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Statutory Rules 1995 No. <sup>L1</sup>

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**Occupational Health and Safety  
 (Commonwealth Employment) (National  
 Standards) Regulations <sup>2</sup> (Amendment)**

I, THE ADMINISTRATOR of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

Dated <sup>L</sup> 1995.

30 October/

<sup>L</sup> P. R. SINCLAIR/  
 Administrator

By His Excellency's Command,

<sup>L</sup>  
 Assistant Minister for Industrial Relations

GARY JOHNS/

**1. Commencement**

1.1 Regulations 5, 6 and 8 commence on 30 April 1996.

[NOTE: The remainder of these Regulations commence on gazettal: see *Acts Interpretation Act 1901*, s. 48.]

## **2. Amendment**

2.1 The Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations are amended as set out in these Regulations.

## **3. New regulations 1.05 and 1.06**

3.1 After regulation 1.04, insert in Part 1:

### **Hazard identification and risk assessment**

“1.05. (1) An employer must ensure, in relation to the implementation of these Regulations, that appropriate steps are taken to identify all reasonably foreseeable hazards arising from work which may affect the health or safety of employees or other persons at work.

Penalty: 10 penalty units.

“(2) If a hazard is identified under subregulation (1), the employer must ensure that an assessment is made of the risks associated with the hazard.

Penalty: 10 penalty units.

“(3) In carrying out an assessment under subregulation (2), the employer must, as far as reasonably practicable, determine a method of assessment that adequately addresses the hazards identified, and includes at least one of the following:

- (a) a visual inspection;
- (b) auditing;
- (c) testing;
- (d) technical or scientific evaluation;
- (e) an analysis of injury and near-miss data;
- (f) discussions with designers, manufacturers, suppliers, importers, employers, employees or other relevant parties;
- (g) a quantitative hazard analysis.

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- “(4) Without limiting the operation of subregulations (1) and (2), the identification of hazards and the assessment of associated risks must be undertaken:
  - (a) before the introduction of any plant or substance; and
  - (b) before the introduction of a work practice or procedure; and
  - (c) before changing a workplace or a work practice, or an activity or process, where the change may give rise to a risk to health or safety.
  
- “(5) This regulation does not limit the operation of any other regulation that expressly provides for the identification of hazards or the assessment of risks to the health or safety of a person at work.

**Control of risk after a risk assessment has been made**

- “1.06. (1) An employer must ensure that any risks to health or safety arising from work are:
  - (a) eliminated; or
  - (b) if it is not reasonably practicable to eliminate the risks—minimised.

Penalty: 10 penalty units.

- “(2) If it is reasonably practicable only to minimise risk, the employer must implement control measures by taking the following steps:
  - STEP 1:** the application of engineering controls, including substitution, isolation and modifications to design and guarding.
  
  - STEP 2:** if Step 1 does not minimise the risk, the application of administrative controls, including safe work practices.
  
  - STEP 3:** if Step 2 does not minimise the risk, the provision of appropriate personal protection.

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- “(3) This regulation does not limit the operation of any other regulation that expressly provides for the control of risks to the health or safety of a person at work.

**NOTE**

The *Occupational Health and Safety (Commonwealth Employment) Act 1991* imposes general duties upon groups of persons. These general duties are supported by specific duties that are prescribed in these Regulations. This note identifies:

- (a) the groups of people upon whom duties are imposed by the Act; and
- (b) the provision of the Act which imposes the general duty.

**1. Employers**

Employers are referred to in sections 16 (Duties of employers in relation to their employees) and 17 (Duty of employers in relation to third parties) of the Act.

**2. Manufacturers**

Manufacturers of plant or substances are referred to in section 18 of the Act (Duties of manufacturers in relation to plant and substances).

**3. Suppliers**

Suppliers of plant or substances are referred to in section 19 of the Act (Duties of suppliers in relation to plant and substances).

**4. Persons erecting or installing plant**

Persons erecting or installing plant in a workplace are referred to in section 20 of the Act (Duties of person erecting or installing plant in a workplace).

**5. Employees**

Employees are referred to in section 21 of the Act (Duties of employees in relation to occupational health and safety).”.

**4. Regulation 2.07A (Employee performing work without previously holding a certificate)**

4.1 Subregulations 2.07A (3) and (4):

Omit the subregulations, substitute:

- “(3) Subregulation (1) applies until the end of 29 February 1996 in relation to an employee who performs the work of a regulation 2.03 occupation in Tasmania.
- “(4) Subregulation (1) applies until the end of 29 March 1996 in relation to an employee who performs the work of a regulation 2.03 occupation in New South Wales or the Australian Capital Territory.”.

**5. Part 6 (Hazardous Substances)**

5.1 Omit the Part, substitute:

**“PART 6—HAZARDOUS SUBSTANCES**

***“Division 1—General provisions relating to all hazardous substances***

***“Subdivision A—Introduction***

**Objects of Division 1**

- “6.01. The object of this Division is to minimise the risk to the health of persons due to exposure to hazardous substances:
- (a) by ensuring that hazardous substances used at work are supplied to a person with:
    - (i) labels; and
    - (ii) Material Safety Data Sheets; and

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- (b) by providing for:
  - (i) the assessment of the risk of exposure to hazardous substances; and
  - (ii) the control of exposure to hazardous substances; and
  - (iii) the training of employees who could be exposed to hazardous substances at work on the nature of the hazard and the level of risk posed by the hazardous substance, and the means of assessing and controlling exposure to the substance; and
- (c) by ensuring that emergency services and Comcare have access to relevant information about hazardous substances used at work; and
- (d) by ensuring that relevant information included in NICNAS summary reports is given to employers.

**NOTES**

'Hazardous substance' is defined in regulation 6.03.

The Approved Code of Practice for the Control of Workplace Hazardous Substances incorporates the following national codes that are relevant to the subject-matter of this Part:

- (a) the 'National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC:2007 (1994)]';
- (b) the 'National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (1994)]';
- (c) the 'National Code of Practice for the Labelling of Workplace Substances [NOHSC:2012 (1994)].'

The following additional guidance material is published by Worksafe Australia on the subject:

- (a) the 'Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (1994)]';
- (b) the 'List of Designated Hazardous Substances [NOHSC:10005 (1994)]';
- (c) the 'Guidance Note for the Assessment of Health Risks Arising From the Use of Hazardous Substances in the Workplace [NOHSC:3017 (1994)]';
- (d) the 'Guidance Note For the Control of Workplace Hazardous Substances in the Retail Sector [NOHSC:3018 (1994)]';
- (e) the 'Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC:1003 (1995)]';
- (d) the 'Guidelines for Health Surveillance [NOHSC:7039 (1995)]'.

**Application of Division 1**

"6.02. (1) Subject to subregulations (2), (3) and (4), this Division applies:

- (a) to all hazardous substances; and
- (b) to all workplaces at which hazardous substances are used or produced; and
- (c) in relation to all persons who have the potential to be exposed to hazardous substances.

- “(2) This Division does not apply to the following substances:
- (a) a prescribed substance within the meaning of the *Environment Protection (Nuclear Codes) Act 1978* applies;
  - (b) an infectious substance.
- “(3) This Division does not apply to the following substances if the substances are used in circumstances that are not related to carrying out a work process:
- (a) cosmetics;
  - (b) food within the meaning of the *National Food Authority Act 1991*;
  - (c) a substance that is therapeutic goods within the meaning of the *Therapeutic Goods Act 1989*;
  - (d) tobacco and substances made from tobacco;
  - (e) toilet products;
  - (f) toiletries.
- “(4) This Division does not apply to a substance that is being transported in accordance with the requirements set out in any of the following documents:
- (a) the ADG Code; or
  - (b) the ‘International Maritime Dangerous Goods Code’, published by the International Maritime Organisation;
  - (c) the ‘Technical Instructions for the Safe Transport of Dangerous Goods’, published by the International Civil Aviation Authority;
  - (d) the ‘Dangerous Goods Regulations’, published by the International Air Transport Association.

### **Interpretation of Division 1**

“6.03. In this Division, unless the contrary intention appears:

‘**ADG Code**’ means the ‘Australian Code for the Transport of Dangerous Goods by Road and Rail, 5th Edition’, published by the Federal Office of Road Safety in September 1992;



**‘article’** means a solid object:

- (a) that is produced with a specific shape, design or surface; and
- (b) that is used for a purpose that depends, wholly or partly, on that shape, design or surface; and
- (c) the chemical composition and physical state of which:
  - (i) do not change when the object is used for that purpose; or
  - (ii) change only when the object is used for that purpose;

**‘biological monitoring’** means the measurement and evaluation of a hazardous substance, or its metabolites, in the body tissue, fluids or exhaled air of an employee;

**‘chemical name’**, in relation to a substance, means the recognised chemical name of the substance that is used generally in scientific and technical texts;

**‘consumer package’** means a package that is intended for retail display and sale, and includes a package that:

- (a) is intended for retail sale and display; and
- (b) is transported and distributed in a group of identical packages that form a larger package;

**‘container’**:

- (a) means an object in, or by which, a substance is, or has been, wholly or partly contained or packed, whether or not the object is empty, partly filled or completely filled; and
- (b) does not include a tank or a bulk storage container within the meaning of the ADG Code;

**‘generic name’**, in relation to a substance, means a name that describes the category or group of chemicals that includes the substance;

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**‘hazardous substance’** means a substance:

- (a) that is described in the ‘List of Designated Hazardous Substances [NOHSC:10005 (1994)]’; or
- (b) that has been determined to be a hazardous substance by its manufacturer, in writing and in accordance with the ‘Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (1994)]’;

**‘health surveillance’** means the monitoring of an employee, including the use of biological monitoring, to identify changes (if any) in the employee’s health due to exposure to a hazardous substance, but does not include the monitoring of atmospheric contaminants;

**‘ingredient’** means a component of a substance that is a mixture or a combination, and includes an impurity in the substance;

**‘MSDS’** means a Material Safety Data Sheet;

**‘NICNAS summary report’** means a summary report within the meaning of the *Industrial Chemicals (Notification and Assessment) Act 1989*;

**‘product name’**, in relation to a hazardous substance, means the brand name, trade name, code name or code number given to the substance by the supplier of the substance;

**‘retailer’** means a person who sells goods to persons who are not engaged in the resale of the goods;

**‘retail warehouse operator’** means a person who operates a warehouse in which unopened packaged goods that are intended for retail sale are held;

**‘risk phrase’** means a word, or series of words:

- (a) that describes the hazards of a substance; and
- (b) that is set out in the ‘Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (1994)]’;

**‘risk to health’** means the likelihood that a substance will cause harm to health in the circumstances of its use;

**‘safety phrase’** means a word, or series of words:

- (a) that describes the procedures for the safe handling, storage or use of personal protective equipment in connection with a substance; and
- (b) that is set out in the ‘Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (1994)]’;

**‘substance’**:

- (a) includes a chemical entity, composite material, mixture or formulation; and
- (b) does not include an article;

**‘substance name’** means:

- (a) for a substance that is referred to in the ADG Code—the shipping name, assigned to the substance in the ADG Code, that meets the classification criteria set out in section 2 of that code; and
- (b) for a substance referred to in the ‘Standard for the Uniform Scheduling of Drugs and Poisons’ (also known as ‘SUSDP’), published by the National Health and Medical Research Council—the name given to the substance in that document; and
- (c) for any other substance—the recognised chemical name of the substance, as used in scientific and technical texts;

**‘type I ingredient’**, in relation to a hazardous substance, means an ingredient:

- (a) that:
  - (i) is referred to, in the ‘Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (1994)]’, as:
    - (A) carcinogenic; or
    - (B) mutagenic; or
    - (C) teratogenic; or
    - (D) a skin or respiratory sensitiser; or
    - (E) corrosive; or

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- (F) toxic; or
  - (G) very toxic; or
  - (H) a harmful substance that can cause irreversible effects after acute exposure; or
  - (I) a harmful substance that can cause serious damage to health after repeated or prolonged exposure; or
- (ii) is referred to in the 'Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC:1003 (1995)]'; and
- (b) that is present in the hazardous substance in a quantity that exceeds the lowest relevant concentration cut-off level set out in the 'Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (1994)]';

**'type II ingredient'**, in relation to a hazardous substance, means an ingredient:

- (a) that is referred to, in the 'Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (1994)]', as a harmful substance without any of the additional descriptions referred to in subparagraph (a) (i) of the definition of 'type I ingredient'; and
- (b) that is present in the hazardous substance in a quantity that exceeds the lowest relevant concentration cut-off level set out in that document;

**'type III ingredient'**, in relation to a hazardous substance, means an ingredient other than a type I ingredient or a type II ingredient;

**'use'**, in relation to a substance at a workplace, means to produce, handle, store, transport or dispose of the substance at the workplace.

***“Subdivision B—Duties of a manufacturer, and a supplier, of a hazardous substance for the purposes of the Commonwealth***

**NOTE**

The effect of subsection 18 (3) of the Act is that a person who imports a substance that the person has not manufactured must, if the manufacturer does not have a place of business in Australia at the time of the importation, be taken to be the manufacturer of the substance.

**Determination that a substance is a hazardous substance**

“6.04. (1) If a manufacturer of a substance knows, or ought reasonably to expect, that the substance will be used by employees at work, the manufacturer must determine, in writing and as soon as practicable after commencing to manufacture the substance:

- (a) whether the substance is included in the ‘List of Designated Hazardous Substances [NOHSC:10005 (1994)]’; and
- (b) if the substance is not included in that List—whether the substance is a hazardous substance in accordance with the ‘Approved Criteria for Classifying Hazardous Substances [NOHSC:1008 (1994)]’.

Penalty: 10 penalty units.

“(2) The manufacturer must keep a determination for the period during which the manufacturer manufactures the relevant substance.

Penalty: 5 penalty units.

**Material Safety Data Sheets: Manufacturer's duties**

- “6.05. (1) A manufacturer of a hazardous substance that the manufacturer knows, or ought reasonably to expect, will be used by employees at work must prepare an MSDS for the substance before the substance is supplied to the employer of the employees.

Penalty: 10 penalty units.

**NOTE**

The purpose of an MSDS is to provide the information needed to allow the safe handling of hazardous substances used at work. The MSDS for a substance describes its identity, relevant health hazard information, precautions for use and safe handling information. Guidance on the preparation and use of a MSDS can be obtained from the ‘National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC:2007 (1994)]’ and the ‘National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (1994)]’.

- “(2) An MSDS must:
- (a) set out the name, and Australian address and telephone numbers (including an emergency number), of the manufacturer or importer; and
  - (b) for the hazardous substance to which it relates:
    - (i) clearly identify the substance in accordance with the ‘National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (1994)]’; and
    - (ii) set out its recommended uses; and
    - (iii) describe its chemical and physical properties; and
    - (iv) disclose information relating to each ingredient to the extent prescribed by regulation 6.07; and
    - (v) set out the substance’s risk and safety phrases and any relevant health hazard information about the substance that is reasonably practicable for the manufacturer to provide; and

- (vi) set out information concerning the precautions to be followed in relation to its safe use and handling.

- “(3) The manufacturer must:
- (a) review an MSDS as often as is necessary to ensure that the Sheet contains current information and is accurate in all material respects; and
  - (b) revise the MSDS if necessary.

Penalty: 10 penalty units.

- “(4) In spite of subregulation (3), the manufacturer must review an MSDS:
- (a) at least once in the period of 5 years commencing on the day on which the substance is supplied to the employer; and
  - (b) at least once in each subsequent period of 5 years; to ensure that the MSDS contains current information and is accurate in all material respects.

Penalty: 10 penalty units.

### **Material Safety Data Sheets: Supplier’s duties**

- “6.06. (1) Subject to subregulation (2), a supplier of a hazardous substance that the supplier knows, or ought reasonably to expect, will be used by employees at work must give a copy of the current MSDS for the substance to the employer of the employees on the first occasion that the substance is supplied, and at any later time on request.

Penalty: 10 penalty units.

- “(2) Subregulation (1) does not apply if:
- (a) the hazardous substance is supplied to an employer that is a retailer, or a retail warehouse operator, in a consumer package that holds:
    - (i) less than 30 kilograms of the substance; or
    - (ii) less than 30 litres of the substance; and

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- (b) the supplier knows, or ought reasonably to expect, that the consumer package is intended by the employer to be for retail sale; and
- (c) the supplier knows, or ought reasonably to expect, that the employer does not intend to open the consumer package on the employer's premises.

**Labelling of hazardous substances**

“6.07. A supplier of a hazardous substance that the supplier knows, or ought reasonably to expect, will be used by employees at work must ensure that, at the time of supply:

- (a) each container in which the hazardous substance is supplied is appropriately labelled in accordance with the ‘National Code of Practice for the Labelling of Workplace Hazardous Substances [NOHSC:2012 (1994)]’; and
- (b) the label:
  - (i) clearly identifies the hazardous substance; and
  - (ii) provides details of the Australian supplier; and
  - (iii) discloses information relating to each ingredient to the extent prescribed by regulation 6.08; and
  - (iv) provides the substance's risk and safety phrases and any relevant health and safety information about the substance that is reasonably practicable for the supplier to provide.

Penalty: 10 penalty units.

**NOTE**

The manner in which a container is to be labelled is set out in the ‘National Code of Practice for the Labelling of Workplace Hazardous Substances [NOHSC:2012 (1994)]’.



**Ingredient disclosure: MSDS and labels**

- “6.08. (1) An MSDS must set out:
- (a) for each type I ingredient included in the substance—its chemical name; and
  - (b) for each type II and type III ingredient:
    - (i) its chemical name; or
    - (ii) if the identity of the ingredient is commercially confidential—its generic name.

“(2) If a manufacturer considers that compliance with subparagraph (1) (b) (ii) would not provide sufficient commercial protection for a type III ingredient, other than an ingredient which has a known synergistic effect or which is a hazardous substance, the MSDS may indicate this by the use of the phrase ‘Other ingredients determined not to be hazardous’ in place of the chemical or generic name of the ingredient.

- “(3) A label that relates to a hazardous substance must set out:
- (a) for each type I ingredient included in the substance—its chemical name; and
  - (b) for each type II ingredient:
    - (i) its chemical name; or
    - (ii) if the identity of the ingredient is commercially confidential—its generic name.

**Disclosure by manufacturer of chemical identity of an ingredient—general**

- “6.09. (1) Subject to subregulation (4), if:
- (a) an MSDS, or a label, relating to a hazardous substance used at work does not disclose the name of a particular ingredient of the substance in accordance with regulation 6.08; and
  - (b) an employer, or a person authorised by the employer, asks the manufacturer to tell the employer the name of the ingredient because the information is necessary to provide for, or to protect, the health of a person who could be exposed to the hazardous substance; and

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- (c) there is no medical emergency, at the time of the request, involving the use of the hazardous substance at work;

the manufacturer of the substance must tell the employer the chemical name of the ingredient, in accordance with this regulation, no later than 30 days after the day on which the employer made the request.

Penalty: 10 penalty units.

- “(2) Before the manufacturer tells the employer the chemical name of the ingredient, the manufacturer may ask the employer:
  - (a) to make the request in writing; and
  - (b) to set out, in writing, the reason for making the request.
- “(3) Before the manufacturer tells the employer the chemical name of the ingredient, the manufacturer may tell the employer that it is a condition of telling the employer the name of the ingredient that the employer gives the manufacturer an undertaking, in writing, that the employer will use the information only for the purpose for which it was provided.
- “(4) The manufacturer is not required to tell the employer the chemical name of the ingredient if:
  - (a) the manufacturer is not satisfied that the employer needs the chemical name of the ingredient to give an employee adequate protection against exposure to the relevant substance; and
  - (b) the disclosure of the chemical name of the ingredient would result in significant commercial harm to the manufacturer; and
  - (c) if the manufacturer asks the employer to comply with subregulation (2) or (3)—the employer does not comply with the request.
- “(5) If the employer gives the manufacturer an undertaking that the employer will use the information only for the purpose for which it was provided, the employer must not use the information for any other purpose.

Penalty: 10 penalty units.

- “(6) If the manufacturer refuses the employer’s request, the manufacturer must, no later than 30 days after the employer made the request:
- (a) give the employer, in writing, the reasons for the refusal; and
  - (b) give the employer as much information as is necessary to provide for, or to protect, the health of an employee, or a person at or near a workplace, who could be exposed to the hazardous substance without disclosing the chemical identity of the substance.

Penalty: 10 penalty units.

**Disclosure by manufacturer of chemical identity of an ingredient—emergency**

- “6.10. If:
- (a) a medical emergency exists involving the use of a hazardous substance at work; and
  - (b) an employer asks the manufacturer of the ingredient for the chemical name of an ingredient of the substance for the purpose of providing proper emergency or first aid treatment;
- the manufacturer must tell the employer, or a person authorised by the employer, the chemical name of the ingredient.

Penalty: 10 penalty units.

**Provision of information by a supplier**

- “6.11. A supplier of a hazardous substance that the supplier knows, or ought reasonably to expect, will be used by employees at work must provide to an employer, on request:
- (a) a NICNAS summary report that relates to the condition of the relevant hazardous substance at the time of supply; and

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- (b) information concerning the condition of the substance at the time of supply that will assist in the safe use of the relevant hazardous substance, being information additional to the information contained in an MSDS relating to the substance.

Penalty: 10 penalty units.

***“Subdivision C—Duties of an employer in relation to the use of hazardous substances***

**NOTES**

An employer’s duty may arise because the employer is a manufacturer or supplier of hazardous substances or acts in another capacity referred to in this Division.

Hazardous substances produced by employers, such as by-products, wastes, emissions and manufactured substances, are covered by the requirements of this Subdivision. They must be recorded in the register and as part of risk assessments, training, risk control, atmospheric monitoring and health surveillance carried out under the Subdivision. It is not mandatory for an employer to produce an MSDS for these substances unless it is intended that they are to be supplied outside the employer’s workplace. Employers should make other relevant information available to employees for these substances.

**Use of Material Safety Data Sheets**

**NOTE**

The use of MSDS will allow assessment of the risks of hazardous substances and enable any necessary controls to be established. Further guidance on the use of MSDS can be found in the ‘National Code of Practice for the Control of Workplace Hazardous Substances’ [NOHSC:2007 (1994)].

“6.12. (1) Subject to subregulation (3), if a hazardous substance is to be supplied to an employer, the employer must obtain an MSDS for the substance from the supplier no later than the time at which the substance is first supplied to the employer.

Penalty: 10 penalty units.

“(2) Subject to subregulation (3), if an MSDS for a hazardous substance is given to an employer by a supplier, the employer must ensure that the MSDS is readily accessible to each employee who could be exposed to the hazardous substance.

Penalty: 10 penalty units.

“(3) The employer is not required to comply with subregulations (1) and (2) if:

- (a) the hazardous substance is supplied to an employer that is a retailer, or a retail warehouse operator, in a consumer package that holds:
  - (i) less than 30 kilograms of the substance; or
  - (ii) less than 30 litres of the substance; and
- (b) the employer intends the consumer package to be for retail sale; and
- (c) the employer does not intend to open the consumer package on the employer’s premises.

“(4) Subject to subregulation (5), if an MSDS for a hazardous substance is given to an employer by a supplier, the employer must ensure, as far as reasonably practicable, that the information in each copy of the MSDS under the employer’s control is not altered.

Penalty: 10 penalty units.

“(5) The employer may change the appearance of an MSDS for the following purposes only:

- (a) to make the format of the MSDS consistent with the format described in the ‘National Code of Practice for the Preparation of Material Safety Data Sheets [NOHSC:2011 (1994)]’;

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- (b) to allow the MSDS to be prepared for dissemination by electronic means;
- (c) to allow the employer to attach to the MSDS additional information that is marked clearly as not forming part of the information given by the supplier;
- (d) to translate the MSDS into a language other than the language in which the MSDS was given to the employer.

**Use of labels**

**NOTE**

The purpose of labels is to ensure that the contents of a container used for hazardous substances can be readily identified by product name and to draw the attention of a person who is handling the substance to any significant hazards involved.

- “6.13. (1) An employer must:
- (a) ensure that each container which holds a hazardous substance used at work, including a container supplied to or produced at a workplace, is appropriately labelled in accordance with regulation 6.07; and
  - (b) ensure, as far as reasonably practicable, that a person does not remove, deface, modify or alter the label.

Penalty: 10 penalty units

- “(2) If a hazardous substance is decanted, and is not used immediately, the employer must ensure that the container into which the substance is decanted is labelled with the name of the substance and the appropriate risk and safety phrases.

Penalty: 10 penalty units.

- “(3) Subject to subregulation (4), an employer must ensure that a container that contains a hazardous substance is labelled correctly for the purposes of these Regulations until:
- (a) the substance is removed from the container; and
  - (b) the container is cleaned to the extent that it no longer contains the hazardous substance.

Penalty: 10 penalty units.

- “(4) If:
- (a) a hazardous substance is decanted into a container; and
  - (b) the hazardous substance is used immediately after being decanted; and
  - (c) the employer ensures that the container is cleaned to the extent that it no longer contains the hazardous substance;
- the employer is not required to comply with subregulation (3).

### **Register of hazardous substances**

**NOTE**

A register provides, at a minimum, a listing of all hazardous substances used at work together with their MSDS. It may also include notations on the completion of assessments, assessment reports, monitoring results and details of instruction and training.

A register is a source of information and a tool to manage substances at work.

- “6.14. (1) An employer must ensure that a register is kept and maintained, at each workplace, for hazardous substances that are used or produced at work.

Penalty: 10 penalty units.

- “(2) Subject to subregulation (3), the employer must ensure that the register includes at least the following information:
- (a) a list of all hazardous substances used or produced at the workplace;
  - (b) a copy of the MSDS required, under these Regulations, for each hazardous substance.

Penalty: 10 penalty units.

- “(3) The employer is not required to comply with subregulation (2) in relation to a hazardous substance if:
- (a) the hazardous substance is supplied to an employer that is a retailer, or a retail warehouse operator, in a consumer package that holds:
    - (i) less than 30 kilograms of the substance; or
    - (ii) less than 30 litres of the substance; and
  - (b) the employer intends the consumer package to be for retail sale; and
  - (c) the employer does not intend to open the consumer package on the employer’s premises.

- “(4) The employer must ensure that the register is readily accessible by all persons who could be exposed to a hazardous substance.

Penalty: 10 penalty units.

**Provision of information about enclosed hazardous substances**

- “6.15. If a hazardous substance is contained in an enclosed system (including, for example, a pipe, a piping system, a process vessel or a reactor vessel), the employer that controls the enclosed system must ensure that:
- (a) the existence of the hazardous substance is disclosed to all persons who could be exposed to the hazardous substance; and
  - (b) the hazardous substance is identified clearly to those persons.

Penalty: 10 penalty units.



**Prohibition on specified uses of hazardous substances**

“6.16. An employer must ensure that a hazardous substance referred to in column 2 of an item in Schedule 1 is not used at work for a purpose referred to in column 3 of the item.

Penalty: 10 penalty units.

**Risk assessment for hazardous substances**

**NOTE**

The purpose of an assessment is to enable decisions to be made about appropriate control measures, induction and training, monitoring and health surveillance commensurate with the level of risk that arises from use of a hazardous substance at work. Guidance on assessments can be found in the ‘National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC:2007(1994)]’ and the ‘Guidance Note for the Assessment of Health Risks Arising From the Use of Hazardous Substances in the Workplace [NOHSC:3017 (1994)]’.

“6.17. (1) An employer must ensure that an assessment is made, in accordance with this regulation, of the risks to health caused by work that involves potential exposure to a hazardous substance.

Penalty: 10 penalty units.

- “(2) An assessment must include:
- (a) the identification of each hazardous substance that is used or produced in the course of work; and
  - (b) an examination of the MSDS required, under these Regulations, for each hazardous substance; and
  - (c) if an MSDS cannot reasonably be obtained for examination—an examination of information, equivalent to the information that is required to be included in an MSDS, relating to:
    - (i) any hazard to health relating to the hazardous substance; and

- (ii) the precautions to be followed in relation to the safe use and handling of the hazardous substance; and
  - (d) if the hazardous substance is kept in an unopened consumer package—an examination of each label that appears on the package; and
  - (e) the identification of any risk to health, arising from exposure to each hazardous substance that is identified, of which the employer knows, or that the employer ought reasonably to expect.
- “(3) The employer may undertake a generic risk assessment of risks to health if:
  - (a) the risk assessment is carried out only in relation to work:
    - (i) that is performed using the hazardous substance; and
    - (ii) for which the risk factors are identical in all cases; and
  - (b) the risk assessment is designed to identify any differences in the nature of work performed using the hazardous substance that could result in a change to the risk factors associated with the performance of the work; and
  - (c) it is not practicable for the employer to undertake a separate risk assessment for each workplace at which the hazardous substance is used.
- “(4) If the employer decides there is not a significant risk to health from the use of a hazardous substance at work, the employer must ensure that:
  - (a) the hazardous substance is included in the register referred to in subregulation 6.14 (1); and
  - (b) the register is noted to indicate compliance with the requirements referred to in subregulation (2).

Penalty: 10 penalty units.

- “(5) If an employer decides that there is a significant risk to health from the use of a particular hazardous substance at work, the employer must ensure that:
- (a) regulations 6.19, 6.20 and 6.21 are complied with; and
  - (b) a report on the assessment is prepared; and
  - (c) the register is amended to indicate compliance with the requirements of this Division.

Penalty: 10 penalty units.

**NOTE**

Assessment reports should reflect the detail of the assessment including sufficient information to show why decisions about risks and precautions were made. Further guidance on deciding if the risk is significant can be found in the ‘National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC:2007 (1994)]’ and the ‘Guidance Note for the Assessment of Health Risks Arising from the Use of Hazardous Substances in the Workplace [NOHSC:3017 (1994)]’.

- “(6) An employer must revise a risk assessment if:
- (a) the employer knows, or ought reasonably to be expected to know, of evidence that the assessment is no longer valid; or
  - (b) there has been a significant change in the work to which the assessment relates.

Penalty: 10 penalty units.

- “(7) In addition to subregulation (6), an employer must review a risk assessment:
- (a) at least once in the period of 5 years commencing on the day on which the assessment is completed; and
  - (b) at least once in each subsequent period of 5 years.

Penalty: 10 penalty units.

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- “(8) An employer must ensure that a report prepared under this regulation is readily accessible to an employee who could be exposed to a hazardous substance to which the report relates.

Penalty: 10 penalty units.

**Instruction and training**

“6.18. An employer must ensure that:

- (a) employees who are likely to be exposed to a hazardous substance, and anyone supervising the employees, are trained and provided with information and instruction in:
- (i) the nature of the hazard associated with the substance, the process of risk assessment and the level of risk ; and
  - (ii) the control procedures associated with the use of the hazardous substance; and
  - (iii) the need for, and proper use and maintenance of, measures to control risk; and
  - (iv) the use, fit, testing and storage of personal protective equipment, if personal protective equipment forms a part of the measures to control risk; and
- (b) the instruction and training are commensurate with the level of risk to health, caused by the hazardous substance, that is assessed.

Penalty: 10 penalty units.

**NOTE**

Guidance on the key elements of an induction and training program can be found in the ‘National Code of Practice for the Control of Workplace Hazardous Substances [NOHSC:2007 (1994)]’.

## **Risk control**

### **NOTE**

Risk control should be carried out using the hierarchy of control measures listed in priority order in the 'National Code of Practice for Control of Workplace Hazardous Substances [NOHSC:2007 (1994)]'.

“6.19. (1) An employer must ensure that no employee at work is exposed to an airborne concentration of a hazardous substance, in the breathing zone of the employee, at a level that exceeds the appropriate exposure standard for the relevant period of time.

Penalty: 10 penalty units.

“(2) An employer must ensure, on the basis of a risk assessment carried out under regulation 6.17, that exposure to a hazardous substance is:

- (a) prevented; or
- (b) if it is not reasonably practicable to prevent the exposure—adequately controlled in order to minimise the risks to health caused by the substance

Penalty: 10 penalty units.

“(3) An employer must take all reasonably practicable steps to prevent or control exposure to a hazardous substance by measures other than the provision of personal protective equipment.

Penalty: 10 penalty units.

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- “(4) If measures undertaken in accordance with subregulation (3) do not prevent, or provide adequate control of, exposure of an employee to a hazardous substance, the employer must, in addition to taking the measures, make available to the employee suitable personal protective equipment that will adequately control the employee’s exposure to the hazardous substance.

Penalty: 10 penalty units.

- “(5) An employer must ensure that engineering controls, safe work practices and personal protective equipment that are used to prevent or control exposure to a hazardous substance are properly maintained and used.

Penalty: 10 penalty units.

**Atmospheric monitoring**

**NOTE**

Monitoring involves the use of valid and suitable techniques to derive a quantitative estimate of the exposure of employees to hazardous substances. It may also be used to determine the effectiveness of control measures. Further guidance on monitoring can be found in the ‘National Code of Practice for Control of Workplace Hazardous Substances [NOHSC:2007 (1994)]’.

- “6.20. (1) If a risk assessment carried out under regulation 6.16 indicates that atmospheric monitoring should be undertaken, the employer to whom the assessment relates must undertake appropriate monitoring in accordance with a suitable procedure.

Penalty: 10 penalty units.

- “(2) The employer must ensure that the results of the atmospheric monitoring are recorded in the register referred to in subregulation 6.14 (1).

Penalty: 10 penalty units.

- “(3) The employer must ensure that:
- (a) an employee who has been, or could be, exposed to a hazardous substance that is subject to atmospheric monitoring is given the results of the monitoring; and
  - (b) the records of atmospheric monitoring are readily accessible to that employee at all reasonable times.

Penalty: 10 penalty units.

### **Health surveillance**

#### **NOTE**

Health surveillance can assist in minimising the risk to health from hazardous substances by confirming that the absorbed dose is below the acceptable level, by indicating biological effects requiring reduction of exposure and by collecting data to evaluate the effects of exposure. Further guidance on health surveillance can be found in the ‘National Code of Practice for Control of Workplace Hazardous Substances [NOHSC:2007 (1994)]’ and in the ‘Guidelines for Health Surveillance [NOHSC:7039 (1995)]’.

- “6.21. (1) An employer must provide health surveillance of an employee if:
- (a) a risk assessment shows the employee has been exposed to a hazardous substance referred to in column 2 of an item in Schedule 2; and

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- (b) the employer believes, or ought reasonably to believe, that:
  - (i) the exposure of the employee to the substance has the effect that an identifiable disease or other effect on health may be related to the exposure; and
  - (ii) there is a reasonable likelihood that the disease or other effect on health may occur under the particular conditions of work; and
  - (iii) either:
    - (A) there are valid techniques for detecting an indication of the disease or other effect on health; or
    - (B) there is a valid biological monitoring procedure available and a reasonable likelihood that accepted values might be exceeded.

Penalty: 10 penalty units.

- “(2) The employer must ensure that:
- (a) the health surveillance is performed under the supervision of a legally qualified medical practitioner who is adequately trained in the requisite testing or medical examinations for the particular substance; and
  - (b) if there is a significant risk to the health of the employee from the substance—the health surveillance includes the relevant procedure referred to in column 3 of the item in Schedule 2; and
  - (c) the employer consults the employee on the selection of a medical practitioner to supervise the health surveillance.

Penalty: 10 penalty units.

- “(3) The health surveillance must be undertaken at the expense of the employer.



- “(4) If an employee undergoes health surveillance, the employer must ensure that:
- (a) the employee is notified of the results of the surveillance as soon as practicable; and
  - (b) the employee is given any necessary explanation of the results of the surveillance; and
  - (c) Comcare Australia is notified of any adverse result detected in health surveillance that is consistent with exposure to the relevant hazardous substance.

Penalty: 10 penalty units.

- “(5) If an employer is advised by a medical practitioner of the need for remedial action following the health surveillance of an employee, the employer must, as soon as practicable:
- (a) revise any assessment of the employee’s exposure to the hazardous substance; and
  - (b) take the steps that are necessary to comply with the requirements of these Regulations.

Penalty: 10 penalty units.

- “(6) An employer must:
- (a) ensure that records obtained by the employer as a result of health surveillance are kept as confidential records; and
  - (b) as far as reasonably practicable, ensure that the written consent of the employee is obtained before the records are given or shown to a person (other than the employer or the employee) who is entitled to have access to the records.

Penalty: 5 penalty units.

**Record keeping**

- “6.22. (1) If an assessment report, prepared for the purposes of this Part, indicates a need for, or contains the results of, atmospheric monitoring or health surveillance, the employer to whom the report relates must keep the report:
- (a) in a suitable form; and
  - (b) for at least 30 years from the date of the last entry in the report.

Penalty: 5 penalty units.

- “(2) If an assessment report, prepared for the purposes of this Part, does not indicate a need for atmospheric monitoring or health surveillance, the employer to whom the report relates must keep the report:
- (a) in a suitable form; and
  - (b) for at least 5 years from the date of the last entry in the report.

Penalty: 5 penalty units.

- “(3) If a document includes details of instruction and training given by an employer to an employee for the purposes of this Part, the employer must keep the document:
- (a) in a suitable form; and
  - (b) for at least 5 years from the date of the last entry in the report.

Penalty: 5 penalty units.

- “(4) If an employer that keeps a record referred to in subregulation (1) or (2) ceases operations in the State or Territory in which the record was created, the employer must give the record to Comcare Australia.

Penalty: 5 penalty units.

**Emergency services**

“6.23. An employer must ensure that all relevant records, relating to hazardous substances, that are kept by the employer under this Part are readily accessible by the following persons:

- (a) an emergency service;
- (b) Comcare Australia;
- (c) an investigator acting in the course of his or her duties.

Penalty: 10 penalty units.

***“Subdivision D—Employees’ duties in relation to hazardous substances***

**Duties of employees**

“6.24. An employee must report to his or her employer, as soon as practicable, any matter of which the employee is aware that may affect the employer’s compliance with the provisions of this Part.

Penalty: 10 penalty units.

***“Division 2—Additional provisions relating to carcinogens***

*[There are as yet no provisions in this Division]*

***“Division 3—Additional provisions relating to inorganic lead***

*[There are as yet no provisions in this Division]”.*

**6. Part 7 (Confined Spaces)**

6.1 Omit the Part, substitute:

**“PART 7—CONFINED SPACES**

**Objects of Part 7**

“7.01 The object of this Part is to ensure that:

- (a) manufacturers of confined spaces:
  - (i) eliminate the need to enter the confined spaces; or
  - (ii) if it is not reasonably practicable to eliminate the need to enter the confined space, minimise the need to enter the confined spaces; and
- (b) employers in control of confined spaces:
  - (i) eliminate risks to persons who must enter or work in the confined spaces; or
  - (ii) if it is not reasonably practicable to eliminate those risks, minimise the risks.

**Interpretation of Part 7**

“7.02. In this Part, unless the contrary intention appears:

**‘confined space’** means an enclosed, or partly enclosed, space:

- (a) that is at atmospheric pressure while it is occupied; and
- (b) that is not intended, or designed, primarily as a place of work;

**NOTE**

A confined space may also:

- (a) have a restricted means of entry and exit; or
- (b) have an atmosphere that contains potentially harmful levels of contaminants; or
- (c) have an atmosphere that does not have safe levels of oxygen; or
- (d) cause engulfment; or
- (e) be enclosed only on 3 sides.

**'contaminant'** means any dust, fume, mist, vapour, gas or other substance, in liquid or solid form, the presence of which may be harmful to health and safety;

**'flammable range'** means the range of concentration, in air, of flammable contaminant in which explosion may occur on ignition;

**'LEL'**, in relation to a flammable contaminant, means the concentration of the contaminant in air below which the propagation of a flame does not occur on contact with a source of ignition;

**NOTE**

The initials 'LEL' stand for Lower Explosive Limit.

**'purging'** means the method by which a contaminant is displaced from a confined space;

**'safe oxygen level'** means:

- (a) a minimum oxygen content in air of 19.5% by volume under normal atmospheric pressure; and
- (b) a maximum oxygen content in air of 23.5% by volume under normal atmospheric pressure;

**'stand-by person'** means a competent person who:

- (a) is assigned to remain on the outside of, and in close proximity to, a confined space; and
- (b) is able, if practicable, to observe each person in the confined space; and
- (c) is able, if practicable, to be in continuous communication with each person in the confined space; and
- (d) is able to initiate rescue procedures for persons in the confined space; and
- (e) is able to operate and monitor equipment used to ensure safety during entry to, and the performance of work in, the confined space.

### **Manufacture of a confined space**

"7.03. A manufacturer of a confined space that the manufacturer knows, or ought reasonably to expect, will be used by employees at work must:

- (a) take all reasonably practicable steps to ensure that the design of the space eliminates the need for persons to enter the confined space; and
- (b) if entry to the confined space may be required, ensure that the confined space is provided with safe means of entry and exit.

Penalty: 10 penalty units.

#### **NOTE**

The effect of subsection 18 (3) of the Act is that a person who imports a confined space that the person has not manufactured may, in certain circumstances, be taken to be the manufacturer of the confined space.

**Modification of a confined space**

“7.04. (1) An employer that modifies a confined space must ensure that the modification does not detrimentally affect the safe means of entry into, and exit from, the space.

Penalty: 10 penalty units.

“(2) A manufacturer that modifies a confined space that the manufacturer knows, or ought reasonably to expect, will be used by employees at work must ensure that the modification does not detrimentally affect the safe means of entry into, and exit from, the space.

Penalty: 10 penalty units.

“(3) An installer that modifies a confined space in a workplace for the use of employees at work must ensure that the modification does not detrimentally affect the safe means of entry into, and exit from, the space.

Penalty: 10 penalty units.

**Hazard identification and risk assessment**

“7.05. (1) If work is to be carried out under the control of an employer, the employer must identify:  
(a) each confined space associated with the performance of the work; and  
(b) any hazards associated with working in the confined space.

Penalty: 10 penalty units.

“(2) If work that is to be carried out under the control of an employer involves entry to a confined space, the employer must ensure that a risk assessment is undertaken by a competent person before the work first commences.

Penalty: 10 penalty units.

- “(3) The risk assessment must include an assessment of the following matters:
- (a) the nature of the confined space;
  - (b) the work that is to be carried out, including whether it is necessary to enter the confined space to carry out the work;
  - (c) the method by which the work may be carried out;
  - (d) the risks associated with:
    - (i) the method of work selected; and
    - (ii) the plant to be used; and
    - (iii) any potentially hazardous condition that may exist inside the confined space;
  - (e) the need for emergency and rescue procedures.
- “(4) The employer may undertake a generic risk assessment of confined spaces if:
- (a) the risk assessment is carried out only in relation to spaces:
    - (i) that are of the same kind; and
    - (ii) in which the same kind of work is carried out; and
    - (iii) for which the risk factors are identical; and
  - (b) the risk assessment is designed to identify any differences in the condition or location of the confined spaces, or the work carried out in them, that could result in a change to the risk factors associated with working in the confined spaces; and
  - (c) it is not practicable for the employer to undertake a separate risk assessment for each of the confined spaces.
- “(5) The employer must ensure that a risk assessment is reviewed for each confined space identified in the assessment on each occasion that work carried out under the employer’s control involves entry to the space.

Penalty: 10 penalty units.



- “(6) For the purposes of subregulation (5), a generic review of risk assessments may be undertaken if:
- (a) the review relates to confined spaces:
    - (i) that are of the same kind; and
    - (ii) in which the same kind of work is carried out; and
    - (iii) for which the risk factors are identical; and
  - (b) it is not practicable to undertake a separate review for each of the confined spaces.

- “(7) An employer to whom a risk assessment relates must ensure that the assessment is revised, before a person is allowed to enter a confined space to which the assessment applies, if the employer knows, or ought reasonably to know, of evidence that the assessment is no longer valid.

Penalty: 10 penalty units.

- “(8) If it is practicable to set out the risk assessment in writing before the work to which the assessment relates first commences, the employer must ensure that the risk assessment is set out in writing.

Penalty: 10 penalty units.

### **Risk control**

- “7.06. (1) If a risk assessment undertaken under subregulation 7.05 (2) (or a revised risk assessment) indicates a risk to health or safety arising from work involving entry to a confined space that is under the control of an employer, the employer must:
- (a) eliminate the risk; or
  - (b) if it is not reasonably practicable to eliminate the risk, minimise the risk.

Penalty: 10 penalty units.

- “(2) An employer must take all reasonably practicable steps to ensure that, before a person enters a confined space that is under the employer’s control:
- (a) the confined space has a safe oxygen level; and
  - (b) any atmospheric contaminant in the confined space is reduced to below the relevant exposure standard identified in the document entitled ‘Exposure Standards for Atmospheric Contaminants in the Occupational Environment’, published by Worksafe Australia; and
  - (c) the confined space is free from extremes of temperature; and
  - (d) the concentration of any flammable contaminant in the atmosphere of the confined space is less than 5% of the LEL of the contaminant; and
  - (e) appropriate steps are taken to control any risk associated with the presence of any vermin; and
  - (f) all potentially hazardous services, including process services, normally connected to the confined space are positively isolated in order to prevent:
    - (i) the introduction of any material, contaminant, agent or condition harmful to a person in the confined space; and
    - (ii) the activation or energising of any equipment or service which may pose a risk to the health or safety of a person in the confined space.

Penalty: 10 penalty units.

- “(3) If the atmospheric monitoring of a confined space is required to be carried out as a result of a risk assessment undertaken under subregulation 7.05 (2), the employer must ensure that the monitoring is carried out in a manner that is consistent with the risk assessment.

Penalty: 10 penalty units.

- “(4) If a confined space must be cleared of contaminants in order to comply with subregulation (1), the employer must ensure that:
- (a) the contaminants are removed with the use of a suitable purging agent; and
  - (b) purging and ventilation are not carried out using pure oxygen, or a gas mixture which has oxygen in a concentration greater than 21% by volume.

Penalty: 10 penalty units.

- “(5) An employer must ensure that:
- (a) before a person enters a confined space that is under the control of the employer; and
  - (b) while a person is in the confined space; appropriate signs and, if reasonably practicable, protective barriers are erected to prevent persons who are not involved in work in or near the confined space from entering the area defined by the signs and barriers.

Penalty: 10 penalty units.

#### **Risk control—provision of equipment**

- “7.07. (1) If it is not reasonably practicable to provide a safe oxygen level in a confined space that is under the control of an employer, the employer must ensure that a person does not enter the confined space unless the person is equipped with suitable personal protective equipment, including, if necessary, air-supplied respiratory equipment.

Penalty: 10 penalty units.

- “(2) If atmospheric contaminants cannot be reduced to safe levels in a confined space that is under the control of an employer, the employer must ensure that a person does not enter the confined space unless the person is equipped with suitable respiratory protective equipment.

Penalty: 10 penalty units.

- “(3) If:
- (a) a need to enter a confined space that is under the control of an employer is identified; and
  - (b) an appropriate risk assessment is undertaken under subregulation 7.05 (2);
- the employer must provide equipment that is readily accessible and appropriate to any hazard identified by the risk assessment.

Penalty: 10 penalty units.

- “(4) If a need to enter a confined space that is under the control of an employer is identified before a risk assessment is undertaken under subregulation 7.05 (2), the employer must:
- (a) ensure that no person enters the confined space unless at least 1 stand-by person is present outside the space at the time of entry and at all times at which the space is occupied; and
  - (b) provide equipment that is readily accessible and appropriate to any hazard likely to be encountered in the confined space.

Penalty: 10 penalty units.

- “(5) If an employer provides equipment under this regulation, the employer must ensure that:
- (a) the equipment is selected and, if necessary, fitted to suit the person who is to use it; and
  - (b) the equipment is maintained in a proper working condition.

Penalty: 10 penalty units.

#### **Use of entry permits to control access to a confined space**

- “7.08. (1) If an employer is satisfied that work in a confined space that is under the employer’s control can be carried out in a safe manner, the employer:
- (a) must give written approval to enter the confined space by issuing an entry permit that names the person; and

- (b) must not allow a person to enter the confined space unless the person is named on an entry permit; and
- (c) must, if reasonably practicable, give a person named in an entry permit a copy of the permit before the person enters the confined space.

Penalty: 10 penalty units.

- “(2) The employer must ensure that the entry permit specifies any precautions or instructions necessary for safe entry to the confined space and the performance of the work, taking into consideration, the hazards identified in the risk assessment (if any) undertaken under subregulation 7.05 (2).

Penalty: 10 penalty units.

- “(3) The employer must ensure that each person who is required to carry out the work described in the entry permit is informed of, and understands, the contents of the entry permit before the person enters the confined space to which the permit relates.

Penalty: 10 penalty units.

- “(4) The employer must:
- (a) acknowledge, in writing, that the work in the confined space has been completed; and
  - (b) ensure that all persons involved in the work have left the confined space;
- before the confined space is returned to normal use.

Penalty: 10 penalty units.

### **Control of fire and explosion risk**

- “7.09. (1) If the concentration of flammable contaminant in the atmosphere of a confined space that is under the control of an employer is found to be between 5% and 10% of the LEL of the contaminant, the employer must ensure that:
- (a) the confined space is evacuated; or

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- (b) a continuously monitoring, and suitably calibrated, flammable gas detector is used in the confined space at all times while a person is present in the confined space.

Penalty: 10 penalty units.

- “(2) If the concentration of flammable contaminant in the atmosphere of a confined space that is under the control of an employer is found to be 10% or more of the LEL of the contaminant, the employer must ensure that the confined space is evacuated.

Penalty: 10 penalty units.

- “(3) An employer must ensure that no work is carried out within a confined space that is under the control of the employer, or on the outside surface of a confined space, if the work or any plant is likely to cause or create:
  - (a) a risk to the health or safety of a person in the confined space; or
  - (b) a risk of fire or explosion.

Penalty: 10 penalty units.

**Rescue arrangements**

- “7.10. (1) If a risk assessment undertaken under subregulation 7.05 (2) (or a revised risk assessment) indicates a risk to health or safety, the employer to whom the assessment relates must ensure that no person enters the relevant confined space unless at least 1 stand-by person is present outside the space for the duration of the work carried out in the space.

Penalty: 10 penalty units.

- “(2) The employer must ensure:
- (a) that the openings for entry to and exit from the confined space are of adequate size to allow the rescue of all persons who may enter the confined space; and
  - (b) either:
    - (i) that the openings for entry to and exit from the confined space are not obstructed by fittings or equipment that could impede the rescue of persons; or
    - (ii) if compliance with subparagraph (i) is not reasonably practicable, that a suitable alternative means of rescue is provided.

Penalty: 10 penalty units.

- “(3) The employer must ensure that appropriate rescue and first-aid procedures relating to the confined space are planned, established and rehearsed by employees who are involved in carrying out work in a confined space.

Penalty: 10 penalty units.

### **Instruction and training**

- “7.11. (1) An employer must provide suitable and adequate training, for each person who is required to work in or on a confined space that is under the control of the employer, in all relevant activities that are related to:
- (a) entering the confined space; or
  - (b) working in, or on the outside surface of, the confined space.

Penalty: 10 penalty units.

- “(2) The persons to whom the employer must provide the training include each employee who:
- (a) is required to carry out work in or on a confined space that is under the control of the employer; or
  - (b) undertakes a risk assessment of a confined space; or
  - (c) issues an entry permit; or

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- (d) designs or lays out a workplace that incorporates, or could incorporate, a confined space; or
- (e) manages or supervises persons working in or near a confined space; or
- (f) maintains equipment used for or during work in a confined space; or
- (g) purchases, distributes or maintains personal protective equipment for use in a confined space; or
- (h) is on stand-by during the performance of work in a confined space; or
- (i) is involved in a rescue or first-aid procedure involving work in a confined space.

“(3) The training must include training in the following matters, to the extent that they are relevant to the performance of the particular work and the duties of the person who is being trained:

- (a) the hazards associated with confined spaces;
- (b) risk assessment procedures;
- (c) control measures for confined spaces;
- (d) the selection, use, fit and maintenance of safety equipment.

**Record keeping**

“7.12. (1) If a risk assessment undertaken under subregulation 7.05 (2) is set out in writing, the employer to whom the assessment relates must ensure that the assessment is retained for a period of 5 years.

Penalty: 5 penalty units.

“(2) An employer must keep a copy of an entry permit issued under paragraph 7.08 (1) (a) for a period of at least 3 months after the permit is issued.

Penalty: 5 penalty units.



- “(3) An employer must keep a record of the training provided to an employee under regulation 7.11 for the period of the employee’s employment.

Penalty: 5 penalty units.

- “(4) An employer must, on request, make a record referred to in subregulation (1), (2) or (3) available to:
- (a) the employee to whom the record relates; or
  - (b) an investigator.

Penalty: 5 penalty units.

- “(5) If:
- (a) an employee has worked in a confined space to which a record referred to in subregulation (1), (2) or (3) relates; and
  - (b) health surveillance of the employee is required under Part 6 of these Regulations for a period longer than the period stated in the relevant subregulation;
- the employer must retain the record for the period of the health surveillance.

Penalty: 5 penalty units.

**NOTE**

The following Australian Standards provide guidance on the subject matter of this Part:

- (a) AS 1715: *Selection, Use and Maintenance of Respiratory Protective Devices*;
- (b) AS 1716: *Respiratory Protective Devices*.

AS 2865, *Safe Working in a Confined Space*, is an approved code of practice under Section 70 of the Act.”.

**7. Regulation 10.01 (Interpretation):**

**7.1 Regulation 10.01:**

Insert the following definitions:

“**‘competent person’**, in relation to a specified task, means a person who has, through a combination of training, education and experience, acquired knowledge and skills that enable the person to perform correctly that task;

**‘emergency service’** includes:

- (a) a fire, ambulance or police department operating in a State or Territory; and
- (b) another department, agency or instrumentality of the Crown, operating in a State or Territory, that may be required to attend at the scene of an emergency in the State or Territory;

**‘exposure standard’**:

- (a) in relation to exposure to a substance—means an airborne concentration of a particular substance in a person’s breathing zone identified in accordance with the ‘Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC:1003 (1995)]’; and
- (b) in relation to exposure to noise—means the exposure standard for noise set out in subregulation 3.03 (1);

**‘hazardous situation’** means a situation that has the potential to cause injury or illness to an individual;

**‘minimise’** means to reduce to the lowest level that is reasonably practicable to achieve;

**‘record’** includes anything in which information is stored or from which information can be reproduced;

**‘risk assessment’** means the process of evaluating the probability and consequences of injury or illness arising from exposure to an identified hazard or hazards;

**‘use’**, in relation to plant, means to work from, operate, maintain, inspect or clean the plant;”.

7.2 Regulation 10.01:

Add at the end:

- “(2) In these Regulations:
- (a) a reference to a document the title of which includes the letters ‘AS’ is a reference to a document of that title published by Standards Australia and:
    - (i) as in force on the day on which it was published; or
    - (ii) if the document has been amended—as in force immediately before the day on which the regulation that refers to the document commences; and
  - (b) a reference to a document the title of which includes the letters ‘NOHSC’ is a reference to a document of that title published by the National Occupational Health and Safety Commission and:
    - (i) as in force on the day on which it was published; or
    - (ii) if the document has been amended—as in force immediately before the day on which the regulation that refers to the document commences; and
  - (c) if paragraphs (a) and (b) do not apply—a reference to a document, followed by a description of the person that published the document, is a reference to the document of that title:
    - (i) as in force on the day on which it was published; or
    - (ii) if the document has been amended—as in force immediately before the day on which the regulation that refers to the document commences.”.

**8. New Schedules 1 and 2**

8.1 Add at the end of the Regulations:

**SCHEDULE 1**

Regulation 6.16

**PROHIBITED USES OF HAZARDOUS SUBSTANCES**

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Column 1 Item no.	Column 2 Substance	Column 3 Prohibited use
1	Polychlorinated biphenyls (also known as PCBs)	Prohibited for all uses other than: (a) handling for storage prior to disposal; or (b) removal and disposal; or (c) use when contained in existing electrical equipment or construction material; or (d) repair of existing electrical equipment or construction material

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**SCHEDULE 2**

Regulation 6.21

**HAZARDOUS SUBSTANCES FOR WHICH HEALTH  
SURVEILLANCE IS REQUIRED**

Column 1 Item no.	Column 2 Substance	Column 3 Description of health surveillance
1	4,4' Methylenebis (2-chloroaniline) (also known as MOCA)	Urinary total MOCA  Dipstick analysis of urine for haematuria  Urine cytology
2	Acrylonitrile	Demographic, medical and occupational history  Exposure record  Medical interview if required by the doctor supervising the health surveillance
3	Asbestos	Occupational and demographic data  Medical interview  Records of personal exposure

**SCHEDULE 2—continued**

Column 1 Item no.	Column 2 Substance	Column 3 Description of health surveillance
4	Cadmium	Demographic, medical and occupational history  Exposure record  Health advice including counselling about the effect of smoking on cadmium exposure  Physical examination with emphasis on the respiratory system  Standard respiratory questionnaire to be completed  Standard respiratory function tests including, for example, FEV <sub>1</sub> , FVC and FEV <sub>1</sub> /FVC  Urinary cadmium and $\beta$ 2-microglobulin
5	Crystalline silica	Demographic, medical and occupational history  Completion of a standardised respiratory questionnaire  Standardised respiratory function test, such as FEV <sub>1</sub> , FVC or FEV <sub>1</sub> /FVC  Chest X-ray, full size PA view

**SCHEDULE 2—continued**

Column 1 Item no.	Column 2 Substance	Column 3 Description of health surveillance
6	Inorganic arsenic	<p>Demographic, medical and occupational history</p> <p>Exposure record</p> <p>Health advice</p> <p>Physical examination with emphasis on the peripheral nervous system and skin</p> <p>Urinary total arsenic</p>
7	Inorganic mercury	<p>Demographic, medical and occupational history</p> <p>Health advice</p> <p>Physical examination with emphasis on dermatological, gastrointestinal, neurological and renal systems</p> <p>Urinary inorganic mercury</p>
8	Isocyanates	<p>Physical examination of respiratory system and skin</p> <p>Standardised respiratory function test, such as FEV<sub>1</sub>, FVC or FEV<sub>1</sub>/FVC</p> <p>Standardised respiratory questionnaire to be completed</p>

**SCHEDULE 2—continued**

Column 1 Item no.	Column 2 Substance	Column 3 Description of health surveillance
9	Organophosphate pesticides	<p>Baseline examination of red cell and plasma cholinesterase activity levels</p> <p>Estimate of red cell and plasma cholinesterase activity towards the end of the working day on which organophosphate pesticides have been used</p> <p>Medical and occupational history</p> <p>Physical examination</p>
10	Polycyclic aromatic hydrocarbons	<p>Exposure record</p> <p>Demographic, medical and occupational history</p> <p>Health advice including recognition of photochemical burns and skin changes</p> <p>Physical examination</p>
11	Thallium	<p>Demographic and occupational history</p> <p>Physical examination</p> <p>Urinary thallium</p>



**SCHEDULE 2**—continued

Column 1 Item no.	Column 2 Substance	Column 3 Description of health surveillance
12	Vinyl chloride	Occupational and demographic data  Record of personal exposure

**NOTES**

1. Notified in the *Commonwealth of Australia Gazette* on
2. Statutory Rules 1994 No. 414; 1995 Nos. 53 and 98.

L 1995. 6 November