



Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2004 (No. 2)¹

Statutory Rules 2004 No. 378²

I, PHILIP MICHAEL JEFFERY, Governor-General 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 16 December 2004

P. M. JEFFERY
Governor-General

By His Excellency's Command

KEVIN ANDREWS
Minister for Employment and Workplace Relations

1 Name of Regulations

These Regulations are the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2004 (No. 2)*.

2 Commencement

These Regulations commence on 1 April 2005.

3 Amendment of *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994*

Schedule 1 amends the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994*.

Schedule 1 Amendments

(regulation 3)

[1] Regulation 1.04, note 1

omit

paragraph 8 (1) (f)

insert

subsection 38 (1)

[2] Regulation 2.01, note

substitute

Note The regulations in this Part should be read with the National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment (NOHSC: 1006 (2001)), declared by NOHSC and as in force on 26 September 2001. The Standard can be found on the Internet at http://www.nohsc.gov.au/PDF/Standards/NOHSC-1006-2001_STANDARD.pdf.

[3] Regulation 2.02, definition of *National Standard*

substitute

interim certificate, for the work of a regulation 2.03 occupation, means a certificate issued by or on behalf of a certifying authority to the effect that the employee has successfully demonstrated competence in the work.

National Standard means the National Occupational Health and Safety Certification Standard for Users and Operators of Industrial Equipment (NOHSC: 1006 (2001)):

- (a) declared by NOHSC under subsection 38 (1) of the *National Occupational Health and Safety Commission Act 1985*; and
- (b) as in force on 26 September 2001.

Note The National Standard can be found on the Internet at http://www.nohsc.gov.au/PDF/Standards/NOHSC-1006-2001_STANDARD.pdf.

[4] Paragraph 2.05A (1) (e)

omit

2.07A,

[5] Regulation 2.07A

omit

[6] Subregulation 2.07C (1)

omit

a document, or other advice, to the effect that the employee has successfully demonstrated competence in the work.

insert

an interim certificate for the work.

[7] Subregulation 2.07C (2)

omit

the document or advice

insert

the interim certificate

[8] Paragraph 2.07C (2) (a)

omit

the document or advice; or

insert

the interim certificate; or

[9] Subregulation 2.07E (1)

omit

a document, or other advice, to the effect that the contractor has successfully demonstrated competence in the work.

insert

an interim certificate for the work.

[10] Subregulation 2.07E (2)

omit

the document or advice

insert

the interim certificate

[11] Paragraph 2.07E (2) (a)

omit

the document or advice; or

insert

the interim certificate; or

[12] Paragraph 2.11 (1) (b)

omit

clause 5.33

insert

clause 5.32

[13] Paragraph 3.03 (2) (a)

substitute

(a) in accordance with AS/NZS 1269.1:1998 ‘Occupational noise management — Measurement and assessment of noise immission and exposure’; and

[14] Subregulation 3.03 (3)

substitute

(3) The value of $L_{C, peak}$ must be determined by using sound-measuring equipment with a peak detector-indicator characteristic that complies with the requirements of AS 1259.1-1990 ‘Acoustics – Sound Level Meters – Non-integrating’.

[15] Paragraphs 3.08 (4) (a) and (b)

substitute

- (a) that complies with the requirements of AS/NZS 1270:2002 'Acoustics — Hearing protectors'; and
- (b) selected by the employer in accordance with the requirements of AS/NZS 1269.3:1998 'Occupational noise management — Hearing protector program'.

[16] Subregulation 3.08 (4), after the penalty

insert

Note Guidance for appropriate hearing protection is provided by the *National Code of Practice for Management and Protection of Hearing at Work* [NOHSC:2009(2000)], which can be found on the Internet at <http://www.nohsc.gov.au/pdf/standards/noisestandard.pdf>.

[17] Subregulation 3.08 (4A)

omit

Australian Standard AS 1270 (*Acoustics — Hearing Protectors*).

insert

AS/NZS 1270:2002 'Acoustics — Hearing protectors'.

[18] Subregulation 3.08 (4B)

omit

Australian Standard AS 1269 (*Acoustics — Hearing Conservation*).

insert

AS/NZS 1269.3:1998 'Occupational noise management — Hearing protector program'.

[19] Subregulation 4.07 (3), including the penalty

omit

[20] After regulation 4.07

insert

4.07A Hire of plant mentioned in Part 2 of Schedule 6 and registered by a State or Territory authority

- (1) This regulation applies to a supplier who hires or leases plant:
 - (a) mentioned in Part 2 of Schedule 6; and
 - (b) that is registered by an authority of the State or Territory in which the supplier operates, in accordance with a law of that State or Territory.
- (2) The supplier must take all reasonably practicable steps to ensure that:
 - (a) the plant is inspected and maintained in accordance with the laws of the State or Territory mentioned in paragraph (1) (b); and
 - (b) the plant is inspected and maintained between each hire or leasing to identify and, if necessary, minimise any risk to health and safety of employees from the use of the plant at work; and
 - (c) records of the inspection and maintenance of plant mentioned in paragraph (b) are kept for at least 12 months after the end of the hire or leasing period for the plant; and
 - (d) records of the registration of the plant are kept for at least 12 months after the date of registration.

Penalty: 10 penalty units.

- (3) If a supplier hires or leases plant mentioned in subregulation (1) to an employer, being plant that the supplier knows, or ought reasonably to expect, will be used by employees at work, the supplier must take all reasonably practicable steps to ensure that the employer is given the evidence mentioned in paragraph 4.40D (b) in relation to the plant.

Penalty: 10 penalty units.

4.07B Hire of plant not mentioned in Part 2 of Schedule 6

- (1) This regulation applies to a supplier who hires or leases plant, other than plant mentioned in Part 2 of Schedule 6.
- (2) If the supplier hires or leases plant to which this regulation applies to an employer, being plant that the supplier knows, or ought reasonably to expect, will be used by employees at work, the supplier must take all reasonably practicable steps to ensure that:
 - (a) any risk to the health and safety of the employees arising from the use of the plant is minimised; and
 - (b) the plant is inspected and maintained between each hire or leasing to identify and, if necessary, minimise any risk to health and safety of employees from the use of the plant at work; and
 - (c) records of the inspection and maintenance of plant mentioned in paragraph (b) are kept for at least 12 months after the end of the hire or leasing period for the plant; and
 - (d) records of the registration of the plant (if any) are kept for at least 12 months after the date of registration; and
 - (e) an assessment is carried out on a regular basis to determine:
 - (i) the need for testing the plant to establish whether new or increased risks to health and safety have developed; and
 - (ii) the times at which testing of that kind is to be carried out; and
 - (f) if, under paragraph (e), it is determined that testing is necessary — testing is carried out and the results of the testing are recorded; and
 - (g) the records of testing mentioned in paragraph (f) are kept for the period in which the supplier hires or leases the plant to employers.

Penalty: 10 penalty units.

[21] Regulation 4.08, heading

substitute

4.08 Provision of information — used plant

[22] Regulation 4.20

substitute

4.20 Gas cylinders

- (1) An employer must take all reasonably practicable steps to ensure that a gas cylinder at work is inspected in accordance with AS 2030.

Penalty: 10 penalty units.

- (2) Strict liability applies to the physical element in subregulation (1) that the inspection is in accordance with AS 2030.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) If an employer that operates a gas cylinder test station is given a gas cylinder to be inspected and tested, the employer must take all reasonably practicable steps to ensure that the cylinder is inspected and tested in accordance with AS 2030 and AS 2337.

Penalty: 10 penalty units.

- (4) Strict liability applies to the physical element in subregulation (3) that the inspection and testing is in accordance with AS 2030 and AS 2337.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) If an employer that operates a gas cylinder test station is given a gas cylinder to be filled, the employer must take all reasonably practicable steps to ensure that:

- (a) the cylinder is only filled if it bears a current inspection mark in accordance with AS 2030; and

-
- (b) the cylinder is in good condition when being filled; and
 - (c) the cylinder is filled in accordance with AS 2030; and
 - (d) the fluid with which the cylinder is intended to be filled is compatible with the cylinder; and
 - (e) the cylinder is filled in a manner that is not a risk to the health and safety of a relevant person.

Penalty: 10 penalty units.

- (6) Strict liability applies to the physical elements in subregulation (5) that the cylinder bears a current inspection mark, and is filled, in accordance with AS 2030.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (7) In this regulation:

AS 2030 means the standard comprising:

- (a) AS 2030.1-1999 ‘The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 1: Cylinders for compressed gases other than acetylene’; and
- (b) AS 2030.2-1996 ‘The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 2: Cylinders for dissolved acetylene’; and
- (c) AS 2030.4-1985 ‘The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 4: Welded cylinders-insulated’.

AS 2337 means the standard comprising:

- (a) AS 2337.1-1999 ‘Gas cylinder test stations – Part 1: General requirements, inspections and tests – Gas cylinders’; and
- (b) AS 2337.2-1990 ‘Gas cylinder test stations – Part 2: LP gas fuel vessels for automotive use’; and
- (c) AS 2337.3-1998 ‘Gas cylinder test stations – Part 3: Inspection and testing of fibre reinforced plastic gas cylinders’.

4.20A Other equipment under pressure

- (1) If pressure equipment, other than a gas cylinder:
 - (a) is mentioned in AS/NZS 1200:2000 'Pressure equipment'; and
 - (b) is in use at work;
the employer must take all reasonably practicable steps to ensure that the equipment is inspected in accordance with AS/NZS 3788:2001 'Pressure equipment — In service Inspection'.

Penalty: 10 penalty units.
- (2) Strict liability applies to the physical elements in subregulation (1) that:
 - (a) the pressure equipment is mentioned in AS/NZS 1200:2000 'Pressure equipment'; and
 - (b) the inspection is in accordance with AS/NZS 3788:2001 'Pressure equipment — In service Inspection'.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

[23] Regulation 4.22

substitute

4.22 Powered mobile plant — general

- (1) An employer must take all reasonably practicable steps to ensure that powered mobile plant at work is used in a manner that minimises any risk to the health and safety of a relevant person.

Penalty: 10 penalty units.
- (2) Subregulation (3) applies if, after an employer minimises the risk to health and safety relating to powered mobile plant at work:
 - (a) there remains a risk of:
 - (i) an item of powered mobile plant overturning; or

- (ii) objects falling on the operator of the powered mobile plant; or
 - (iii) the operator of the powered mobile plant being ejected from the seat; and
- (b) the risk needs to be controlled.

(3) The employer must take all reasonably practicable steps to ensure that:

- (a) an appropriate combination of operator protective devices is provided; and
- (b) the devices are appropriately maintained and used.

Penalty: 10 penalty units.

(4) An employer must take all reasonably practicable steps to ensure that appropriate controls are implemented to eliminate or minimise the risk of that plant colliding with other powered mobile plant.

Penalty: 10 penalty units.

4.22A Powered mobile plant — protective structures and restraining devices

- (1) If a tractor is used at work under a tree, or in any other place, that is too low to allow the tractor to work while it is fitted with a rollover protective structure, the structure may be lowered or removed while the tractor is used in that situation.
- (2) An employer must take all reasonably practicable steps to ensure that:
 - (a) a protective structure that is fitted to powered mobile plant at work complies with AS 1636 or AS 2294; or
 - (b) if a protective structure, or an associated structural attachment, of a kind mentioned in paragraph (a) is not available — another protective structure is designed by a suitably qualified engineer in accordance with the following requirements:
 - (i) the performance requirements of AS 2294 must be used as the design criteria for a rollover or falling object protective structure;

-
- (ii) the engineer is permitted to use calculated deformations if the engineer is satisfied that deformation testing is not required;
 - (iii) the protective structure must be identified with the information required by AS 2294, as appropriate.

Penalty: 10 penalty units.

- (3) Strict liability applies to the following physical elements:
 - (a) in paragraph (2) (a) — that the structure complies with AS 1636 or AS 2294;
 - (b) in subparagraph (2) (b) (i) — that the protective structure is designed in accordance with the performance requirements of AS 2294;
 - (c) in subparagraph (2) (b) (iii) — that the information is required by AS 2294.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (4) An employer must take all reasonably practicable steps to ensure that, to minimise any risk to the health and safety of employees at work, powered mobile plant used by those employees is fitted with suitable operator restraining devices if:
 - (a) the plant is fitted with a rollover protective structure or a falling object protective structure; and
 - (b) attaching points for operator restraining devices have been incorporated in the original design of the plant.

Penalty: 10 penalty units.

- (5) In this regulation:

AS 1636 means the standard comprising:

- (a) AS 1636.1-1996 ‘Tractors — Roll over protective structures — Criterion and tests — Part 1: Conventional tractors’; and
- (b) AS 1636.2-1996 ‘Tractors — Roll over protective structures — Criterion and tests — Part 2: Rear mounted for narrow-track tractors’; and

- (c) AS 1636.3-1996 'Tractors — Roll over protective structures — Criterion and tests — Part 3: Mid-mounted for narrow-track tractors'.

AS 2294 means the standard comprising:

- (a) AS 2294.1-1997 'Earthmoving Machinery — Protective Structures — Part 1: General'; and
- (b) AS 2294.2-1997 'Earthmoving Machinery — Protective Structures — Part 2: Laboratory tests and performance requirements for roll-over protective structures'; and
- (c) AS 2294.3-1997 'Earthmoving Machinery — Protective Structures — Part 3: Laboratory tests and performance requirements for falling-object protective structures'; and
- (d) AS 2294.4-1997 'Earthmoving Machinery — Protective Structures — Part 4: Specifications for deflection-limiting volume'.

[24] Regulation 4.27

substitute

4.27 Lasers and laser products

- (1) An employer must take all reasonably practicable steps to ensure that:
 - (a) a laser or laser product is not operated at work if it has not been classified and labelled in accordance AS/NZS 2211; and
 - (b) a Class 3B or Class 4 laser or laser product, within the meaning of AS/NZS 2211, is not used at work in a building or construction operation; and
 - (c) the use of a laser or laser product at work in a building or construction operation, other than a laser or laser product mentioned in paragraph (b), is in accordance with AS 2397-1993 'Safe Use of lasers in the building and construction industry'.

Penalty: 10 penalty units.

- (2) Strict liability applies to the following physical elements:
- (a) in paragraph (1) (a) — that the laser or laser product has been classified and labelled in accordance with AS/NZS 2211;
 - (b) in paragraph (1) (b) — that the laser or laser product is for the purposes of AS/NZS 2211;
 - (c) in paragraph (1) (c) — that the use of the laser or laser product is in accordance with AS 2397-1993 ‘Safe Use of lasers in the building and construction industry’.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) In this regulation:

AS/NZS 2211 means AS/NZS 2211.1:2004 ‘Safety of laser products — Equipment classification, requirements and user’s guide’.

[25] Regulation 4.39

substitute

4.39 Definition for Division 8

In this Division:

relevant employing authority, in relation to an employer seeking an exemption under regulation 4.40A, means:

- (a) if the employer is the Commonwealth — the employing authority that wishes to seek the exemption; or
- (b) if the employer is a Commonwealth authority — that Commonwealth authority.

Note The term *employing authority* is defined in subsection 5 (1) of the Act. See also section 10 of the Act in relation to employing authority.

[26] Before regulation 4.40

insert

Subdivision A General licence requirements

[27] Subparagraph 4.40 (1) (b) (ii)

omit

paragraph 4.40A (4) (a).

insert

paragraph 4.40A (4) (a) or regulation 4.40D.

[28] Paragraph 4.40 (1A) (b)

omit

paragraph 4.40A (4) (a).

insert

paragraph 4.40A (4) (a) or regulation 4.40D.

[29] Regulation 4.40A, heading

substitute

4.40A Exemption from licensing — exemption by Commission

[30] After regulation 4.40C

insert

4.40D Exemption from licensing — hire of plant for less than 12 months

Regulation 4.40 does not apply to an employer in relation to an item of plant if:

- (a) the item is hired by the employer for less than 12 months; and

-
- (b) for an item of plant mentioned in regulation 4.07A — the employer obtains from the supplier of the item evidence that:
- (i) the item, and the design for that type of plant, are registered under a law of the State or Territory in which the supplier operates; and
 - (ii) the item will continue to be registered under the law of the State or Territory for the period of hire; and
 - (iii) the item complies with the requirements of the law of the State or Territory; and
 - (iv) the item has been inspected and maintained in accordance with the requirements of the law of the State or Territory; and
- (c) before hiring the item, the employer inspected the item.

[31] Regulations 4.42 and 4.43

substitute

4.42 Application for renewal of a licence

- (1) An employer to whom a licence is granted under regulation 4.43 may apply for a renewal of the licence.
- (2) An application under subregulation (1) must:
 - (a) be made before the licence expires; and
 - (b) be in writing, using the form (if any) approved by the Commission; and
 - (c) include a statement to the effect that each item of plant mentioned in the licence has been maintained in a safe condition and is safe to operate.

4.43 Grant and renewal of a licence

- (1) On receipt of an application made in accordance with regulation 4.41, the Commission:
 - (a) must consider the application; and

- (b) must:
 - (i) grant a licence to the employer, in the name of the employing authority; or
 - (ii) refuse to grant a licence; or
 - (iii) ask the employer to give it additional information that is necessary to assist the Commission to decide whether or not to grant a licence to operate an item of plant; and
- (c) must notify the employer of the Commission's decision as soon as practicable after making it.

Note The effect of section 10 of the Act is that an employer is required to act through the employing authority. **Employing authority** is defined in section 5 of the Act and in regulations 4 and 4A of the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*.

- (2) On receipt of an application made in accordance with regulation 4.42, the Commission:
 - (a) must consider the application; and
 - (b) must:
 - (i) renew the licence; or
 - (ii) refuse to renew the licence; or
 - (iii) ask the employer to give it additional information that is necessary to assist the Commission to decide whether or not to renew the licence to operate an item of plant; and
 - (c) must notify the employer of the Commission's decision as soon as practicable after making it.
- (3) If the Commission asks an employer to give the Commission information:
 - (a) the employer must give the information to the Commission within the time specified by the Commission; and
 - (b) in deciding to grant or renew, or to refuse to grant or renew, the licence, the Commission must consider the information.

-
- (4) A notice under paragraph (1) (c) in relation to the grant of a licence must set out the following:
- (a) the items of plant that the employing authority is licensed to operate;
 - (b) the employer who applied for the licence;
 - (c) the date that the licence comes into force;
 - (d) the period for which the licence is in force;
 - (e) the conditions to which the licence is subject under subregulation 4.45 (1);
 - (f) the amount of the licence fee to be paid, and the date by which the fee must be paid.

Note Regulation 4.44 provides that a licence comes into force on the day it is granted.

- (5) A notice under paragraph (2) (c) in relation to the renewal of a licence must set out the following:
- (a) the date that the renewal of the licence comes into force;
 - (b) the period for which the licence is effective;
 - (c) the amount of the licence fee to be paid, and the date by which the fee must be paid.
- (6) For paragraphs (4) (d) and (5) (b), the Commission may specify a period of up to 4 years.
- (7) For paragraphs (4) (f) and (5) (c), the amount of the licence fee is the amount that the Commission estimates to be the cost of:
- (a) issuing or renewing the licence; and
 - (b) monitoring the employer's performance of its obligations under the licence.
- (8) For paragraphs (4) (f) and (5) (c), the Commission may provide that a licence fee is to be paid in specified instalments.
- (9) A notice under paragraph (1) (c) or (2) (c) in relation to a refusal to grant or renew a licence must set out the reasons for the refusal.

[32] Regulation 4.44

omit

paragraph 4.43 (1) (a)

insert

subregulation 4.43 (1)

[33] Paragraphs 4.45 (1) (c) and (d)

substitute

- (c) the employer must pay the fee set out in a notice under paragraph 4.43 (1) (c) or (2) (c), or 4.46 (3) (c), by the time stated in the notice;
- (d) the employer must comply with a direction given by the Commission that the Commission considers necessary for ensuring the safe operation of the plant.

[34] Regulations 4.46, 4.47 and 4.48

substitute

4.46 Variation of licence

- (1) This regulation applies if:
 - (a) plant that an employing authority is licensed to operate is altered; or
 - (b) in the case of plant that is normally fixed in one location — the plant is relocated; or
 - (c) the name of the employer is changed; or
 - (d) plant is decommissioned or disposed of.
- (2) The employer must, no later than 21 days after becoming aware of an event mentioned in subregulation (1):
 - (a) apply to the Commission in writing, using the form (if any) approved by the Commission, for a variation of the licence relating to that plant; and

-
- (b) if paragraph (1) (d) applies — return the licence to the Commission.

Penalty: 10 penalty units.

- (3) On receipt of an application made under subregulation (2), the Commission:
- (a) must consider the application; and
 - (b) must:
 - (i) vary the licence to reflect the event mentioned in the application; or
 - (ii) refuse to vary the licence; or
 - (iii) ask the employer to give it additional information that is necessary to assist the Commission to decide whether or not to vary the licence; and
 - (c) must notify the employer of the Commission's decision as soon as practicable after making it.
- (4) If the Commission asks the employer to give it information:
- (a) the employer must give the information to the Commission within the time specified by the Commission; and
 - (b) in deciding to vary, or refuse to vary, the licence, the Commission must consider the information.
- (5) A notice under paragraph (3) (c) in relation to a variation of a licence must set out the following:
- (a) the items of plant that the employing authority is licensed to operate;
 - (b) the amount of the fee to be paid, and the date by which the fee must be paid.
- (6) For paragraph (5) (b), the amount of the licence fee is the amount that the Commission estimates to be the cost of varying the licence.
- (7) A notice under paragraph (3) (c) in relation to a refusal to vary a licence must set out the reasons for the refusal.

4.47 Notification of compliance with maintenance requirement for plant other than tower cranes

- (1) This regulation applies to an employer that is licensed to operate an item of plant mentioned in Part 2 of Schedule 6, other than a tower crane.
- (2) For each period of 12 months that the employer is licensed to operate the item, the employer must give the Commission a notice to the effect that the employer has carried out the inspections, checks, tests, maintenance and cleaning required under paragraph 4.15 (2) (h) for the item.

Note Subregulation 4.15 (1) requires an employer to take all reasonably practicable steps to ensure that a risk to the health and safety of a relevant person arising from plant used by employees at work, or the associated systems of work, under the employer's control is eliminated or, if it is not reasonably practicable to eliminate the risk, minimised in accordance with Division 7. Paragraph 4.15 (2) (h) requires an employer to take all reasonably practicable steps to ensure that inspections, maintenance and cleaning are carried out having regard to procedures recommended for the plant by its designer or manufacturer, or developed for the plant by a competent person.

- (3) A notice for an item under subregulation (2):
 - (a) must be given using the form (if any) approved by the Commission; and
 - (b) must be given to the Commission as soon as practicable after the end of the period to which it relates; and
 - (c) must include:
 - (i) the employer's licence number; and
 - (ii) a statement to the effect that the item has been maintained in a safe condition and is safe to operate.

4.48 Notification of compliance with maintenance requirement for tower cranes

- (1) This regulation applies to an employer that is licensed to operate a tower crane.

-
- (2) For each period of 36 months that the employer is licensed to operate the tower crane, the employer must give the Commission a notice to the effect that the employer has carried out the inspections, checks, tests, maintenance and cleaning required under paragraph 4.15 (2) (h) for the tower crane.
 - (3) In addition to subregulation (2), if a tower crane is relocated, the employer must give the Commission a notice to the effect that the employer has carried out the inspections, checks, tests, maintenance and cleaning required under paragraph 4.15 (2) (h) for the tower crane since the last notice for the tower crane was given under this subregulation or subregulation (2).

Note Subregulation 4.15 (1) requires an employer to take all reasonably practicable steps to ensure that a risk to the health and safety of a relevant person arising from plant used by employees at work, or the associated systems of work, under the employer's control is eliminated or, if it is not reasonably practicable to eliminate the risk, minimised in accordance with Division 7. Paragraph 4.15 (2) (h) requires an employer to take all reasonably practicable steps to ensure that inspections, maintenance and cleaning are carried out having regard to procedures recommended for the plant by its designer or manufacturer, or developed for the plant by a competent person.

- (4) A notice for a tower crane under subregulation (2) or (3):
 - (a) must be given using the form (if any) approved by the Commission; and
 - (b) must be given to the Commission as soon as practicable after:
 - (i) the end of the period to which it relates; or
 - (ii) the tower crane is relocated;as the case requires; and
 - (c) must include:
 - (i) the employer's licence number; and
 - (ii) a statement to the effect that the tower crane has been maintained in a safe condition and is safe to operate.

[35] Subregulation 4.49 (2)

substitute

- (2) This regulation does not apply to an employer in relation to an item of plant if:
- (a) the item is mentioned in Part 2 of Schedule 6; and
 - (b) the item is hired by the employer for less than 12 months; and
 - (c) the employer obtains from the supplier of the item evidence that the design for that type of plant is registered under a law of the State or Territory in which the supplier operates.

[36] Paragraph 4.51 (4) (a)

substitute

- (a) for pressure equipment — the design of the equipment has been verified in accordance with the standards mentioned in items 7 and 8 of Schedule 5; and

[37] After regulation 4.54

insert

Subdivision B Special licences

[38] Regulations 4.55, 4.56, 4.57 and 4.58

substitute

4.55 Definitions for Subdivision B

- (1) In this Subdivision:
- defence employing authority* means the Secretary of the Department of Defence and the Chief of the Defence Force.
- licensee* means the defence employing authority, if holding a special licence.

special licence means a licence granted under subregulation 4.58 (1) or renewed under subregulation 4.58 (2).

- (2) For this Subdivision:
- (a) the *Australian Defence Organisation* comprises the Department of Defence and the Australian Defence Force; and
 - (b) anything required to be done by the defence employing authority may be done by the Secretary of the Department of Defence or the Chief of the Defence Force acting:
 - (i) for himself or herself; and
 - (ii) on behalf of the other person; and
 - (c) anything given or notified to the Secretary of the Department of Defence or the Chief of the Defence Force is taken to be given or notified to the defence employing authority.

Note 1 Under the definition of *employing authority* in section 5 of the Act and regulation 4 of the *Occupational Health and Safety (Commonwealth Employment) Regulations 1991*, the Chief of the Defence Force is the employing authority in relation to a member of the Australian Defence Force.

Note 2 Under the definitions of *employing authority*, *entity* and *principal officer* in section 5 of the Act, the Secretary to the Defence Department is the employing authority in relation to a person who is employed by the Defence Department.

Note 3 The effect of section 10 of the Act is that an employer is required to act through the employing authority.

4.55A Exemption — Australian Defence Organisation

Regulations 4.41 to 4.54 (inclusive) do not apply to the Australian Defence Organisation if the defence employing authority holds a special licence.

4.56 Application for a special licence

- (1) If the Australian Defence Organisation wishes to operate plant mentioned in Part 2 of Schedule 6, the Australian Defence Organisation may apply for a special licence.

- (2) Before the Australian Defence Organisation makes an application under subregulation (1), the Australian Defence Organisation must consult with the involved unions of the employees of the Australian Defence Organisation.
- (3) The application must:
 - (a) be in writing, using the form (if any) approved by the Commission; and
 - (b) include:
 - (i) a list of each type of plant to be licensed; and
 - (ii) the number of items of each type of plant to be licensed; and
 - (iii) a unique identifying number for each item of plant to be licensed.

4.57 Application for renewal of a special licence

- (1) If the licensee wishes to continue operating the plant to which the special licence relates, the licensee must apply for a renewal of the special licence.
- (2) The application must:
 - (a) be made before the special licence expires; and
 - (b) be in writing, using the form (if any) approved by the Commission; and
 - (c) include:
 - (i) a list of each type of plant to be licensed; and
 - (ii) the number of items of each type of plant to be licensed; and
 - (iii) a unique identifying number for each item of plant to be licensed.
- (3) If the licensee applies for a renewal of the special licence in accordance with this regulation, and the licensee does not receive notice of the Commission's decision before the special licence expires, the licensee may continue to operate the plant to which the special licence relates until the licensee receives the notice.

-
- (4) If the licensee does not apply for a renewal of the special licence, the licensee must apply for a licence under regulation 4.41 in order to operate plant mentioned in subregulation 4.40 (1).

Note Under regulation 4.40D, regulation 4.40 does not apply to an employer in relation to an item of plant if the item is hired by the employer for less than 12 months and certain other requirements are met.

4.58 Grant and renewal of a special licence

- (1) On receipt of an application made in accordance with regulation 4.56, the Commission:
- (a) must consider the application; and
 - (b) must:
 - (i) grant a licence to the Australian Defence Organisation, in the name of the defence employing authority; or
 - (ii) refuse to grant a special licence; or
 - (iii) ask the defence employing authority to give it additional information that is necessary to assist the Commission to decide whether or not to grant a special licence to operate plant; and
 - (c) must notify the defence employing authority of the Commission's decision as soon as practicable after making it.
- (2) On receipt of an application made in accordance with regulation 4.57, the Commission:
- (a) must consider the application; and
 - (b) must:
 - (i) renew a special licence granted to the licensee under subregulation (1); or
 - (ii) refuse to renew the special licence; or
 - (iii) ask the defence employing authority to give it additional information that is necessary to assist the Commission to decide whether or not to renew the special licence to operate plant; and

- (c) must notify the defence employing authority of the Commission's decision as soon as practicable after making it.
- (3) If the Commission asks the defence employing authority to give it information:
- (a) the defence employing authority must give the information to the Commission within the time specified by the Commission; and
 - (b) in deciding to grant or renew, or refuse to grant or renew, the licence, the Commission must consider the information.
- (4) A notice under paragraph (1) (c) in relation to the grant of a special licence must set out the following:
- (a) a statement to the effect that the special licence applies only to the Australian Defence Organisation;
 - (b) each item of plant that the licensee is licensed to operate, and the unique identifying number for each item;
 - (c) the day on which the special licence comes into force;
 - (d) the period for which the special licence is in force;
 - (e) the conditions to which the special licence is subject under regulation 4.60;
 - (f) the amount of the special licence fee to be paid and the date by which the fee must be paid.
- (5) A notice under paragraph (2) (c) in relation to the renewal of a special licence must set out the following:
- (a) the day on which the renewal of the special licence comes into force;
 - (b) the period for which the special licence is effective;
 - (c) the amount of the special licence renewal fee to be paid and the date by which the fee must be paid.
- (6) For paragraphs (4) (d) and (5) (b), the Commission may specify a period of up to 4 years.

-
- (7) For paragraphs (4) (f) and (5) (c), the amount of the fee is the amount that the Commission estimates to be the cost of:
- (a) issuing or renewing the special licence; and
 - (b) monitoring the performance by the Australian Defence Organisation of its obligations under the special licence.
- (8) A notice under paragraph (1) (c) or (2) (c) in relation to a refusal to grant or to renew a special licence must set out the reasons for the refusal.
- (9) If the defence employing authority receives a notice from the Commission under paragraph (1) (c) or (2) (c) in relation to a refusal to grant or to renew a special licence, the defence employing authority may:
- (a) apply again for a special licence or for renewal of a special licence; or
 - (b) apply for a licence under subregulation 4.41 (1).

[39] Regulation 4.60

substitute

4.60 Conditions of a special licence

- (1) A special licence granted under subregulation 4.58 (1), renewed under subregulation 4.58 (2) or varied under regulation 4.62 is subject to the following conditions:
- (a) the Australian Defence Organisation must comply with regulation 4.60A;
 - (b) the Australian Defence Organisation must establish and maintain a system for registering plant designs that is consistent with the procedure for registration in regulations 4.49, 4.50, 4.51, 4.52, 4.53 and 4.54;
 - (c) the Australian Defence Organisation must keep a register recording how each item of plant to which the special licence relates is used;
 - (d) the system of registration of plant design established under paragraph (b) must be audited by the Australian Defence Organisation from time to time;

- (e) the system of registration of plant design established under paragraph (b) may be audited by the Commission at a time agreed by Commission and the Australian Defence Organisation;
 - (f) the Australian Defence Organisation must ensure that the unique identifying number for an item of plant is displayed on the item;
 - (g) the Australian Defence Organisation must pay the fee set out in a notice under paragraph 4.58 (1) (c) or (2) (c) by the time stated in the notice;
 - (h) the Australian Defence Organisation must comply with a direction given by the Commission that the Commission considers necessary for ensuring the safe operation of the plant.
- (2) The licensee must not contravene a condition to which the special licence is subject.
- (3) If the Australian Defence Organisation contravenes a condition to which the special licence is subject, the Commission may, by written notice given to the licensee:
- (a) cancel the special licence; or
 - (b) suspend the special licence for a period of up to 12 months; or
 - (c) vary the conditions of the special licence.
- Note* If a contravention relates to a particular item of plant, the Commission may vary the special licence to remove that item of plant from the licence under regulation 4.62A.
- (4) A notice under subregulation (3) must include the reasons for the Commission's decision to cancel, suspend or vary the conditions of the special licence.

4.60A Record of compliance with maintenance requirement for plant

- (1) For each period of 12 months that the licensee is licensed to operate an item of plant, the Australian Defence Organisation must keep a record of the details of any inspections, checks, tests, maintenance or cleaning that have been carried out for the item.

Note Subregulation 4.15 (1) requires an employer to take all reasonably practicable steps to ensure that a risk to the health and safety of a relevant person arising from plant used by employees at work, or the associated systems of work, under the employer's control is eliminated or, if it is not reasonably practicable to eliminate the risk, minimised in accordance with Division 7. Paragraph 4.15 (2) (h) requires an employer to take all reasonably practicable steps to ensure that inspections, maintenance and cleaning are carried out having regard to procedures recommended for the plant by its designer or manufacturer, or developed for the plant by a competent person.

- (2) A record under subregulation (1):
- (a) must be in the form (if any) approved by the Commission; and
 - (b) must include:
 - (i) the special licence number; and
 - (ii) the item's unique identifying number.
- (3) The licensee must, if the Commission asks the licensee for a copy of the record, give the Commission a copy of the record.

[40] Regulation 4.62

substitute

4.62 Variation of a special licence — application by licensee

- (1) This regulation applies if:
- (a) plant that the licensee is licensed to operate is altered; or
 - (b) the name of the Department of Defence or the Australian Defence Force is changed; or
 - (c) plant is decommissioned or disposed of.

- (2) The licensee must, not later than 21 days after becoming aware of an event mentioned in subregulation (1), apply to the Commission in writing, using the form (if any) approved by the Commission, for a variation of the special licence.
- (3) On receipt of an application made in accordance with subregulation (2), the Commission:
 - (a) must consider the application; and
 - (b) must:
 - (i) vary the special licence to reflect the event mentioned in the application; or
 - (ii) refuse to vary the special licence; or
 - (iii) ask the defence employing authority to give it additional information that is necessary to assist the Commission to decide whether or not to vary the special licence; and
 - (c) must notify the licensee of the Commission's decision as soon as practicable after making it.
- (4) If the Commission asks the defence employing authority to give it information:
 - (a) the defence employing authority must give the information to the Commission within the time specified by the Commission; and
 - (b) in deciding to vary, or refuse to vary, the special licence, the Commission must consider the information.
- (5) A notice under paragraph (3) (c) in relation to a variation of a special licence must set out the following:
 - (a) each item of plant that the licensee is licensed to operate;
 - (b) the unique identifying number for each item of plant that the licensee is licensed to operate;
 - (c) the amount of the fee to be paid, and the date by which the fee must be paid.
- (6) For paragraph (5) (c), the amount of the licence fee is the amount that the Commission estimates to be the cost of varying the licence.

-
- (7) A notice under paragraph (3) (c) in relation to a refusal to vary a special licence must set out the reasons for refusing to vary the licence.
 - (8) If the Commission varies the special licence, the licensee must return the original licence to the Commission.

4.62A Variation of special licence — contravention of condition relating to particular item of plant

- (1) This regulation applies if:
 - (a) the licensee contravenes a condition to which the special licence is subject; and
 - (b) the contravention relates to a particular item of plant.
- (2) The Commission may vary the special licence to remove the item of plant from the licence.
- (3) If the Commission varies a special licence under subregulation (2), the Commission must give the licensee a notice setting out:
 - (a) each item of plant that the licensee is licensed to operate; and
 - (b) the unique identifying number for each item of plant that the licensee is licensed to operate; and
 - (c) the amount of the fee to be paid, and the date by which the fee must be paid; and
 - (d) the reasons for the Commission's decision to vary the special licence.
- (4) For paragraph (3) (c), the amount of the fee is the amount that the Commission estimates to be the cost of varying the licence.
- (5) If the Commission varies the special licence, the licensee must return the original licence to the Commission.

[41] Paragraph 4.63 (i)*omit*

paragraph 4.46 (2) (b)

insert

paragraph 4.46 (3) (b)

[42] Subregulation 10.01 (1)*omit**minimise* means to reduce to the lowest practicable level.**[43] Subregulation 10.01 (1), definition of *risk* (second occurring)***omit***[44] Schedule 5***substitute***Schedule 5 Plant standards**

(paragraphs 4.05 (2) (d) and 4.51 (4) (b))

Item	Australian Standard	Title
1	AS/NZS 1200:2000	'Pressure equipment'
2	AS 1418	
	AS 1418.1-2002	'Cranes (including hoists and winches) – Part 1: General requirements'
	AS 1418.2-1997	'Cranes (including hoists and winches) – Part 2: Serial hoists and winches'
	AS 1418.3-1997	'Cranes (including hoists and winches) – Part 3: Bridge, gantry and portal cranes (including container cranes)'

34	<i>Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2004 (No. 2)</i>	2004, 378
----	---	-----------

Item	Australian Standard	Title
	AS 1418.4:2004	'Cranes (including hoists and winches) – Part 4: Tower cranes'
	AS 1418.5-2002	'Cranes (including hoists and winches) – Part 5: Mobile and vehicle loading cranes'
	AS 1418.6-1988	'Cranes (including hoists and winches) (known as the SAA Crane Code) – Part 6: Guided storing and retrieving appliances'
	AS 1418.7-1999	'Cranes (including hoists and winches) – Part 7: Builders hoists and associated equipment'
	AS 1418.8-2002	'Cranes (including hoists and winches) (known as the SAA Crane Code) – Part 8: Special purpose appliances'
	AS/NZS 1418.9-1996	'Cranes (including hoists and winches) – Part 9: Vehicle hoists'
	AS 1418.10-1996	'Cranes (including hoists and winches) – Part 10: Elevating work platforms'
	AS 1418.12-1991	'Cranes (including hoists and winches) – Part 12: Crane collector systems'
	AS 1418.13-1996	'Cranes (including hoists and winches) – Part 13: Building maintenance units'
	AS 1418.14-1996	'Cranes (including hoists and winches) – Part 14: Requirements for cranes subject to arduous working conditions'
	AS 1418.15-1994	'Cranes (including hoists and winches) – Part 15: Concrete placing equipment'
	AS 1418.16-1997	'Cranes (including hoists and winches) – Part 16: Mast climbing work platforms'
	AS 1418.17-1996	'Cranes (including hoists and winches) – Part 17: Design and construction of workboxes'
	AS 1418.18-2001	'Cranes (including hoists and winches) – Part 18: Crane runways and monorails'
3	AS 1576	
	AS/NZS 1576.1-1995	'Scaffolding – Part 1: General requirements'

Item	Australian Standard	Title
	AS 1576.2-1991	‘Scaffolding – Part 2: Couplers and accessories’
	AS/NZS 1576.3-1995	‘Scaffolding – Part 3: Prefabricated and tube-and-coupler scaffolding’
	AS 1576.4-1991	‘Scaffolding – Part 4: Suspended scaffolding’
	AS/NZS 1576.5-1995	‘Scaffolding – Part 5: Prefabricated splitheads and trestles’
	AS/NZS 1576.6-2000	‘Scaffolding – Part 6: Metal tube-and-coupler scaffolding – Deemed to comply with AS/NZS 1576.3’
4	AS 2030	
	AS 2030.1-1999	‘The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 1: Cylinders for compressed gases other than acetylene’
	AS 2030.2-1996	‘The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 2: Cylinders for dissolved acetylene’
	AS 2030.4-1985	‘The verification, filling, inspection, testing and maintenance of cylinders for storage and transport of compressed gases – Part 4: Welded cylinders-insulated’
5	AS/NZS 3509:2003	‘LP gas fuel vessels for automotive use’
6	AS 3533.1-1997	‘Amusement rides and devices – Part 1: Design and construction’
7	AS 3920.1-1993 except the provisions about hazard levels	‘Assurance of product quality – Part 1: Pressure equipment manufacture’
8	AS 4343-1999	‘Pressure equipment — Hazard levels’

[45] Schedule 6, heading

substitute

Schedule 6 Types of plant

(paragraph 4.19 (2) (a), subregulations 4.40 (1), 4.47 (1), 4.49 (1), 4.51 (1) and 4.56 (1))

[46] Schedule 6, Part 1, items 1 and 2

substitute

- 1 Pressure equipment, other than pressure piping, that has a hazard level of A, B, C or D, determined in accordance with AS 4343-1999 'Pressure equipment – Hazard levels' and specifically covered by the standard mentioned in item 1 of Schedule 5
- 2 Gas cylinders covered by the standards mentioned in item 4 of Schedule 5

[47] Schedule 6, Part 1, item 7

substitute

- 7 Amusement structures covered by the standard mentioned in item 6 of Schedule 5, other than class 1 structures

[48] Schedule 6, Part 1, item 11

substitute

- 11 Bridge cranes¹:
 - (a) with a safe working load of greater than 10 tonnes; or
 - (b) designed to handle molten metal or dangerous goods².

[49] Schedule 6, Part 2, items 1 and 2

substitute

- 1 Boilers:
 - (a) that have a hazard level of A, B or C determined in accordance with AS 4343-1999 'Pressure equipment – Hazard levels'; and
 - (b) are specifically covered by the standard mentioned in item 1 of Schedule 5
- 2 Pressure vessels:
 - (a) that have a hazard level of A, B or C, determined in accordance with AS 4343-1999 'Pressure equipment – Hazard levels'; and
 - (b) are specifically covered by the standard mentioned in item 1 of Schedule 5, other than:
 - (i) gas cylinders mentioned in the standard mentioned in item 4 of Schedule 5; and
 - (ii) LP gas fuel vessels for automotive use mentioned in AS/NZS 3509:2003 'LP gas fuel vessels for automotive use'; and
 - (iii) serially produced pressure vessels mentioned in AS 2971:2002 'Serially Produced Pressure Vessels'

[50] Schedule 6, Part 2, item 5

substitute

- 5 Amusement structures covered by the standard mentioned in item 6 of Schedule 5, other than class 1 structures

Notes

1. These Regulations amend Statutory Rules 1994 No. 414, as amended by 1995 Nos. 53, 98 and 337; 1996 Nos. 129 and 288; 1997 No. 227; 1999 Nos. 66, 86 and 189; 2000 No. 289; 2001 No. 326; 2003 Nos. 286 and 314; 2004 No. 227.
2. Notified in the *Commonwealth of Australia Gazette* on 23 December 2004.