transfer an MHF licence to another person who will become the operator of the MHF. The regulator must be satisfied that the proposed operator would achieve an equivalent or better standard of health and safety in the operation of the facility to what the current operator has achieved.

Subregulations 600(2) and (3) set out the process by which the regulator can transfer the licence.

Note 1 provides that a decision to refuse to transfer a licence is a reviewable decision under regulation 676.

Division 5 – Suspension and cancellation of major hazard facility licence

Regulation 601 – Cancellation of major hazard facility licence – on operator's application

Subregulation 601(1) allows the operator of a licensed MHF to apply to the regulator to cancel the licence.

Subregulations 601(2) and (3) set out the process by which the regulator can transfer the licence. Subregulation 601(4) requires the regulator to cancel an MHF licence if the quantity of Schedule 15 chemicals present or likely to be present at the facility does not exceed their threshold quantity, and it is unlikely that a major incident will occur at the facility.

Note 1 provides that a decision to refuse to cancel a licence is a reviewable decision under regulation 676.

Regulation 602 – Suspension or cancellation of licence – on regulator's initiative

Regulation 602 allows the regulator, on its own initiative, to suspend or cancel an MHF licence on the grounds set out in subregulation 601(1).

Subregulation 602(2) provides that if the regulator suspends or cancels an MHF licence, then the regulator may disqualify the operator from applying for a further MHF licence.

A note provides that a decision to suspend or cancel a licence, or disqualify the operator from applying for a further licence, is a reviewable decision under regulation 676.

Regulation 603 – Matters to be taken into account

Regulation 603 outlines the matters that the regulator must take into account when considering whether or not to suspend or cancel an MHF licence under regulation 602. Such matters include whether the operator has been convicted or found guilty of an offence under legislation dealing with occupational health and safety, and the details of an equivalent licence held by the operator under corresponding WHS law.

Regulation 604 – Notice to and submissions by operator

Regulation 604 provides that before suspending or cancelling an MHF licence, the regulator must give the operator a written notice of the proposed suspension or cancellation, and any proposed disqualification. This regulation specifies that the notice must outline the relevant allegations, facts and circumstances known to the regulator, and advise that the operator may make a submission to the regulator in relation to the proposed suspension, cancellation or disqualification.

Regulation 605 – Notice of decision

Regulation 605 requires the regulator to give the operator of an MHF written notice of a decision to suspend or cancel the MHF licence under regulation 602 within 14 days after making the decision. This regulation sets out the information that must be contained in the notice of decision.

Regulation 606 – Immediate suspension

Regulation 606 allows the regulator to suspend an MHF licence on a ground referred to in regulation 602, without giving notice under regulation 604. For an immediate suspension of an MHF licence, the regulator must be satisfied that a person may be exposed to an imminent serious risk to his or her health or safety if the MHF licence is not suspended, or a corresponding regulator has suspended an equivalent licence held by the operator under an equivalent regulation in the corresponding jurisdiction.

Subregulations 606(2) and (3) set out the process by which the regulator must inform the operator of a decision to suspend the MHF licence.

Regulation 607 – Operator to return licence document

Regulation 607 requires an operator, on receiving a notice under regulation 605, to return the licence document to the regulator in accordance with the notice.

Regulation 608 – Regulator to return licence document after suspension

Regulation 608 requires the regulator to return the licence document to the operator within 14 days after the suspension ends.

Chapter 10 – Mines

This Chapter has intentionally been left blank.

Chapter 11 – General

Chapter 11 sets out the requirements for the processes of internal review and external review of reviewable decisions. It outlines how the regulator may exempt a person or a class of persons from complying with a provision of the Regulations. It also prescribes the list of serious illnesses requiring notification under section 36 of the WHS Act and the requirements for inspectors' identity cards for the purpose of section 157 of the WHS Act.

Defined terms in Chapter 1 which are relevant to this Chapter include *internal review* and *external review*.

Part 11.1 – Review of Decisions under these Regulations

Division 1 – Reviewable decisions

Regulation 676 – Which decisions under these Regulations are reviewable

Regulation 676 sets out all the decisions made under these Regulations that are reviewable and who is eligible to apply for a review of each reviewable decision.

Division 2 – Internal review

Regulation 677 – Application

Regulation 677 provides that the internal review process does not apply to a reviewable decision made under Chapter 9 (Major hazard facilities) or under Part 11.2 (Exemptions) of these Regulations. The application process for a major hazard facility licence or an exemption is lengthy and involves close communication between the applicant and the regulator. Internal review would further delay resolution of the matter and would therefore not be suitable. Decisions under Chapter 9 and Part 11.2 are subject to external review by the AAT.

Regulation 678 – Application for internal review

Regulation 678 sets out the time limits in which an eligible person may apply for an internal review of a reviewable decision. The application must be made in the manner and form required by the regulator.

Regulation 679 – Internal reviewer

Regulation 679 allows the regulator to appoint a person or a body to conduct internal reviews. It provides that the person who made the reviewable decision cannot conduct an internal review in relation to that decision.

Regulation 680 – Decision of internal reviewer

Regulation 680 provides that the internal reviewer may confirm or vary the reviewable decision or set aside the original decision and substitute another decision.

Regulation 680 also specifies the timeframes and processes the internal reviewer must follow when reviewing a reviewable decision. This includes reviewing the reviewable decision and making a decision as soon as practicable and within 14 days after the application is received.

The internal reviewer may ask the applicant to provide additional information. The applicant must provide the information within the time specified by the internal reviewer (which must not be less than 7 days). Once the additional information is received, the internal reviewer must make a decision as soon as practicable and within 14 days. If the additional information is not provided by the applicant, the reviewable decision is taken to have been confirmed at the end of the time period.

If the reviewable decision is not varied or set aside within the 14 day time period, the reviewable decision is taken to have been confirmed by the internal reviewer.

Regulation 681 – Decision on internal review

Regulation 681 provides that the internal reviewer must give written notice of the decision on the internal review and the reasons for the decision to the applicant within 14 days of making the decision.

Regulation 682 – Internal review – reviewable decision continues

Regulation 682 clarifies that an application for an internal review does not affect the operation of the reviewable decision or prevent the taking of any lawful action to implement or enforce the decision, subject to any contrary provision.

Division 3 – External review

Regulation 683 – Application for external review

Regulation 683 provides that an eligible person may apply for an external review of a reviewable decision made by the regulator under Chapter 9 (Major Hazard Facilities) or under Part 11.2 (Exemptions) of the Regulations, or a decision made in relation to an internal review.

Part 11.2 – Exemptions

This Part deals with granting exemptions and the requirements for applying for an exemption.

Division 1 – General

Regulation 684 – General power to grant exemptions

Regulation 685 – Matters to be considered when granting exemptions

Regulation 684 provides that the regulator may exempt a person or class of persons from compliance with any of these Regulations, either on the regulator's own initiative or on the written application of one or more persons. The exemption may be subject to certain limitations set out in this Part.

While this regulation may raise queries about the exercise of executive power because it appears to be a 'Henry VIII' clause, it does not operate in the context of that description. Rather, it merely allows for some of the technical requirements imposed in the Regulations to be set aside where the regulator is satisfied that there will not be an adverse outcome for work health and safety.

Regulation 685 sets out certain matters that the regulator must have regard to in deciding whether or not to grant an exemption under regulation 684. These include whether the granting of the exemption will result in a standard of health and safety at the relevant workplace that is at least equivalent to the standard that would be achieved by compliance with the relevant provision/s.

This power vested in the regulator cannot be exercised to override a requirement in the WHS Act itself, but merely regulatory obligations. Further, the power is subject to the overriding responsibilities of the regulator under the WHS Act. Section 152 of the WHS Act sets out the functions of the regulator. These include:

- b) to monitor and enforce compliance with this Act.

It would be inconsistent with the functions of the regulator to provide an exemption that does not contribute to general compliance with the WHS Act. At the same time, the exemption power allows for the detail of the regulatory framework to be set aside in appropriate circumstances.

An exemption can be granted on the regulator's own initiative. This allows the regulator to take proactive action to overcome a technical issue (and impose conditions in doing so if it sees fit) rather than waiting for an application to be made.

The exemption-making power does not allow for exemption from compliance with two significant risk-management areas, high risk work licences and major hazard facility, exemptions for which are dealt with separately. High risk work licence exemptions (regulation 687) and major hazard facilities (regulation 688) requires the regulator to be satisfied that a relevant equivalent standard of health and safety is achieved before the exemption can be granted.

The making of a regulation that allows the regulator to grant exemptions is expressly contemplated in the regulation-making power granted in the WHS Act. Subsection 276(3) provides that regulations may be made to:

- e) prescribe exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed; and
- f) allow the regulator to provide exemptions from complying with any of the regulations on the terms and conditions (if any) prescribed or, if the regulations allow, on the terms and conditions (if any) determined by the regulator.

There are two additional protections from an abuse of executive power, if that is a concern.

Firstly the regulations will be subject to disallowance where the exemption exempts a class of persons (see regulation 692 (2) which provides that “an exemption document that exempts a class of persons is a legislative instrument”). An exemption for one person is not a legislative instrument (subregulation 692(3)). These subregulations are intended to clarify the application of the *Legislative Instruments Act 2003* to the regulation.

Secondly, decisions relating to conditions on exemptions are subject to external review by the AAT, as per regulation 683.

Safe Work Australia have developed national guidance material explaining how the exemption application and decision making process is intended to operate and published this along with principles to guide decision making on its website.

Division 2 – High risk work licences

Regulation 686 – High risk work licence – exemption

Regulation 686 provides that the regulator may exempt a person or a class of persons from a requirement to hold a high risk work licence. The exemption may be granted on the written application of any person concerned.

A note provides that a refusal to exempt a person from the requirement to hold a high risk work licence is a reviewable decision under regulation 676.

Regulation 687 – High risk work licence – regulator to be satisfied about certain matters

Regulation 687 provides that the regulator must be satisfied about certain matters before granting an exemption in relation to holding a high risk work licence under regulation 686.

Division 3 – Major hazard facilities

Regulation 688 – Major hazard facility – exemption

Regulation 688 provides that the regulator may exempt the operator of a major hazard facility or proposed major hazard facility from any regulatory provision

relating to that facility. The exemption may be granted on the written application of the operator of the major hazard facility or proposed major hazard facility.

A note provides that a refusal to exempt an operator of a major hazard facility from compliance with any of these Regulations, on application, is a reviewable decision under regulation 676.

Regulation 689 – Major hazard facility – regulator to be satisfied about certain matters

Regulation 689 specifies the matters that the regulator must be satisfied about before granting an exemption in relation to a major hazard facility or proposed major hazard facility under regulation 688.

Division 4 – Exemption process

Regulation 690 – Application for exemption

Regulation 690 provides that an application for an exemption must be made in the manner and form required by the regulator.

Regulation 691 – Conditions of exemption

Regulation 691 allows the regulator to impose any conditions it considers appropriate on an exemption granted under Part 11.2. The conditions imposed on the exemption may require the applicant to do certain things as stated in this regulation.

A note provides that the imposing of conditions on an exemption granted on application under Part 11.3 is a reviewable decision under regulation 676.

Regulation 692 – Form of exemption document

Regulation 692 provides that an exemption must be in writing and lists the matters that it must state.

Regulation 693 – Compliance with conditions of exemption

Regulation 693 specifies that a person who is granted an exemption must comply with the conditions of the exemption. The person must also ensure that any person under the management or control of that person complies with the conditions of the exemption.

Regulation 694 – Notice of decision in relation to exemption

Regulation 694 requires the regulator to give the applicant a copy of the exemption within 14 days of making the decision to grant the exemption or, if the regulator made the decision on its own motion, to each person to whom the exemption will apply.

Regulation 696 – Notice of refusal of exemption

Regulation 696 requires that if the regulator refuses to grant an exemption, the regulator must notify the applicant in writing about the refusal within 14 days after making the decision. The notice must state the reasons for the refusal.

A note provides that a refusal to grant an exemption under this regulation is a reviewable decision under regulation 676.

Regulation 697 – Amendment or cancellation of exemption

Regulation 697 provides that the regulator may amend or cancel an exemption at any time.

A note provides that an amendment or cancellation of an exemption granted on application under Part 11.2 is a reviewable decision under regulation 676.

Regulation 698 – Notice of amendment or cancellation

Regulation 698 sets out what the regulator must do if it decides to amend or cancel an exemption.

The regulator must notify the applicant in writing about the amendment or cancellation within 14 days after making the decision. The notice must state the reasons for the amendment or cancellation. The amendment or cancellation takes effect either on the giving of the notice to the applicant or on a later date specified in the notice. A notice that affects one person is not a legislative instrument.

If the exemption affects a class of persons, the notice is a legislative instrument, and the amendment or cancellation takes effect in accordance with the *Legislative Instruments Act 2003*.

Part 11.3 – Miscellaneous

Regulation 699 – Incident notification – prescribed serious illnesses

Regulation 699 specifies certain conditions to be a serious illness for the purposes of section 36 of the WHS Act.

Regulation 700 – Inspectors' identity cards

Regulation 700 lists the matters that an identity card given by the regulator to an inspector for the purposes of subsection 157(1) of the WHS Act must include.

Regulation 702 – Confidentiality of information – exception relating to administration or enforcement of others laws

Regulation 702 provides that a corresponding WHS law is prescribed for subparagraph 271(3)(c)(ii) of the WHS Act.

Chapter 12 – Transitional and saving provisions

Chapter 12 provides for the transition from the current OHS Regulations to the new WHS laws. New or significantly modified duties, when compared with the current OHS Regulations will be subject to a transitional period, which will generally be 12 months. The duties to provide training to workers in the hazards and risks associated with asbestos apply 6 months after commencement.

This Chapter also provides for the phasing in of a duty where an activity, such as the design of an item of plant, or a construction project, may have started prior to commencement of the Regulations so as to minimise any adverse impact from changes in the law mid activity.

This Chapter provides for the continued recognition of registrations and licences granted under current OHS laws following commencement of the new WHS laws and ‘saves’ pending applications.

Pending the development of new codes of practice, existing parts of the current OHS Code of Practice 2008 are preserved and training courses that are currently accredited under the OHS Act are recognised on a transitional basis to ensure the continued availability of courses.

This Chapter also provides for the phasing in of the new globally harmonised system for the classification and labelling of hazardous chemicals over 5 years.

The provisions in this chapter are based on nationally agreed transitional principles developed by Safe Work Australia to ensure a smooth and nationally consistent transition to model WHS laws.

Part 3 – General risk and workplace management

Division 3.1 – Managing risks to health and safety

Regulation 716 – Lead in time for managing risks

Regulation 716 provides a PCBU with a transition period of 12 months to complete arrangements to manage risks associated with remote or isolated work, including providing a system of work that includes effective communication with a relevant worker.

Division 3.2 – General workplace management

Subdivision 4 – Emergency plans

Regulation 717 – Lead in time for emergency plan

Regulation 717 provides a PCBU with a 12 month transition period to prepare an emergency plan for a workplace where one is not in place upon commencement of the regulations.

Part 4 – Hazardous Work

Division 4.1 – Noise

Regulation 718 – Particular provision for audiometric testing

Regulation 718 provides for the phasing in of the duties in subregulation 58(2) and sets out the requirements that apply instead.

Subregulation 58(2) requires a PCBU who provides personal protective equipment to also provide audiometric testing for the worker within 3 months of the worker commencing work and, in any event, at least every 2 years.

Where a PCBU would be required to provide audiometric testing for a worker under subregulation 58(2), the PCBU will have until 1 January 2013 to provide the first test to the worker. The PCBU must then provide further testing at least every 2 years after the first test is provided.

Subregulation 718(5) deems a contravention of subregulations (3) or (4) to be a contravention of regulation 58.

Regulation 719 – Noise – duties of designers

Subregulation 719(1) provides that the duties imposed on a designer of plant under regulation 59 do not apply to design activities if the designer started or completed the design before 1 January 2012.

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

Subregulation 719(2) provides for the phasing in of the duties under regulation 59. If a designer has the benefit of an exemption because of subregulation 719(1), but has not completed the design by 1 January 2014, then the designer must comply with regulation 59.

Regulation 720 – Noise – duties of manufacturers

Regulation 720 sets out the way that the duties placed on manufacturers in the OHS Regulations and WHS regulations in relation to noise and plant will operate on and after commencement.

Subregulation 720(1) provides that the duties imposed on a manufacturer under regulation 59 do not apply in relation to the manufacture of plant if the manufacturer started or completed any process associated with the manufacture before 1 January 2012.

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

Subregulation 720(2) provides that where a process is exempt from the operation of regulation 59 because it was started (or started and completed) before 1 January 2012, then the duties imposed under regulation 3.04 of the OHS Regulations apply so as to avoid a regulatory gap.

Subregulation 720(3) clarifies that if a duty under the OHS Regulations applies because of subregulation 720(2), then the OHS Act and Regulations will apply in relation to any breach.

Subregulation 720(4) provides for the phasing in of the duties in regulation 59. If a manufacturer has the benefit of an exemption because of subregulation 720(2), but has not completed the manufacture by 1 January 2013, then the manufacturer must comply with regulation 59 after this time.

Note: the WHS (T&C) Act provides that where a process is exempt from the operation of the WHS Act because it was started (or started and completed) before commencement, the relevant duties that apply to manufacturers under the OHS Act will apply. Refer to Item 3 of Schedule 2 to the WHS (T&C) Act for further information.

Regulation 721 – Noise – duties of importers

Subregulation 721(1) provides that the duties imposed on a manufacturer under regulation 59 do not apply in relation to the importation of plant if the importer started or completed any steps constituting the importation before 1 January 2012.

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

Subregulation 721(2) provides for the phasing in of the duties in regulation 59. If an importer has the benefit of an exemption because of subregulation 721(1), but has not completed the importation activity by 1 January 2013, then the manufacturer must comply with regulation 59.

Note: the WHS (T&C) Act provides that where a process is exempt from the operation of the WHS Act because it was started (or started and completed) before commencement, the relevant duties

that apply to importers under the OHS Act will apply. Refer to Item 4 of Schedule 2 to the WHS (T&C) Act for further information.

Regulation 722 – Noise – duties of suppliers

Regulation 722 sets out the way that duties placed on suppliers in the OHS Regulations and WHS regulations in relation to noise and plant will operate on and after commencement.

Subregulation 722(1) provides that the duties imposed on a supplier under regulation 59 do not apply in relation to the supply of plant if the supplier started or completed any process associated with the supply of plant before 1 January 2012.

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

Subregulation 722(2) provides that where a process is exempt from the operation of regulation 59 because it was started (or started and completed) before 1 January 2012, then the duties imposed under regulation 3.05 of the OHS Regulations apply.

Subregulation 722(3) clarifies that if a duty under the OHS Regulations applies because of subregulation 722(2), then the OHS Regulations will apply in relation to any breach.

Subregulation 722(4) provides for the phasing in of the duties in regulation 59. If a supplier has the benefit of an exemption because of subregulation 722(2), but has not completed the supply by 1 January 2013, then the supplier must comply with regulation 59.

Note: the WHS (T&C) Act provides that where a process is exempt from the operation of the WHS Act because it was started (or started and completed) before commencement, the relevant duties that apply to suppliers under the OHS Act will apply. Refer to Item 5 of Schedule 2 to the WHS (T&C) Act for further information.

Division 4.2 – Hazardous manual tasks

Regulation 723 – Hazardous manual tasks – duties of designers

Subregulation 723(1) provides that the duties imposed on a designer of plant under regulation 61 do not apply to design activities if the designer started or completed the design before 1 January 2012.

Regulation 61 provides that a designer of plant or structure must eliminate or, if it is not reasonably practicable to do so, minimise the need for a hazardous manual task to be carried out in relation to the plant or structure; and imposes duties on the designer to provide specified information about the features of the plant or structure.

Subregulation 723(2) provides for the phasing in of the duties under regulation 61. If a designer has the benefit of an exemption because of subregulation 723(1), but has not completed the design by 1 January 2014, then the designer must comply with regulation 61.

Regulation 724 – Hazardous manual tasks – duties of manufacturers

Subregulation 724(1) provides that the duties imposed on a manufacturer under regulation 61 do not apply in relation to the manufacture of plant if the manufacturer started or completed any process associated with the manufacture before 1 January 2012.

Regulation 61 provides that a manufacturer of plant or structure must eliminate or, if it is not reasonably practicable to do so, minimise the need for a hazardous manual task to be carried out in relation to the plant or structure; and requires the manufacturer to provide specified information about the features of the plant or structure.

Subregulation 724(2) provides for the phasing in of the duties in regulation 61. If a manufacturer has the benefit of an exemption because of subregulation 724(2), but has not completed the manufacture by 1 January 2013, then the manufacturer must comply with regulation 61.

Note: the WHS (T&C) Act provides that where a process is exempt from the operation of the WHS Act because it was started (or started and completed) before commencement, the relevant duties that apply to manufacturers under the OHS Act will apply. Refer to Item 3 of Schedule 2 to the WHS (T&C) Act for further information.

Regulation 725 – Hazardous manual tasks – duties of importers

Regulation 726 – Hazardous manual tasks – duties of suppliers

Regulations 725 and 726 each provide that the duties imposed on an importer and the duties placed on a supplier under regulation 61 do not apply until 1 January 2013.

Regulation 61 provides that an importer or supplier of plant or structure must take reasonable steps to obtain from the designer and manufacturer information about the features of the plant or structure.

Note: the WHS (T&C) Act provides that where a process is exempt from the operation of the WHS Act because it was started (or started and completed) before commencement, the relevant duties that apply to importers and suppliers under the OHS Act will apply. Refer to Item 4 and Item 5 of Schedule 2 to the WHS (T&C) Act for further information.

Division 4.5 – High risk work

Regulation 727 – Licence to carry out high risk work

Subregulation 727(1) provides that regulation 81, which provides a person must not carry out high risk work unless they hold the relevant high risk work licence, does not apply to certain persons until 1 July 2014. The persons listed are members of the Defence Force, a person who has been exempted by a corresponding regulator, and a person otherwise exempt by a law of a corresponding jurisdiction.

Regulation 2.03 of the OHS Regulations currently preserve the operation of State and Territory laws which relate to licensing for a class of high risk work.

Employees need to comply with the relevant State and Territory OHS licensing regimes by obtaining a licence to perform high risk work from the relevant State and Territory Regulator, with the exception of members of the Defence Force.

A member of the Defence Force is not bound by any law of a State or Territory that would require the member to have permission (e.g. a licence) to do anything in the course of his or her duties as a member of the Defence Force by virtue of section 123 of the *Defence Act 1903*. This regulation would maintain that position for a transitional period following commencement of the new laws.

Members of the Defence Force will continue to be exempt from the duty to hold a high risk work licence until 1 July 2014.

To ensure consistent application of the Regulations where Commonwealth and State WHS laws may apply concurrently, a person who is exempt from the requirement to hold a licence to perform a class of high risk work under a corresponding state or territory law, will also be exempt from the requirement to hold a licence under these regulations.

Subregulation 727(2) provides that item 23 of Schedule 3 and item 23 of Schedule 4 do not apply until 1 January 2013. The effect of this subregulation is to delay the requirement to hold a reach stacker licence. This class of licence is new.

Division 4.6 – Demolition work

Regulation 728 – Notice of demolition work

Regulation 728 provides that the duties imposed on a person under regulation 142 do not apply until 1 January 2013.

Regulation 142 requires a PCBU, who proposes to undertake specified types of demolition work, to give the regulator written notice of the demolition work at least 5 days prior to the commencement of the work.

Division 4.8 – Diving work

Regulation 729 – Duties

Regulation 729 provides that the duties imposed on a person under Part 4.8 do not apply until 1 January 2013.

Part 5 – Plant and structures

Division 5.1 – General duties for plant and structures

Subdivision 2 – Duties of persons conducting businesses or undertakings that design plant

Regulation 730 – Hazard identified in design during manufacture

Regulation 730 provides that the duties imposed on a designer of plant under regulation 188 only apply in relation to the plant if the manufacturer of the plant advises the designer of the plant, on or after 1 January 2012, that there is a hazard in the design of the plant.

Regulation 188 provides that, if a manufacturer of plant advises the designer of the plant that there is a hazard in the design for which there is no control measure, the designer must revise the information originally supplied to the manufacturer to eliminate or minimise the risk, or notify the manufacturer in writing if the designer considers that it is unnecessary to revise the information.

Regulation 731 – Other duties

Subregulation 731(1) provides that the duties imposed on a designer of plant under regulations 189 to 192 do not apply in relation to any plant if the designer started or completed designing the plant before 1 January 2012.

Regulations 189 to 192 outline the duties of a designer of plant in relation to guarding, operational controls, emergency stop controls and warning devices.

Subregulation 731(2) provides for the phasing in of the duties in regulations 189 to 192. If a designer has the benefit of an exemption because of subregulation 731(1) but has not completed the design by 1 January 2014 then the designer must comply with regulations 189 to 192.

Subdivision 3 – Duties of persons conducting businesses or undertakings that manufacture plant

Regulation 732 – Control of risk

Regulation 732 provides that the duties imposed on a manufacturer of plant under regulation 193 only apply in relation to any process associated with the manufacture of the plant that is undertaken on or after 1 January 2012.

Regulation 193 requires a manufacturer of plant to ensure that the plant is manufactured, inspected and tested, if required, in accordance with the information provided by the designer of the plant under the WHS Act and these Regulations. This regulation also sets out the steps a manufacturer must take when a hazard is identified in the design of the plant during the manufacturing process for which the designer has not provided a control measure.

Regulation 733 – Other duties

Subregulation 733(1) provides that the duties imposed on a manufacturer of plant under regulations 194 and 195 do not apply in relation to any plant if the manufacturer started or completed any process associated with the manufacture of the plant before 1 January 2012.

Regulation 194 imposes duties on a manufacturer of plant where guarding is used to control risk.

Regulation 195 requires a manufacturer of plant to take all reasonable steps to obtain specified information from the designer of plant and to pass information on.

Subregulation 733(2) provides for the phasing in of the duties in regulations 194 and 195. If a manufacturer has the benefit of an exemption because of subregulation 733(1), but has not completed the manufacture by 1 January 2013, then the manufacturer must comply with regulations 194 and 195.

Note: the WHS (T&C) Act provides that where a process is exempt from the operation of the WHS Act because it was started (or started and completed) before commencement, the relevant duties that apply to manufacturers under the OHS Act will apply. Refer to Item 3 of the WHS (T&C) Act for further information.

Subdivision 4 – Duties of persons conducting businesses or undertakings that import plant

Regulation 734 – Duties

Subregulation 734(1) provides that the duties imposed on an importer under regulations 196 and 197 do not apply in relation to any plant if the importer started or completed any steps constituting the importation of the plant before 1 January 2012.

Regulation 196 requires an importer of plant to take all reasonable steps to obtain specified information from a manufacturer and designer of plant, and to give that information to any person to whom the importer supplies the plant.

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

Subregulation 734(2) provides for the phasing in of the duties in regulations 196 and 197. If an importer has the benefit of an exemption because of subregulation 734(1), but has not completed the importing by 1 January 2013, then the importer must comply with regulations 196 and 197.

Note: the WHS (T&C) Act provides that where a process is exempt from the operation of the WHS Act because it was started (or started and completed) before commencement, the relevant duties that apply to importers under the OHS Act will apply. Refer to Item 4 of the WHS (T&C) Act for further information.

Subdivision 5 – Duties of persons conducting businesses or undertakings that supply plant

Regulation 735 – Duties

Subregulation 735(1) provides that the duties imposed on a supplier under regulations 198 to 200 do not apply in relation to any plant if the supplier started or completed any process associated with the supply of the plant before 1 January 2012.

Regulation 198 requires a supplier of plant to take all reasonable steps to obtain specified information and to ensure that the person to whom the plant is supplied is given the information when the plant is supplied.

Regulation 199 requires a supplier of second-hand plant to ensure, as far as reasonably practicable, that any faults in the plant are identified and to provide information about the condition of the plant.

Regulation 200 requires a supplier of plant to be used for scrap or spare parts to inform the person to whom the plant is supplied that the plant is scrap and is not to be used as plant.

Subregulation 735(2) provides for the phasing in of the duties in regulations 198 to 200. If a supplier has the benefit of an exemption because of subregulation 735(1), but has not completed the supply by 1 January 2013, then the supplier must comply with regulations 198 to 200.

Note: the WHS (T&C) Act provides that where a process is exempt from the operation of the WHS Act because it was started (or started and completed) before commencement, the relevant duties that apply to suppliers under the OHS Act will apply. Refer to Item 5 of the WHS (T&C) Act for further information.

Subdivision 6 – Duties of persons conducting businesses or undertakings that install, construct or commission plant or structures

Regulation 736 – Duties

Regulation 736 provides that the duties imposed on a PCBU that installs, constructs or commissions plant that is to be used, or could reasonably be expected to be used, as, or at, a workplace under regulations 201 and 202 do not apply in relation to any plant or structure if the person started or completed any process associated with the installation, construction or commissioning of the plant or structure before 1 January 2012.

Regulations 201 and 202 require a PCBU that installs, constructs or commissions plant or a structure to have regard to the information provided by the designer or manufacturer under the WHS Act and these Regulations, or instructions provided by a competent person, to the extent that these instructions relate to health and safety.

Note: the WHS (T&C) Act provides that where a process is exempt from the operation of the WHS Act because it was started (or started and completed) before commencement, the relevant duties that apply to OHS installers under the OHS Act will apply. Refer to Item 6 of the WHS (T&C) Act for further information.

Regulation 737 – Plant used in connection with tree lopping — lead in time for application of regulation 221

Regulation 737 provides that duties imposed under Regulation 221 do not apply until a code of practice for the use of plant in connection with tree lopping takes effect.

Regulation 221 includes an exception to the requirements in regulation 220 in relation to work boxes used to lift or suspend people where the box is used in connection with tree lopping. Further detail in relation to safe carrying out tree lopping will be included in a Code of Practice on Safe Access in Tree Trimming and Arboriculture. Public consultation on a draft Code ended on 16 December 2011 and it is anticipated that the Code of Practice will be finalised in the first half of 2013.

Division 5.2 – Additional duties relating to registered plant and plant designs

Subdivision 2 – Duties of persons conducting businesses or undertakings who design plant

Regulation 738 – Duties

Subregulation 738(1) provides that the duties imposed on a designer of plant under regulations 228 and 229 do not apply in relation to any plant if the designer started or completed designing the plant before 1 January 2012.

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

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

Subregulation 738(2) provides for the phasing in of the duties in regulations 228 and 229. If a designer has the benefit of an exemption because of subregulation 738(1), but has not completed the design by 1 January 2014, then the designer must comply with regulations 228 and 229.

Division 5.3 – Registration of plant designs and items of plant

Regulation 739 – Registration of design of concrete placement units and prefabricated formwork

Subregulation 739(1) provides that the designs of concrete placement units with delivery booms and prefabricated formwork are not required to be registered under Part 5.3 if the designer started or completed designing the item before 1 January 2012.

Subregulation 739(2) provides for the phasing in of the duties under Part 5.3 in relation to the items of plant mentioned in subregulation 739(1). If the designer has the benefit of an exemption because of subregulation 739(1), but has not completed the design by 1 January 2014, then the manufacturer must comply with the requirements of Part 5.3 in relation to the duties of a designer.

Regulation 740 – Registration of design of lifts

Regulation 740 provides that the duties imposed on a person under Part 5.3 do not apply in relation to lifts (including escalators and moving walkways) until 1 January 2013.

Regulation 741 – Existing registrations of plant and plant designs

Regulation 741 preserves existing registrations of plant and plant design under the OHS Regulations. Subregulation 741(1) provides that this regulation applies to an item or design of plant if it was registered under Division 8 of the OHS Regulations before 1 January 2012, the registration is in force immediately before the commencement, and the item or design of plant is required to be registered under Part 5.3 on 1 January 2012.

Subregulation 741(2) provides that on 1 January 2012:

- An item of plant is taken to be registered by the regulator as an item of plant under Part 5.3 and the registration is valid until the date on which it is expressed to expire unless the regulator revokes it earlier; and
- The design of the item of plant is taken to be registered by the regulator as the design of an item of plant under Part 5.3; and
- Any existing conditions applying to the registration of the item or design of plant continue to apply and the registration may be varied or revoked by the regulator.

Subregulations 741(3) and (4) provide that a written notice issued by the Commission under Division 8 of the OHS Regulations stating that the Commission has registered the design or item of plant is taken to be a registration document issued by the regulator under regulations 261 and 274 respectively for the design or item of plant.

Subregulations 741(5) and (6) provide that registration numbers issued by the Commission under Division 8 of the OHS Regulations for an item or design of

plant are taken to be the plant registration number and design registration number under regulations 273 and 260 respectively for the item or design of plant.

Regulation 742 – Pending applications for registration of plant and plant designs

Regulation 742 provides for the preservation of pending applications for registration of plant and plant designs.

Subregulation 742(1) provides that this regulation applies if:

- before 1 January 2012, an application was made under Division 8 of the OHS Regulations to register the design of an item of plant or an item of plant; and
- immediately 1 January 2012, the application had not been decided; and
- the registration day (the day the design of the item of plant or the item of plant is required to be registered under Part 5.3) is on 1 January 2012 or a later date required by this Part.

Subregulation 742(2) provides that on the registration day:

- the application is taken to be an application made to the regulator under Part 5.3 for the registration of the design or the item; and
- the application is to be dealt with in accordance with Part 5.3.

Regulation 743 – Registration of plant and plant design by Defence Force

Regulation 743 provides that the duties imposed under Part 5.3 of the Regulations in relation to the registration of plant and plant designs do not apply where the Australian Defence Organisation (ADO) holds a 'special licence'. Regulation 4.58 of the OHS Regulations previously enabled the Commission to grant the ADO a special licence to operate specified types of plant. Where a special licence was in force, the duties in Division 8 of Part 4 of the OHS Regulations did not apply.

Subregulation 743(1) preserves the licence granted to the ADO by the Commission in relation to the special registration of plant and plant designs after commencement of the new WHS laws. The licence immediately in force prior to commencement of the new WHS laws:

- is taken to continue in force despite the repeal of the OHS Regulations; and
- is taken to be subject to the same conditions (if any) to which it was subject immediately before 1 January 2012; and
- may be varied or revoked by the regulator.

Part 6 – Construction work

Division 6.2 – Duties of designer of structure and person who commissions construction work

Regulation 744 – Duties

Regulation 744 provides that the duties imposed on a person under regulations 294 to 296 do not apply until 1 January 2013.

Regulation 294 imposes duties on PCBU who commission construction work, and designers to manage risks associated with the construction of the design. Specifically, a PCBU who commissions construction work, and the designers of structures are required to ensure that risks to health and safety arising from construction are eliminated so far as is reasonably practicable, or if this is not possible, minimised so far as is reasonably practicable.

Regulation 295 requires a designer to give a written safety report to the PCBU who commissioned the design.

Where a principal contractor is engaged for a construction project commissioned by a PCBU regulation 296 requires the PCBU to give the principal contractor relevant information about hazards and risks.

Division 6.3 – Duties of person conducting business or undertaking

Subdivision 1 – General

Regulation 745 – Security of workplace

Regulation 745 provides that the duties imposed on a person under regulation 298 do not apply until 1 January 2013.

Regulation 298 provides that a person with management or control of a workplace at which construction work is carried out must have regard to certain matters to ensure, so far as is reasonably practicable, that the workplace is secured from unauthorised access.

Subdivision 3 – Excavation work

Regulation 746– Additional controls — trenches

Regulation 746 provides that the duties imposed on a person under regulation 306 do not apply until 1 January 2013.

Regulation 306 specifies the additional control measures that a PCBU who proposes to excavate a trench at least 1.5m deep must put in place.

Division 6.4 – Additional duties of principal contractor

Regulation 747 – Specific control measure – signage identifying principal contractor

Regulation 747 provides that the duties imposed on a person under regulation 308 do not apply until 1 January 2013.

Regulation 308 provides that the principal contractor for a construction project must install signs that are clearly visible from outside the workplace and show certain information.

Regulation 748 – Duties – WHS management plans

Subregulation 748(1) provides that if a construction project started before 1 January 2012, then the duties imposed on a person under regulations 309 to 314 do not apply in relation to the project until 1 January 2013.

Regulations 309 – 314 set out the duties placed on principal contractors in relation to WHS management plans and safe work method statements.

Subregulation 748(2) provides that if regulations 309 to 314 do not apply to a duty holder because the relevant project started before 1 January 2012, Division 12.4 and Division 12.5 of the OHS Regulations apply until 1 January 2013.

Division 12.4 of the OHS Regulations provides that where it is likely that 5 or more persons will be working on a construction project at any one time the employer in control of the project on must prepare an occupational health and safety management plan. An OHS management plan is equivalent to a WHS management plan.

Division 12.5 provides that an employer in control of a construction project that involves high risk construction work must obtain relevant safe work

method statements from persons engaged to undertake the work. The employer is also required to ensure that the statements are reviewed and changed as is necessary, and to take all reasonably practicable steps to ensure that they are complied with.

Subregulation 748(3) clarifies that if the OHS Regulations apply because of subregulation (2), then the OHS Act and Regulations apply in relation to any breach.

Division 6.5 General construction induction training

Regulation 749 – Duties

Regulation 749 provides that the duties imposed on a person under regulations 317(2) and 326 do not apply until 1 January 2013.

Regulation 317(2) places an obligation on a PCBU to ensure that a worker holds a general construction induction training card, and Regulation 326 places a duty on a worker to keep their card available for inspection while at work.

During this transitional period, the obligations placed on a PCBU by Regulation 316 and Subregulation 317(1) to ensure that general construction induction training is provided to a worker engaged to undertake construction work will apply.

Part 7 – Hazardous chemicals

Division 7.1 – Hazardous chemicals

Subdivision 2 – Obligations relating to safety data sheets and other matters

Regulation 750 – labelling hazardous chemicals – pipework

Regulation 750 provides that the duties imposed on a person under regulation 343 do not apply until 1 January 2013.

Regulation 343 requires a PCBU at a workplace to ensure that a hazardous chemical in pipe work is identified as far as is reasonably practicable by a label, sign or by another method on or near the pipe work.

Subdivision 8 Prohibition, authorisation and restricted use

Regulation 751 – Authorisation to use, handle or store prohibited carcinogens and restricted carcinogens

Regulation 751 provides that the requirement to be authorised under Division 8 of Part 7.1 by the regulator to use, handle or store a prohibited or restricted carcinogen does not apply until 1 January 2013.

Division 7.2 – Lead

Subdivision 3 – Lead risk work

Regulation 752 – Notification of lead risk work

Regulation 752 provides that the duties imposed on a person under regulation 403 do not apply until 1 January 2013.

Regulation 403 requires a PCBU to give the regulator written notice of lead risk work carried out at the workplace and sets out requirements in relation to the content of the notice and record keeping. An emergency services organisation must also notify the regulator of lead risk work in certain circumstances.

Part 8 – Asbestos

Division 8.3 – Management of asbestos and associated risks

Regulation 753 – Duties

Regulation 753 provides that the duties imposed on a person under regulations 425 to 430 do not apply until 1 January 2013.

Regulations 425 to 430 set out requirements relating to asbestos registers and asbestos management plans and require:

- Establishment of an asbestos register for a workplace;
- Access to the register;
- Transfer of the register by the person relinquishing management or control of the workplace;
- Development of an asbestos management plan; and
- Review of an asbestos management plan.

Division 8.4 – Management of naturally occurring asbestos

Regulation 754 – Duties

Subregulation 754(1) provides that the duties imposed on a person under regulations 431 to 433 do not apply until 1 January 2013.

Regulations 431 to 433 set out the requirements for duty holders at workplaces where naturally occurring asbestos is likely to be encountered and provides for asbestos management plans and training for workers in these circumstances.

Subregulation 754(2) provides that the duties imposed on a person under regulation 434 do not apply until 1 July 2012.

Regulation 434 requires a PCBU to provide training on hazards and risks associated with naturally occurring asbestos for workers who carry out work where naturally occurring asbestos is likely to be found.

Division 8.5 – Asbestos at the workplace

Subdivision 2 – Training

Regulation 755 – Duties

Regulation 755 provides that the duties imposed on a person under regulation 445 do not apply until 1 July 2012.

Regulation 445 places specific requirements on PCBUs regarding training for certain workers about identification, safe handling and suitable control measures for asbestos. This training is required for workers who may be involved in asbestos removal work or carrying out asbestos-related work outside the scope of licensed asbestos removal work. Regulation 445 also specifies record keeping requirements in relation to the training undertaken by the worker.

Part 9 – Major hazard facilities

Division 9.7 – Licensing of major hazard facilities

Regulation 756 – Existing major hazard facility

Regulation 756 deems a facility that was classified as a major hazard facility under the OHS Regulations to be a determined facility under the Regulations if the chemicals listed in Schedule 15 are present or likely to be present at the facility in a quantity that exceeds 10% of their threshold quantity.

A facility that was not licensed under the OHS Regulations, would be required to continue the application process and must make an application for a licence within 2 years of classification of the facility under Division 9.2 of the OHS Regulations.

A facility that was licensed under the OHS Regulations immediately before 1 January 2012, is required to make an application for a new licence under the WHS Regulations by 1 January 2012. A licence will be taken to be granted upon application (see regulation 757).

Regulation 757 – Existing licensed major hazard facility

Regulation 757 recognises existing major hazard facility licences granted under the OHS Regulations following commencement of the new WHS laws. Regulation 757 provides that a facility that immediately before 1 January 2012 was licensed under regulation 9.20 of the OHS Regulations is taken to be licensed under Part 9.7 of the Regulations.

The licence will be subject to the conditions it was subject to immediately before 1 January 2012 and the regulator may vary or delete a condition, as well as impose a new condition.

Regulation 758 – Existing notification of facility awaiting decision

Regulation 758 preserves a notification provided by an employer in control of a potential major hazard facility that was provided under the OHS Regulations.

Subregulations 758(1) and 758(2) provide that where a notification about the facility was given to the Commission before 1 January 2012, and the Commission has not decided whether to classify the facility as a major hazard facility, the notice is taken to have been given to the regulator under regulation 536.

Regulation 536 requires the operator of a facility at which Schedule 15 chemicals are present or likely to be present, in a quantity that exceeds 10% of their threshold quantity, to notify the regulator.

Subregulation 758(3) provides that if the notification provided did not include the information mentioned in regulation 538, the operator must give the information to the regulator within 3 months.

Regulation 538 requires that the notification must contain information about the facility and the operator of the facility as outlined in the regulation and whether the operator is an individual or a body corporate.

Part 12 – Other transitional matters

Division 1 – Globally Harmonised System of Classification and Labelling of Chemicals

Regulation 759 – Introductory period for GHS

Regulation 759 provides for the phase in of the requirements of the GHS over a period of 5 years. When a regulation makes provision for a matter by reference to compliance with the GHS, a person will be taken to comply with the provision if the person complies with either the GHS or a ‘transitional standard’ to the extent that the standard is relevant. The transitional standards include the current NOHSC standards for the classification and labelling of hazardous substances, the AGD Code, the Code of Practice for Labelling Agricultural Chemical Products, and the Code of Practice for Labelling Veterinary Chemical Products.

On the 1 January 2017, all duty holders must comply with the GHS where a provision of these regulations requires them to do so.

Division 2 – Obligation to train health and safety representatives – approved courses of training

Regulation 760 Courses accredited before 1 January 2012

Subregulation 760(1) deems a training course accredited by or approved by the Commission immediately prior to the commencement of the WHS Act to be approved by the regulator under paragraph 72(1)(a) of the WHS Act for a transitional period of 12 months. Subregulation 760(2) further preserves the conditions that applied to the approval and provides that the regulator may vary or revoke the approval.

Division 3 – Codes of practice

Regulation 761 Preserved codes of practice

Regulation 761 preserves certain Parts of the Occupational Health and Safety Code of Practice 2008 as preserved codes for the purposes of subitem 23(1) of Schedule 2 to the WHS (T&C) Act pending the development and approval of new codes of practice on these topics.

Schedules

Schedule 1 – Revocation of regulations

A note provides that some States and Territories will use this schedule to repeal existing OHS regulations. This Schedule is left blank in the Commonwealth WHS Regulations.

Schedule 2 – Fees

Clause 1 – Purpose of this Schedule

Clause 1 specifies that the purpose of Schedule 2 is to set out the fees to be paid under these Regulations and when they must be paid.

Table 2.1

Table 2.1 sets out the fees to be paid under these Regulations, the specific regulation under which the fee must be paid, the nature and amount of the fee, and when the fee must be paid.

Schedule 3 – High risk work licences and classes of high risk work

Table 3.1

Table 3.1 sets out the high risk work licences and provides a description of each class of high risk work that is within the scope of each licence.

Clause 1 – Boom-type elevating work platform

Clause 1 specifies the length of a boom for the purposes of item 21 in table 3.1.

Schedule 4 – High risk work licences – competency requirements

Clause 1 – Purpose of this Schedule

Clause 1 provides that the purpose of Schedule 4 is to set out and identify the qualifications needed for a high risk work licence.

Table 4.1

Table 4.1 sets out the qualifications needed for a high risk work licence.

Schedule 5 – Registration of plant and plant designs

Schedule 5 sets out the items of plant requiring registration of design under regulation 243. It also sets out the items of plant that are required to be registered under regulation 246.

Part 1 – Plant requiring registration of design

Clause 1 – Items of plant requiring registration of design

Clause 1 identifies the items of plant requiring registration of design under regulation 243.

Clause 2 – Exceptions

Clause 2 clarifies that certain items of plant are not subject to the plant design registration requirements under regulation 243, even though they are listed in clause 1. The items of plant listed include heritage boilers and tow trucks.

Part 2 – Items of plant requiring registration

Clause 3 – Items of plant requiring registration

Clause 3 identifies the items of plant that are required to be registered under regulation 246.

Clause 4 – Exceptions

Clause 4 clarifies that certain items of plant are not subject to the plant item registration requirements under regulation 246, even though they are listed in clause 3. The items of plant listed include playground devices and inflatable devices that are sealed.

Schedule 6 – Classification of mixtures

Clause 1 – Purpose of this Schedule

Clause 1 identifies that the purpose of Schedule 6 is to replace the tables in the GHS with the tables in the Schedule.

Table 6.1 – Classification of mixtures containing respiratory or skin sensitisers

Table 6.1 sets out the cut-off values/concentration limits of ingredients of a mixture classified as either a respiratory sensitiser or a skin sensitiser, which would trigger classification of the mixture.

Table 6.2 – Classification of mixtures containing carcinogens

Table 6.2 sets out the cut-off values/concentration limits of ingredients of a mixture classified as a carcinogen, which would trigger classification of the mixture.

Table 6.3 – Classification of mixtures containing reproductive toxicants

Table 6.3 sets out the cut-off values/concentration limits of ingredients of a mixture classified as a reproductive toxicant, or for effects on or via lactation, which would trigger classification of the mixture.

Table 6.4 – Classification of mixtures containing specific target organ toxicants (single exposure)

Table 6.4 sets out the cut-off values/concentration limits of ingredients of a mixture classified as a specific target organ toxicant, which would trigger classification of the mixture (with single exposure).

Table 6.5 – Classification of mixtures containing specific target organ toxicants (repeated exposure)

Table 6.5 sets out the cut-off values/concentration limits of ingredients of a mixture classified as a specific target organ toxicant, which would trigger classification of the mixture (with repeated exposure).

Schedule 7 – Safety data sheets

Clause 1 – Safety data sheets – content

Clause 1 outlines the information to be contained in a safety data sheet. This clause:

- specifies the general information that must be contained in a safety data sheet;
- specifies the particular information about the chemical that must be included;
- requires the safety data sheet to use the headings in subclause 1(2);
- requires the safety data sheet to be structured in the order set out in subclause 1(2); and
- requires the safety data sheet to be written in English.

Clause 2 – Safety data sheets – research chemical, waste product or sample for analysis

Clause 2 sets out the information that must be contained in a safety data sheet for a hazardous chemical which is a research chemical, waste product or sample for analysis for the purposes of regulation 331.

Schedule 8 – Disclosure of ingredients in safety data sheet

Clause 1 – Purpose of this Schedule

Clause 1 provides that the purpose of Schedule 8 is to set out the way in which the ingredients of a hazardous chemical must be disclosed in section 3 of a safety data sheet.

Clause 2 – Identity of ingredients to be disclosed

Clause 2 applies if an ingredient in a hazardous chemical causes the correct classification of the chemical to include a hazard class and hazard category referred to in table 8.1. The identity of the ingredient must be given in English on both the label and safety data sheet of the hazardous chemical.

Table 8.1

Table 8.1 sets out the GHS hazard categories for different classes of GHS hazards.

Clause 3 – Generic names used to disclose identity of ingredients

Clause 3 applies if an ingredient in a hazardous chemical must be disclosed under clause 2. This clause sets out the circumstances in which the ingredient may be disclosed by its generic name.

Table 8.2

Table 8.2 sets out the hazard categories of certain hazard classes.

Clause 4 – Disclosing proportions of ingredients

Clause 4 sets out the circumstances in which the proportions of the ingredients of a hazardous chemical must be disclosed.

Schedule 9 – Classification, packaging and labelling requirements

Schedule 9 sets out the requirements for the correct classification, packaging and labelling of hazardous chemicals.

Part 1 – Correct classification

Clause 1 – Correct classification of a substance, mixture or article

Clause 1 provides that a substance or mixture (other than a research chemical, sample for analysis or waste product) is correctly classified if a determination is made about whether the substance or mixture can be classified into a hazard class under the GHS, including a mixture classification referred to in Schedule 6.

Subclause 1(2) provides that a substance or mixture that is a research chemical, sample for analysis or waste product is correctly classified if, so far as is reasonably practicable having regard to the known or suspected properties of the substance or mixture, a determination is made about the identity of the substance or mixture; and a determination is made about whether the substance or mixture can be classified into a hazard class under the GHS.

Subclause 1(3) provides that an article that contains a substance or mixture that may be released during the use, handling or storage of the article is correctly classified if the substance or mixture is correctly classified.

Part 2 – Correct packing

Clause 2 – Correctly packing hazardous chemicals

Clause 2 sets out the requirements for a hazardous chemical to be correctly packed in a container. Subclause 2(2) sets out additional requirements for the correct packing of a hazardous chemical supplied by a retailer to a person, in a container provided by the person.

Part 3 – Correct labelling

A note provides that more than one clause of this Part may apply to a hazardous chemical depending on the nature of the hazardous chemical, its container and other matters.

Clause 3 – Labelling hazardous chemicals – general

Clause 3 sets out the requirements for a hazardous chemical to be correctly labelled, where the chemical is packed in a container and has a label in English.

Clause 4 – Labelling hazardous chemicals – small container

Clause 4 sets out the requirements for a hazardous chemical to be correctly labelled, where the chemical is packed in a container and has a label in English, but the container is too small for a label attached to it to include all the information referred to in subclause 3(1).

Clause 5 – Labelling hazardous chemicals – research chemicals or samples for analysis

Clause 5 applies to a hazardous chemical that is a research chemical or sample for analysis. The hazardous chemical is correctly labelled if the chemical is packed in a container that has a label in English and the label includes both the product identifier and a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

Clause 6 – Labelling hazardous chemicals – decanted or transferred chemicals

Clause 6 applies to a hazardous chemical that is decanted or transferred from the container in which it is packed, and either will not be used immediately or is supplied to someone else. The hazardous chemical is correctly labelled if the chemical is packed in a container that has a label in English and the label includes both the product identifier and a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

Clause 7 – Labelling hazardous chemicals – known hazards

Clause 7 applies to a hazardous chemical where the chemical is not being supplied to another workplace and the hazards relating to the chemical are known to the workers involved in using, handling or storing the chemical. The hazardous chemical is correctly labelled if the chemical is packed in a container that has a label in English and the label includes both the product identifier and a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

Clause 8 – Labelling hazardous chemicals – waste products

Clause 8 applies to a waste product if it is reasonably likely that the waste product is a hazardous chemical. The waste product is correctly labelled if it is packed in a container that has a label in English and the label consists of the product identifier, the name, Australian address and business telephone number of the manufacturer or importer, and a hazard pictogram or hazard statement consistent with the correct classification of the chemical.

Clause 9 – Labelling hazardous chemicals – explosives

Clause 9 sets out the requirements for a hazardous chemical to be correctly labelled where the hazardous chemical may be classified in the explosives hazard class.

Clause 10 – Labelling hazardous chemicals – agricultural and veterinary chemicals

Clause 10 applies to a hazardous chemical that is an agricultural or veterinary chemical. The hazardous chemical is correctly labelled if the chemical is labelled in accordance with the requirements of the Australian Pesticides and Veterinary Medicines Authority, the label is in English, and the label includes both a hazard statement and precautionary statement which are consistent with the correct classification of the chemical.

Subclause 10(2) clarifies that an ‘agricultural or veterinary chemical’ means an agricultural chemical product or veterinary chemical product under the *Agricultural and Veterinary Chemicals Code Act 1994*.

Schedule 10 – Prohibited and restricted hazardous chemicals and carcinogens

A note provides that the prohibition of the use of carcinogens listed in column 2 of table 10.1, and the restriction of the use of carcinogens listed in column 2 of table 10.2, apply to the pure substance, where the substance is present in a mixture at a concentration greater than 0.1%, unless otherwise specified.

Table 10.1 – Prohibited carcinogens

Table 10.1 sets out the prohibited carcinogens.

Table 10.2 – Restricted carcinogens

Table 10.2 sets out the restricted carcinogens and their restricted uses.

Table 10.3 – Restricted hazardous chemicals

Table 10.3 sets out the restricted hazardous chemicals and their restricted uses.

A note provides that regulation 382 deals with polychlorinated biphenyls (PCBs).

Schedule 11 – Placard and manifest quantities

Table 11.1

Table 11.1 sets out the descriptions, placard quantities and manifest quantities of various hazardous chemicals.

Note 1 provides that in item 2, gases under pressure with acute toxicity, category 4 only applies up to a LC50 of 5,000 ppmV. This is equivalent to dangerous goods of Division 2.3.

Note 2 provides that item 4, which relates to flammables, includes flammable aerosols.

Clause 1 – Determination of classification of flammable liquids

Clause 1 provides that, for the purposes of table 11.1, if a flammable liquid category 4 is used, handled or stored in the same spill compound as one or more flammable liquids of categories 1, 2 or 3, then the total quantity of flammable liquids of categories 1, 2 or 3 must be determined as if the flammable liquid category 4 had the same classification as the flammable liquid in the spill compound with the lowest flash point.

The example illustrates the application of clause 1. It clarifies that for placarding and manifest purposes, if a spill compound contains 1,000L of flammable liquid category 1 and 1,000L of flammable liquid category 4, then the spill compound is considered to contain 2,000L of flammable liquid category 1.

Schedule 12 – Manifest requirements

Clause 1 – Manifest – general information

Clause 1 sets out the general information required in a manifest of hazardous chemicals.

Clause 2 – Manifest – bulk storage and containers

Clause 2 sets out the information required in a manifest of a hazardous chemical, where the hazardous chemical is stored at a workplace either in bulk or in a container.

Clause 3 – Manifest – identification of hazardous chemical

Clause 3 sets out the information required in a manifest for:

- a hazardous chemical (other than a flammable liquid category 4, unstable explosive, organic peroxide type A or self-reactive substance type A);
- a flammable liquid category 4; and
- an unstable explosive, organic peroxide type A or self-reactive substance type A.

Clause 4 – Manifest – storage area for packaged hazardous chemicals

Clause 4 sets out the information required in a manifest of hazardous chemicals, where:

- a storage area contains, or is likely to contain, a packaged hazardous chemical or a hazardous chemical in an intermediate bulk container;
- the storage area is required to have a placard under these regulations; and
- the hazardous chemicals are dangerous goods under the ADG Code.

Subclause 4(3) sets out the chemicals which are considered to be ‘specified hazardous chemicals’ for the purposes of clause 4.

Clause 5 – Manifest – hazardous chemicals being manufactured

Clause 5 sets out the information required in a manifest for an area where hazardous chemicals are being manufactured.

Clause 6 – Manifest – hazardous chemicals in transit

Clause 6 provides that if the hazardous chemicals at a workplace are dangerous goods under the ADG Code, are in transit at the workplace, and are accompanied by dangerous goods transport documents that comply with the ADG Code, then the PCBU at the workplace is taken to comply with clauses 4 and 5 if the manifest includes a compilation of the dangerous goods transport documents.

Clause 7 – Manifest – plan of workplace

Clause 7 requires a manifest of hazardous chemicals at a workplace to contain a scale plan. This clause sets out the requirements for the scale plan.

Schedule 13 – Placard requirements

Clause 1 – Displaying placards

Clause 1 applies if a PCBU is required to display a placard at the workplace in relation to a hazardous chemical. This clause sets out the requirements for the content and location of the placard.

Clause 2 – Maintaining placards

Clause 2 sets the duties imposed on a PCBU to maintain and amend the placard.

Clause 3 – Outer warning placards – requirements

Clause 3 applies to a PCBU who is required to display an outer warning placard at the workplace in relation to a hazardous chemical under regulation 349.

This clause requires the outer warning placard to comply with the form and dimensions shown in figure 13.1, and display the word 'HAZCHEM' in red letters on a white or silver background.

Clause 4 – Placards for particular hazardous chemicals stored in bulk

Clause 4 applies to a PCBU who must display a placard at the workplace in relation to the storage in bulk of any of the hazardous chemicals specified in subclause 4(1). Subclauses 4(2) to (5) set out the requirements for this placard.

Clause 5 – Placards for unstable explosives, organic peroxides type A or self-reactive substances type A in bulk

Clause 5 sets out the requirements for a placard displayed at a workplace in relation to unstable explosives, organic peroxides type A or self-reactive substances type A that are stored in bulk.

Clause 6 – Placards for packaged Schedule 11 hazardous chemicals (other than flammable liquids category 4) and IBCs

Clause 6 sets out the requirements for a placard displayed at a workplace in relation to packaged Schedule 11 hazardous chemicals (other than flammable liquids category 4) or a Schedule 11 hazardous chemical stored in an intermediate bulk container.

Clause 7 – Placards for flammable liquids category 4 packaged or in bulk

Clause 7 sets out the requirements for a placard displayed at a workplace in relation to a packaged flammable liquid category 4 or a flammable liquid category 4 in bulk.

Schedule 14 – Requirements for health monitoring

Table 14.1 – Hazardous chemicals (other than lead) requiring health monitoring

Table 14.1 sets out the hazardous chemicals (other than lead) which require health monitoring and the type of health monitoring required for each chemical.

Table 14.2 – Lead requiring health monitoring

Table 14.2 sets out the type of health monitoring required for lead.

Schedule 15 – Hazardous chemicals at major hazard facilities (and their threshold quantity)

Clause 1 – Definitions

Clause 1 sets out the definitions for this Schedule.

Clause 2 – Relevant hazardous chemicals

Clause 2 provides that the hazardous chemicals that characterise a workplace as a facility for the purposes of these Regulations are the chemicals specifically referred to in table 15.1 and the chemicals that belong to the types, classes and categories referred to in table 15.2.

Clause 3 – Threshold quantity of one hazardous chemical

Clause 3 sets out how the threshold quantity of a hazardous chemical is determined under this Schedule.

Clause 4 – Threshold quantity of more than one hazardous chemical

Clause 4 specifies the formula to be applied to calculate whether a threshold quantity of chemicals exists, where there is more than one hazardous chemical.

Clause 5 – How table 15.1 must be used

Clause 5 provides guidance about the interpretation and application of table 15.1, which specifies the threshold quantity of a hazardous chemical.

Clause 6 – How table 15.2 must be used

Clause 6 provides additional information about the threshold quantities and classification of the explosives mentioned in table 15.2.

Table 15.1

Table 15.1 sets out the names, UN numbers and threshold quantities of hazardous chemicals that characterise a workplace as a facility for the purposes of these Regulations.

Table 15.2

Table 15.2 sets out the types, classes, categories and threshold quantities of hazardous chemicals that characterise a workplace as a facility for the purposes of these Regulations.

Schedule 16 – Matters to be included in emergency plan for major hazard facility

Schedule 16 sets out the matters that must be included in an emergency plan for an MHF.

Clause 1 – Site and hazard detail

Clause 1 sets out the information required about the site and hazard details. The kinds of information required include a map identifying the locations of potentially hazardous inventory and staging points for emergency services, and details about the maximum number of persons that are likely to be present at the facility on a normal working day.

Clause 2 – Command structure and site personnel

Clause 2 sets out the information required about the command structure and site personnel. The kinds of information required include details of the person who can clarify the content of the emergency plan if necessary, and a list of 24 hour emergency contacts.

Clause 3 – Notifications

Clause 3 sets out the information required about the MHF's procedures for notifying emergency services, the local community and local authority in the event of a major incident or an event that could lead to a major incident. The kinds of information required include details of on-site and off-site warning systems and on-site communication systems.

Clause 4 – Resources and equipment

Clause 4 sets out the information required about the on-site and off-site emergency resources available to the MHF.

Clause 5 – Procedures

Clause 5 sets out the information required about procedures for safely evacuating and accounting for all people on site, the control points for utilities, the control of incidents involving Schedule 15 chemicals, and decontamination following an incident involving Schedule 15 chemicals.

Schedule 17 – Additional matters to be included in safety management system for major hazard facility

Schedule 17 sets out the additional matters that must be included in a safety management system for an MHF.

Clause 1 – Safety policy and safety objectives

Clause 1 requires the safety management system to contain a safety policy and safety objectives. This clause requires details of the method by which the safety policy and objectives will be communicated to persons implementing the safety management system, and an express commitment to the ongoing improvement of the system.

Clause 2 – Organisation and personnel

Clause 2 requires the safety management system to provide information about:

- the persons who will participate in the safety management system;
- the command structure in which these persons work;
- the tasks and responsibilities allocated to each person; and
- the methods by which these persons have acquired and retained the knowledge and skills necessary to carry out their allocated tasks and responsibilities.

Clause 3 – Operational controls

Clause 3 specifies the operational controls required at an MHF. Examples of operational controls include an alarm system and an adequate method of access to the MHF for service and maintenance.

Clause 4 – Duties of operators

Clause 4 requires the safety management system to describe how an operator proposes to comply with their duties under the WHS Act and the relevant parts of Chapter 9 of the Regulations.

Clause 5 – Management of change

Clause 5 requires the safety management system to outline the procedures in place for planning modifications to the MHF.

Clause 6 – Principles and standards

Clause 6 requires the safety management system to contain a statement about the design principles and engineering standards that are being used at the MHF to ensure it operates safely, and specify any technical standards which have been relied on in relation to these design principles and engineering standards.

Clause 7 – Performance monitoring

Clause 7 sets out how the performance of a safety management system must be monitored. This clause requires performance standards for measuring the effectiveness of the safety management system, a description of the way in which these performance standards will be met, and performance indicators that evaluate the effectiveness of any control measures implemented.

Clause 8 – Audit

Clause 8 requires an audit of the performance of a safety management system against the performance standards. This clause provides that the method, frequency and results of the audit process must be specified.

Schedule 18 – Additional matters to be included in safety case for a major hazard facility

Schedule 18 sets out the additional matters that must be included in a safety case for an MHF.

Part 1 – Facility description

Clause 1 – The facility

Clause 1 sets out the information required in the facility description in the safety case. Examples of information that must be provided include a description of the Schedule 15 chemicals and any other hazardous chemicals present or likely to be present at the facility, and a drawing of the MHF's layout illustrating the main process units, main storage areas, major incident hazards and major incident initiators.

Clause 2 – The surrounding area

Clause 2 requires the safety case to include a scaled plan of the facility and its surrounding area, graphs containing demographic information for the local community (including details of surrounding land uses permitted by the local authority), and meteorological data relevant to the estimation of the effects of any major incident.

Part 2 – Safety Information

Clause 3 – Control measures to limit the consequences of major incidents

Clause 3 specifies the information required in the safety case about control measures designed to limit the consequences of major incidents.

Clause 4 – Performance monitoring

Clause 4 requires the safety case to include a detailed description of the performance standards and performance indicators, which are required to be included in the safety management system under clause 7 of Schedule 17.

Clause 5 – Safety management system

Clause 5 provides that where the safety case refers to a matter contained in the safety management system, the safety case must clearly reference the relevant part of the documented safety management system. This clause also requires the safety case to contain a description of the parts of the documented safety management system that address the ongoing implementation, review and revision of the safety management system.

Clause 6 – Safety and reliability of facility structures and plant

Clause 6 requires the safety case to contain a description of the steps taken to ensure that safety and reliability are incorporated into the design and construction of all aspects of the MHF itself.

Clause 7 – Major incident history

Clause 7 requires the safety case to contain a summary of the major incidents that have occurred at the MHF over the previous 5 years.