

INQUIRY INTO KOORAGANG ISLAND ORICA CHEMICAL LEAK

Organisation: Workcover NSW

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Partially Confidential

Submission

WorkCover Authority to Legislative Council Select Committee on the Kooragang Island Orica Chemical Leak

1. Introduction

This submission is provided by the WorkCover Authority of New South Wales to the New South Wales Legislative Council's Select Committee inquiring into the chemical leak at the premises of Orica Australia Pty Ltd at Kooragang Island. The attached submission addresses specifically the following terms of reference:

“(b) the New South Wales Government's response following the incident, including:

.....

(ii) the actions of government departments and agencies once notified.”

WorkCover works cooperatively with a range of co-regulators in the area of chemical safety. In relation to chemical incidents, it is normal practice for WorkCover to be informed of any serious chemical incident by Fire and Rescue NSW as the Combat Agency for hazardous materials. In this case, we understand that Fire and Rescue NSW was not involved, through its 000 service or other notification methods. Therefore, WorkCover was not contacted by the emergency services. It is important to note that WorkCover is not a combat agency and is not involved in the emergency response phase of an incident. WorkCover's role is to ensure compliance with Occupational Health and Safety legislation.

As explained in the chronology, WorkCover's records indicate that the Orica Australia Pty Ltd notification to WorkCover did not fully disclose the seriousness of the incident (for example no reporting of any exposure or potential impacts to workers or any off-site effects). Subsequently WorkCover established the true nature of the incident and initiated a full investigation, including issuing enforcement notices.

Following this lack of disclosure WorkCover has automatically ranked as high risk serious incidents all chemical incidents at Major Hazard Facilities. WorkCover is reviewing our emergency response procedures as outlined in Part 5 of this submission.

WorkCover is not a member of the State Emergency Management Committee (SEMC) but we will ask SEMC if there is an opportunity for WorkCover to be more involved in their activities. WorkCover has written to SMEC in early November 2011 to express an interest in having a close involvement in emergency preparedness activities.

In the interests of fully informing the Committee of WorkCover's role in this and like incidents, this submission contains material submitted to the inquiry undertaken by Mr Brendan O'Reilly. Part 4 of this submission (beginning at page 19) contains a chronology of significant events relating to the incident and WorkCover's response to it.

2. ROLE OF WORKCOVER

2.1 Legislation Administered by WorkCover

WorkCover is the NSW government agency responsible for the administration of Occupational Health and Safety (OHS) and Workers Compensation (WC) legislation in NSW.

Section 22 of the *Workplace Injury Management and Workers Compensation Act 1988* (NSW) sets out the general functions of WorkCover. The general functions of the Authority include:

- (a) The responsibility for ensuring compliance with the occupational health and safety legislation, and
- (b) The responsibility for day-to-day operational matters.

The objects of the *Occupational Health and Safety Act 2000* (OHS Act) are as follows:

- (a) to secure and promote the health, safety and welfare of people at work,
- (b) to protect people at a place of work against risks to health or safety arising out of the activities of persons at work,
- (c) to promote a safe and healthy work environment for people at work that protects them from injury and illness and that is adapted to their physiological and psychological needs,
- (d) to provide for consultation and co-operation between employers and employees in achieving the objects of this Act,
- (e) to ensure that risks to health and safety at a place of work are identified, assessed and eliminated or controlled,
- (f) to develop and promote community awareness of occupational health and safety issues,
- (g) to provide a legislative framework that allows for progressively higher standards of occupational health and safety to take account of changes in technology and work practices,
- (h) to deal with the impact of particular classes or types of dangerous goods and plant at, and beyond, places of work.

Section 5 of the OHS Act makes it clear that the Act applies to workplaces. The OHS Act does not expressly apply to pollution incidents. The OHS Act is the legal framework governing work health and safety. However, a pollution incident may also be governed by the OHS Act where it concerns or creates risks for work health and safety. WorkCover as a workplace regulator is primarily concerned with the health and safety of workers and others in the workplace.

The OHS legislation poses two important challenges. Firstly, it aims to ensure that risks to health and safety at a workplace are identified, assessed and eliminated or controlled. That is, it requires the parties to anticipate and act on an OHS risk before this risk results in specific incidents of injury or illness.

Secondly, industry must do this in an environment of enormous complexity in production processes, rapidly evolving technologies and materials, and constantly changing organisation of work.

Duties of Employers – section 8 OHS Act

Section 8 of the OHS Act requires employers, so far as is reasonably practicable, to ensure the health, safety and welfare at work of all the employees of the employer. Section 8 also requires an employer, so far as is reasonably practicable, to ensure that people in the workplace other than employees, are not exposed to risks to their health or safety arising from the conduct of the employer's undertaking while they are at the employer's place of work.

Duties of controllers of premises – section 10, OHS Act

Additional duties are imposed under section 10 of the OHS Act on controllers of work premises, plant or substances. Under section 10 (1), a person who has control of premises used by people as a place of work must, so far as is reasonably practicable, ensure that the premises are safe and without risks to health. Section 10(2) imposes a duty on a person who has control of any plant or substance used by people at work, to ensure (so far as is reasonably practicable) that the plant or substance is safe and without risks to health when properly used.

WorkCover's role under the OHS Act is focused on the health and safety of workers and others in the workplace. However, as noted, one of the objects of the OHS Act is to deal with the impact of particular classes or types of dangerous goods and plant at, and beyond, places of work.

2.2 Consultation under the OHS Act and Regulation

Section 13 of the OHS Act creates a duty on employers to consult with employees to enable the employees to contribute to the making of decisions affecting their health, safety and welfare at work. Sections 14, 15 and 16 of the Act set out the nature of consultation, when consultation is required and how consultation is to be undertaken. Section 17 provides for the establishment of OHS committees, election of OHS representatives and other agreed arrangements. The functions of OHS committees and OHS representatives are set out in section 18 while section 19 enables regulations to be made with respect to consultation.

Clause 22 of the *Occupational Health and Safety Regulation 2001* (OHS Regulation) establishes additional obligations in relation to consultation arrangements. Clause 27 provides further specific obligations on employers in relation to consultation.

The consultation requirements of the OHS Act and Regulation involve consultation with the workforce, and do not extend to members of the general public.

An OHS committee has been established at the Orica site, and WorkCover officers are aware that the committee has been informed of and consulted

with regard to the incident. WorkCover has also been consulting directly with the chair of the OHS Committee.

WorkCover does not have a role to provide information to affected communities in relation to pollution incidents. Employers have obligations under the OHS Act to consult with workers on work health and safety matters. Information in relation to public health has been provided by the lead agencies, the Department of Health and Office of Environment and Heritage.

2.3 Duty to notify

Section 86 of the OHS Act requires the occupier of any place of work to notify WorkCover of any 'serious incident' at the workplace and of any incident that is required by the regulations to be notified. Section 86(2) states that such notice must be given as soon as practicable (but not later than 7 days) after the occupier becomes aware of the incident, and in the manner and form required by the regulations. Section 86(3) requires notice of a serious incident to be given 'immediately the occupier becomes aware of the incident', and by the quickest available means.

Section 87 defines a *serious incident* as an incident that has resulted in a person being killed, or any other incident prescribed by the regulations for the purposes of the definition.

Clause 341 of the OHS Regulation provides:

In accordance with section 86 (1) (b) of the Act, any incident listed below occurring at or in relation to a place of work is, if it is an incident that presents a risk to health or safety and is not immediately threatening to life, declared to be an incident that is required to be notified to WorkCover:

- (a) an injury to a person (supported by a medical certificate) that results in the person being unfit, for a continuous period of at least 7 days, to attend the person's usual place of work, to perform his or her usual duties at his or her place of work or, in the case of a non-employee, to carry out his or her usual activities,
- (b) an illness of a person (supported by a medical certificate) that is related to work processes and results in the person being unfit, for a continuous period of at least 7 days, to attend the person's usual place of work or to perform his or her usual duties at that place of work,
- (c) damage to any plant, equipment, building or structure or other thing that impedes safe operation,
- (d) an uncontrolled explosion or fire,
- (e) an uncontrolled escape of gas, dangerous goods (within the meaning of the ADG Code) or steam,
- (f) a spill or incident resulting in exposure or potential exposure of a person to a notifiable or prohibited carcinogenic substance (as defined in Part 6.3),
- (g) removal of workers from lead risk work (as defined in Part 7.6) due to excessive blood lead levels,
- (h) exposure to bodily fluids that presents a risk of transmission of blood-borne diseases,

- (i) the use or threatened use of a weapon that involves a risk of serious injury to, or illness of, a person,
- (i1) a robbery that involves a risk of serious injury to, or illness of, a person,
- (i2) electric shock that involves a risk of serious injury to a person,
- (j) any other incident that involves a risk of:
 - (i) explosion or fire, or
 - (ii) escape of gas, dangerous goods (within the meaning of the ADG Code) or steam, or
 - (iii) serious injury to, or illness of, a person, or
 - (iv) substantial property damage,
- (k) in relation to a major hazard facility (as defined in Chapter 6B)—if not already covered by another paragraph of this clause, a major accident or near miss (as defined in that Chapter).

Clause 344 of the OHS Regulation states:

For the purposes of the definition of *serious incident* in section 87 (1) of the Act, the following incidents at or in relation to a place of work are prescribed:

- (a) an injury to a person that results in the amputation of a limb,
- (b) the placing of a person on a life support system,
- (c) any incident listed below that presents an immediate threat to life:
 - (i) the loss of consciousness of a person caused by impact of physical force, exposure to hazardous substances, electric shock or lack of oxygen,
 - (ii) major damage to any plant, equipment, building or structure,
 - (iii) an uncontrolled explosion or fire,
 - (iv) an uncontrolled escape of gas, dangerous goods or steam,
 - (v) imminent risk of explosion or fire,
 - (vi) imminent risk of an escape of gas, dangerous goods or steam,
 - (vii) a spill or incident resulting in exposure or potential exposure of a person to a notifiable or prohibited carcinogenic substance (as defined in Part 6.3),
 - (viii) entrapment of a person in a confined space,
 - (ix) collapse of an excavation,
 - (x) entrapment of a person in machinery,
 - (xi) serious burns to a person,
- (c) in relation to a major hazard facility (as defined in Chapter 6B)—if not already covered by another paragraph of this clause, a major accident (as defined in that Chapter).

Chapter 6B of the OHS Regulation (clauses 175 – 175ZF) sets out the requirements for Major Hazard Facilities. A copy of this Chapter and of Schedule 8 to the OHS Regulation is attached at **Tab 1**. Clause 175A defines a *major accident* as meaning:

“an incident (including an emission, loss of containment, fire, explosion or release of energy or projectiles, but not including the long term, low volume release of any material) involving a Schedule 8 material occurring in the course of the operation, commissioning, shutdown or maintenance of a major hazard facility that poses a risk of serious

danger or harm (whether immediate or delayed) to any person (including members of the public).”

Whether or not the particular emission was:

- within the classification of ‘dangerous goods’ within the ADG Code (the *Australian Code for the Transport of Dangerous Goods by Road and Rail*) approved by the Ministerial Council for Road Transport and published by the Australian Government from time to time).
- a ‘major accident’ or ‘near miss’
- an uncontrolled escape of gas or steam
- one that posed an immediate threat to life

remains the subject of WorkCover’s current investigation. WorkCover is also investigating possible breaches of sections 8 and 10 of the OHS Act.

2.4 Chemical Management Framework

The chemical management framework under the *Occupational Health and Safety Act 2000* and the *Explosives Act 2003* can be simply illustrated by the diagram 1 below.

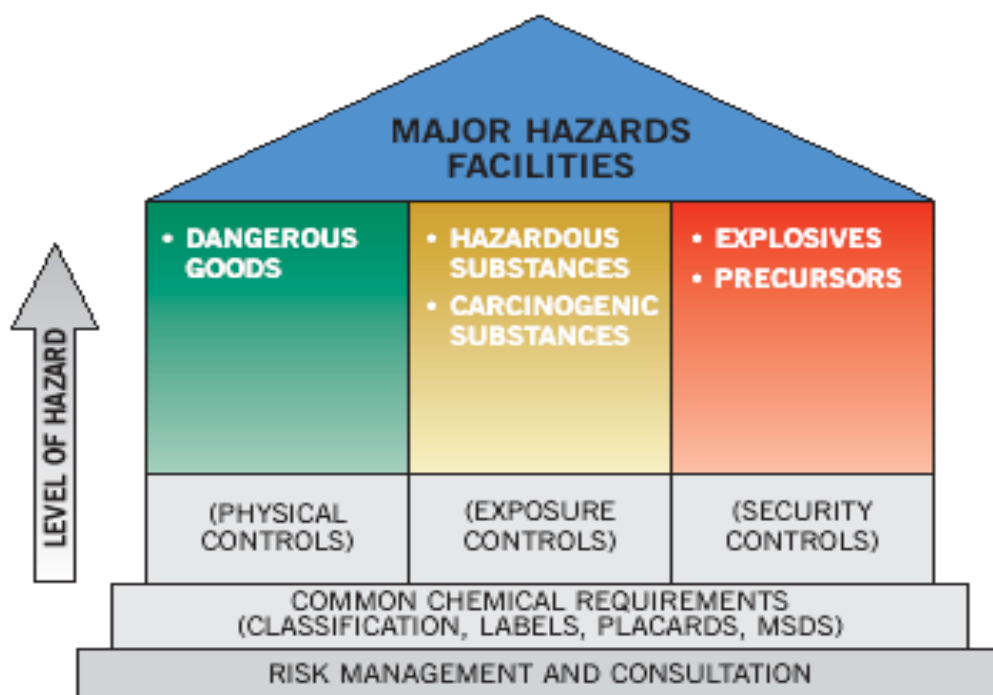


Diagram 1: Chemical Management Framework

All workplaces under occupational health and safety legislation have obligations for risk management and consultation. Workplaces that handle and store chemicals have additional obligations in relation to the management of those materials.

The regulatory obligations for hazardous substances are primarily focused on prevention of exposure to chemicals. The regulatory controls for dangerous goods are primarily focused on the prevention of fire and explosion. The controls for explosives and precursors aim to prevent both explosions and to ensure that materials are securely controlled and accounted for at every stage of their life cycle. Major Hazard Facilities are chemical facilities with the largest quantities of hazardous substances, dangerous goods or explosives.

The Chemical Management Framework (Diagram 1) shows the three groups of hazardous materials that may exist at workplaces and industrial sites and the various types of controls necessary to manage the risks arising from the hazards. Figure 1 illustrates that as the quantity of materials present at the site increases, the level of hazard also increases to a point where additional regulatory controls are necessary.

Hazardous Substances/ Carcinogenic Substances

Chapter 6 of the OHS Regulation contains provisions relating to the manufacture, supply and use of hazardous substances and carcinogenic substances.

Any incident that results in exposure or potential exposure of a person to a notifiable or prohibited carcinogenic substance that is a risk to health or safety and is not immediately threatening to life is notifiable under clause 341 of the OHS Regulation, referred to above. Clause 158 of the OHS Regulation defines notifiable and prohibited carcinogenic substances. The list of notifiable and prohibited carcinogenic substances is based on the *National Model Regulation for the Control of Scheduled Carcinogenic Substances* produced by Safe Work Australia (formerly the National Occupational Health and Safety Commission) which does not include Hexavalent Chromium. A copy of clause 158 and of WorkCover's *Guide for Notifications for Work Involving Carcinogenic Substances* is attached at **Tab 2**.

Medical practitioners have an obligation under clause 166 of the OHS Regulation to notify WorkCover of any adverse result detected in the surveillance of hazardous chemicals listed under clause 165 including inorganic chromium. WorkCover has not received notification of any adverse results.

Dangerous Goods

Chapter 6A of the OHS Regulation contains provisions that regulate the manufacture, import and supply of dangerous goods and impose particular requirements on occupiers of premises where dangerous goods are stored or handled.

Occupiers of premises where dangerous goods are stored and handled are required to investigate serious incidents, determine the likely cause of the incident and keep a record of the investigation (clause 174ZP).

Chapter 6A of the OHS Regulation details specific requirements for occupiers of premises relating to emergency planning and notification of WorkCover

(Clause 174ZC & 174ZS) when quantities of dangerous goods stored or handled on site exceed the manifest quantities listed in the table to schedule 5 of the OHS Regulation.

Clause 174ZC, copy attached at **Tab 3**, requires that an occupier must develop, implement and maintain an emergency plan that is communicated to persons who are engaged by the operator to work at the premises or who may be exposed to risk as a result of an emergency. The emergency plan must also be communicated to persons in control of adjacent premises to the extent that the plan applies to those persons who may be exposed to risk as a result of an emergency. In developing the emergency plan a draft must be provided to the Commissioner Fire and Rescue NSW and the occupier is required to have regard to any written advice given by the Commissioner. Once again, this reflects the role of these organisations under the NSW State Disaster Management Plan.

Clause 174ZS requires an occupier to notify WorkCover annually and include the following information:

- (i) the name of the occupier (and any other occupiers of the premises concerned),
- (ii) the address of the premises where the dangerous goods are stored and handled,
- (iii) the occupier's contact details,
- (iv) the nature of the principal activities involving the dangerous goods,
- (v) the Class, Packing Group and the maximum quantity of the dangerous goods stored and handled in bulk or as packaged dangerous goods,
- (vi) descriptions and details and the maximum quantity of any C1 combustible liquids stored and handled in bulk or as packaged dangerous goods,
- (vii) the product name and the maximum quantity of goods too dangerous to be transported,
- (viii) any other documents or information specifically requested by WorkCover. (Currently includes a site sketch and manifest for the site).

Orica has been providing the above information on an annual basis to WorkCover in respect of the Kooragang Island site. Information provided through the notification is entered onto WorkCover's Stored Chemicals Information Database (SCID). Information from SCID is made available to Fire and Rescue NSW.

Explosives

The *Explosives Act 2003* provides for the regulation and control of the handling of explosives and explosive precursors and certain other dangerous goods on premises. Additional regulatory requirements are contained in the *Explosives Regulation 2005*. These apply to Orica and other entities which manufacture and store explosives and explosive precursors. There is an additional requirement to notify the unplanned loss or theft of explosive materials or ammonium nitrate.

Orica holds an Explosives License under the *Explosives Act 2003*. The *Explosives Act 2003* and the *Explosives Regulation 2005* set out safety and security requirements for handling explosives and security sensitive dangerous substances (SSDSs). The legislation establishes a licensing regime for the life cycle of explosives.

The Explosives Regulation 2005 refers to the following documents:

- AS2187 – Explosives: Storage, Transport and Use
- The Australian Explosives Code
- The Australian Dangerous Substances Code

The Regulation requires that all activities involving the handling of explosives are carried out in accordance with these documents.

A security plan is required for the storage and handling of explosives. The acceptance of the security plan associated with the licence is subject to site verification by WorkCover NSW. A verification visit occurred at the Orica Kooragang Island site on 11 July 2011.

It is a condition of each licence that if any explosive or explosive precursor in the possession, custody or control of the licensee is lost or stolen or is the subject of an attempted theft or any other suspicious incident that threatens the security of the explosive or explosive precursor, the licensee must immediately notify the regulatory authority and a police officer of the loss, theft or incident.

Major Hazard Facilities

Chapter 6B of the OHS Regulation contains requirements for Major Hazard Facilities (MHFs). MHFs are the facilities with the largest quantities of dangerous goods, hazardous substances or explosives such as oil refineries, chemical processing plants, large chemical and gas storage depots and large chemical warehouses.

Chapter 6B of the OHS Regulation adopts the National Standard for Control of Major Hazard Facilities, which is a nationally agreed standard developed by the Safe Work Australia (formerly the National Occupational Health and Safety Commission), to be adopted by jurisdictions in the interests of national consistency in the regulation of MHFs. The development of the National Standard drew upon current international and national initiatives on the control of MHFs, ensuring consistency with those existing initiatives.

The regulatory requirements aim to reduce the risk of major accidents and minimise the consequences in the event of a major accident. These additional and more stringent requirements came into effect on 1 July 2008. MHFs are large and complex undertakings. The new requirements in Chapter 6B of the OHS Regulation adopt a structured way for directing the focus of operators on an improved risk-based approach to the potential hazards that may arise from these environments.

The MHFs requirements are in addition to the requirements explained above in relation to dangerous goods, chemicals and explosives. The OHS regulatory requirements relating to specific substances in turn supplement the general duties of employers and others under the OHS Act to ensure health and safety so far as is reasonably practicable.

The regulation includes transitional arrangements that provide for progressively higher standards and controls including the development of a Safety Report (also known as a safety case). The Safety Report is designed to provide assurance to the MHFs operator, employees, the community, WorkCover and other regulatory authorities that the potential for major accidents at MHFs has been systematically assessed and that effective and appropriate controls are in place. The Safety Report is also a commitment by the MHF operator to the methods by which major accidents risks are controlled.

The Safety Report demonstrates that hazards and risks are fully understood, that the documented controls systems, procedures and processes are fit for purpose and that the facility achieves a level of risk that is as low as is reasonably practicable.

A Safety Report must be submitted to WorkCover as part of the application for registration, which must be submitted within two years of the date of the provisional registration. All MHFs which were in operation at the commencement of the MHF regulatory provisions must submit their safety report by 28 February 2012. However, any newly planned MHF facilities must be registered before they can operate.

Regulations for MHFs are currently in operation in the Commonwealth, New South Wales, Victoria, Queensland, Western Australian, Northern Territory and Tasmania. South Australia and the Australian Capital Territory are yet to adopt MHF requirements. The requirements in New South Wales are based on the *National Standard for the Control of Major Hazard Facilities* and the implementation arrangements and experiences of the Victorian and Queensland MHF regimes.

The Orica facility involved in the incident is a major hazard facility which is provisionally registered by WorkCover under Chapter 6B of the OHS Regulation. Provisional registration is an interim step designed to identify the major hazard facilities and allows existing operators at the time of the implementation of the MHFs regulation sufficient time to meet all the stringent requirements for registered major hazard facilities. The obligations for provisionally registered MHFs include the following:

- development and submission to WorkCover of a plan for preparation of a safety report
- preparation and submission of provisional security and emergency arrangements to WorkCover, including consideration of comments from Commissioners of Police and NSW Fire & Rescue
- recording and investigation of major incidents (as defined), near misses (as defined) and security breaches. The notification requirements in relation to such incidents are covered by the incident

notification requirements in other parts of the OHS Regulation (clauses 341-344).

In order to be registered, operators of provisionally registered MHFs must prepare a Safety Report, Security Plan and updated emergency plan (that addresses all identified risks from the Safety Report) for submission to WorkCover.

In preparing provisional emergency arrangements and the emergency plan, the operator must submit drafts to the Commissioner of Fire & Rescue NSW and take account of any written comments received. Similarly, in preparation of provisional security arrangements and the security plan, the operator must submit drafts to the Commissioner of Police and take account of any written comments received.

The operator of registered MHFs must comply with the gazetted condition C2.5 (*Conditions and requirements of provisional registration and of registration*, WorkCover Catalogue No. WC05528), copy at **Tab 4**. The conditions of registration require the operator to provide information to the community in the following terms:

“C2.5 The operator must take all reasonably practicable steps to ensure that members of the community in areas identified in B2.2(e) and B2.2(f) above are made aware of the actions to take and procedures to follow in the case of a major accident. The communication methods used may include, but are not limited to, newsletters, information in the local paper, meetings with local residents and persons in control of the types of occupancies identified in B2.2(f).”

The areas referred to (B2.2(e) and B2.2(f)) are areas around MHFs that may be affected by a major accident there.

Further, under the OHS Regulation, operators of MHFs are required to investigate and determine likely causes of major accidents or near misses at MHFs, record the results and consult with employees about ways of avoiding major accidents or near misses in the future (clause 175Y(1)). Orica, like other operators of MHFs, was provided with details of expert contact officers in the Major Hazard Facilities team (MHF Team) of WorkCover who could provide advice and assistance.

New South Wales is working with the Commonwealth, States and Territories on national model regulations to support the *Work Health and Safety Act 2011* which is due to commence on 1 January 2012. Chapter 9 of the current draft of the model *Work Health and Safety Regulations 2011* relates to major hazard facilities. The model Regulations were approved in principle by a majority of the Workplace Relations Ministers at their meeting on 10 August 2011, but could be subject to further change. A copy of Chapter 9 and Schedules 15, 16 and 17 of the national Model Regulations current as at 9 September 2011 is attached at **Tab 5**.

The requirements for MHFs to provide information to the community are in draft regulations 572 and 573 of the consolidated model Regulations. Again, these requirements apply only to licensed MHFs. MHF transitional arrangements will be carried forward as part of the process of adopting the model Work Health and Safety Regulation.

The following is a summary of the requirements to provide information to the community:

- The operator of licensed MHFs is to provide the following information about the MHFs to the local community and the local authority:
 - name and location
 - details of a contact person
 - general description of operations
 - how the local community will be notified of a major incident occurring and actions to take
 - a summary of the safety case (plan) for the facility.
- The operator is not required to disclose information that may expose the MHFs to a major incident hazard in relation to the security of the MHFs.
- If a written request is received from a person who believes the occurrence of a major incident may adversely affect his or her health or safety, the operator must provide a copy of the information provided to the local community.
- After a major incident, the MHFs operator is to provide the local community, local authority and any government department or agency with a regulatory role in relation to MHFs with the following:
 - a description of the major incident
 - actions taken by the operator and proposed to be taken to prevent a re-occurrence
 - recommended actions the local community and local authority should take to eliminate or minimise risks to health and safety.

2.5 WorkCover's approach to regulation

WorkCover undertakes a number of important enforcement and advisory functions to motivate and assist industry to secure the health and safety at all NSW workplaces.

The principal emphasis is on assisting industry to comply with its statutory obligations through programs focusing on information exchange, prevention, financial incentives, standard setting and other OHS capacity-building mechanisms.

To achieve compliance, WorkCover uses a variety of strategies to reinforce workplace health and safety. In support of these strategies WorkCover has a range of compliance and enforcement options available which include:

- Provision of information and advice
- Improvement notices

- Prohibition Notices
- Investigation Notices
- Penalty Notices
- Audits
- Prosecution

WorkCover's Compliance Policy and Prosecution Guidelines (June 2010) provide guidance and assistance in making decisions with respect to compliance options. A copy is attached at **Tab 6**.

WorkCover inspectors also verify industry compliance by visiting workplaces, performing audits and other monitoring activities. Instances of non-compliance may result in enforcement action, ranging from an inspector's notice through to court proceedings. Serious breaches and failures to heed notices may also result in prosecution.

WorkCover takes a risk-based approach in the targeting of its prevention and response functions. The Work Health and Safety Business Plan for 2011/12 has identified two discrete programs of work for prevention and response delivery in targeted high risk areas. The programs are:

- The 10/5/5 program targeting the top 10 highest risk industries, top five highest risk injury types and the top five highest risk illnesses, to support employers to take proactive action on workplace health and safety.
- The High Consequence Low Frequency Risk-Based Compliance Program. High consequence – low frequency incidents (HCLF) are those that occur infrequently but can have a very large human, social, environmental and/or economic impact on a workplace, industry sector or the NSW economy. The compliance program was developed using the NSW Better Regulation Office guide titled *Risk-Based Compliance*. MHFs, storage of dangerous goods and notifiable carcinogenic substances are three of the key areas of the HCLF Risk-Based Compliance Program. A verification compliance plan is currently under development to support the program and the plan will include targeted inspections and site visits of MHFs across NSW between now and the end of February 2012 to review compliance with mandated legislative requirements before registration status of these facilities moves from provisional registration to full registration.

WorkCover has a comprehensive training program for WorkCover inspectors who respond to incidents and conduct investigations. Details of the program, including chemical specific components, are provided at **Tab 7**.

3. WORKCOVER'S ADMINISTRATIVE ARRANGEMENTS

3.1 Work Health and Safety Division

WorkCover's overarching purpose is to increase the competitiveness of the NSW economy through productive, healthy and safe workplaces. WorkCover comprises a number of Divisions, as shown in the attached organisational chart, **Tab 8**. The Division responsible for administering the OHS legislation is the Work Health and Safety Division. Work Health and Safety (WHS) Division is led by a General Manager. The WHS Division organisational chart is provided at **Tab 8A**.

Work Health and Safety Division comprises three Groups, each headed by a Director: Operations; Specialist Services; and Business Strategy and Performance.

The **Operations Group** provides the frontline inspectorial and advisory services under the occupational health and safety legislation including complaint and incident investigations and injury and illness prevention programs. The Operations Group includes four metropolitan-based teams, two regionally based teams and two specialised teams, the Response Management Team and the Business Assistance Branch.

The Regional North Team is based at Newcastle and covers northern regional New South Wales from the Newcastle area, including the Orica Kooragang Island site, up to the Queensland border.

The Response Management Team comprises the Strategic Investigations Unit and the Strategic Assessment Centre. The Strategic Investigations Unit investigates work health and safety incidents and high consequence risks to determine compliance with the occupational health and safety legislation and to identify the root causes of incidents to inform prevention activities to reduce workplace illness and injury.

WorkCover's Investigations Reference Manual 2006 – Version 3, sets out three categories of investigations and the criteria to be used to determine these.

Fatal incidents or serious matters of public concern are Category A, possible serious breaches of legislation are Category B and matters requiring a preliminary assessment in order to identify further actions are termed Compliance Investigations, Category C. A copy of pages 32-35 of the Investigations Reference Manual 2006 is attached at **Tab 9**.

Category C incidents are those that receive a preliminary assessment in order to:

- Identify the cause of the incident
- Issue Notices to address the hazard that caused the incident
- Determine whether there has been a breach of legislation
- Determine what further action may be required.

If there appear to be sufficient grounds to conduct a full investigation, the matter is assigned a Category B status.

The Strategic Assessment Centre coordinates the receipt, assessment and allocation of work health and safety incidents and complaints in adherence to a number of operational protocols. The Strategic Assessment Centre has both advisory officers and inspectors who coordinate the assessment of both OHS complaints and incidents.

Attached at **Tab 10** is a copy of an Operating Protocol dated 11 August 2008. This Protocol is supported by more detailed procedures outlined in the following documents developed for the SAC at **Tab 11** relating to:

- (a) Chapter 1 – Incident Handling/Taking Incident Details;
- (b) Chapter 5 – Notifiable incidents; and
- (c) Chapter Nine – Major Hazard Facilities (MHF) Incident Notifications.

The SAC also manages the After Hours Emergency Response Service (AHERS).

The AHERS handles the receipt and management of matters referred outside of normal business hours. The Service consists of a Duty Manager and a number of Inspectors rostered to cover metropolitan and regional NSW.

The **Specialist Services Group** includes the Major Hazards Facilities Team, the Chemicals Team, the Engineering Team, and the Working Environment and Workplace Solutions Team. The Major Hazard Facilities Team and the Chemicals Team provide technical support services in relation to the management of hazardous chemicals.

The Chemicals Team is a multi-skilled team of specialists located within the Specialist Services Group of WorkCover, within WHS Division.

The role of the team is to provide:

- provide practical assistance and guidance to colleagues at WorkCover through verbal and written advice
- investigate and assist with specialised, technical issues
- respond to incidents and complaints involving chemicals and explosives to support frontline officers
- improve the management of safe storage and use of hazardous substances, dangerous goods and explosives in collaboration with operational areas of the organisation
- identify through research and collaboration with stakeholders any emerging issues related to chemicals at workplaces
- keep key internal and external stakeholders updated with the latest information on chemicals and explosives safety
- verify the permission to use and storage of dangerous goods, fireworks, security-sensitive chemicals, lead, carcinogens, pesticides and explosives
- authorisation of explosive and approval of dangerous goods packaging.

The specific assistance provided by the Chemicals Team to the Newcastle Office in dealing with the incident has been as follows:

- The provision of information and advice relating to the toxic and carcinogenic properties of Hexavalent Chromium, Sodium Chromate, Trivalent Chromium and the catalyst Shiftmax 120.
- Assessment of biological and health surveillance testing results
- On-site technical support of a Specialist Inspector at both the Newcastle Office and during meetings with Orica and Office of Environment and Heritage and Department of Health as required.
- Technical support provided by Team Manager, Chemicals Team and technical staff.

The Major Hazard Facilities Team is a specialist team including an officer from the NSW Office of Environment & Heritage, Fire & Rescue NSW, NSW Police Force, and Department of Planning & Infrastructure, in order to facilitate a multi-agency approach to MHFs in NSW. Some inter-agency members are part-time with the MHF Team.

Team members work with MHFs in relation to the regulatory requirements for major hazard facilities under Chapter 6B of the OHS Regulation to prevent major accidents and mitigate their consequences. This includes developing guidance material, providing information to operators of potential MHFs and MHFs about the regulatory requirements, evaluating submissions provided by sites, issuing MHFs provisional registrations, and carrying out advisory and verification site visits. Officers from Police Force and Fire & Rescue focus respectively on security and emergency plans. The team also provides assistance and guidance to colleagues at WorkCover through verbal and written advice in relation to process safety and legislative requirements for major hazard facilities.

3.2 WorkCover's Role in Emergency management arrangements

The usual process following an unplanned or uncontrolled spill or release of any hazardous substance is for contact to be made with emergency services via 000.

WorkCover is not a combat agency under the NSW State Disaster Plan – Displan 2010. It therefore does not have a first responder role. Displan 2010 identifies the combat agency primarily responsible for responding to the emergency. A combat agency is the agency with the specific expertise and equipment to deal with the effects of designated hazards. For hazardous materials the combat agency is:

Land based: Fire and Rescue NSW

State waters: NSW Maritime and NSW Port Corporations

Inland waters: Fire and Rescue NSW

The combat agency has primary responsibility for controlling the response to a particular emergency.

WorkCover is identified as a participating organisation under Displan 2010 for Environmental Services and as an “other” or assisting organisation under the NSW Hazardous Materials/Chemical, Biological, Radiological Emergency Sub-plan (HazMat/CBR Plan). WorkCover is not a combat agency.

WorkCover understands that the term ‘first responders’ is a generic term used in emergency management organisations for members of those organisations who respond to emergencies and who provide immediate emergency medical or safety services. WorkCover has no officers who fall into the category of ‘first responders’.

WorkCover officers will only enter premises where an emergency has been declared where that entry is authorised by relevant officers in the emergency service organisations.

The State Emergency Management Committee (SEMC) was established to ensure that New South Wales has a system to cope with emergencies which is robust, effective and flexible enough to deal with the range of hazards experienced in New South Wales. WorkCover is not a member of the SEMC but does have some roles and responsibilities under Displan 2010, the Functional Area Supporting Plan: *Environmental Services* (Enviroplan) and the Hazmat/CBR Plan.

Displan 2010 details the NSW emergency management arrangements which ensure a coordinated response and recovery from emergencies. SEMC is responsible for emergency planning in NSW and has determined that hazardous materials emergencies require a whole of government approach, particularly in relation to the management of large numbers of persons requiring assistance and the evacuation of a significant portion of the community.

WorkCover’s role under Displan 2010 is that of a participating organisation under the Environmental Services Functional Area. The Office of Environment and Heritage has the coordination role for the Environmental Services Function. Under the Enviroplan, WorkCover as a participating organisation is to be prepared to:

- a. assist with the monitoring and predicting of the occupational risks associated with the emergency; and
- b. provide advice on the properties and characteristics of the hazardous materials.

Displan 2010 also provides for the development of sub-plans of which the HazMat/CBR Plan is one.

Under the HazMat/CBR Plan, the Fire and Rescue NSW Commander is to:

- a. define and control the Combat Site;
- b. advise all agencies of the Personal Protective Equipment (PPE) requirements and coordinate the movement of personnel in and out of the Combat Site;

- c. coordinate the safe removal of people and animals from the Combat Site;
- d. identify, contain and render safe the hazardous materials;
- e. receive and provide information or intelligence to the Site Controller;
- f. advise the Site Controller on the structure and location of NSWFB divisional operations;
- g. inform the Site Controller of any coordination requirements;
- h. when an IED is present or suspected;
 - i. provide decontamination and detection equipment; and
 - ii. support to the NSW Police Bomb Technicians in accordance with the CBR+IED SOP (CBR = Chemical, Biological, Radiological; IED = Improvised Explosive Device; SOP = Standard Operating Procedures);
- i. determine when the Combat Site is rendered safe and formally declare it as such to the Site Controller.

As noted the Fire and Rescue NSW Commander is to determine the Personal Protective Equipment for accessing the site.

WorkCover's role under the HazMat/CBR Plan is to be prepared to:

- a. assist the Multi Agency Incident Management Team with the monitoring and predicting of the occupational risks associated with the emergency;
- b. provide advice on the properties and characteristics of the hazardous materials; and
- c. provide appropriate personnel as requested.

Officers from the Chemicals Team represent WorkCover on a whole of government Hazardous Materials Incident Review Committee which reviews specific incidents from a front line perspective to see if response improvements can be made. The Committee is chaired by the Office of Environment and Heritage.

There are a number of arrangements comprising memoranda of understanding, interagency guidelines and communication protocols covering WorkCover's interaction with other NSW agencies. A list of these is to be found in the After Hours Emergency Response Manual Section 9, **Tab 12**.

Attachments Index

1. OHS Regulations – Chapter 6B and Schedule 8 – Major Hazard Facilities
2. OHS Regulation, clause 158, notifiable carcinogenic substances, and WorkCover Guide for notifications for work involving carcinogenic substances
3. OHS Regulation – clause 174ZC- dangerous goods – planning for emergencies
4. Major Hazard Facilities - *Conditions and Requirements of Provisional Registration and of Registration*
5. Chapter 9 and Schedules 15-17, draft national model *Work Health and Safety Regulations 2011*, 9 September 2011, Major Hazard Facilities
6. WorkCover *Compliance Policy and Prosecution Guidelines*, June 2010
7. Training program for WorkCover inspectors *WorkCover Compliance Policy and Prosecution Guidelines*, June 2010
8. WorkCover Organisational Chart
- 8A. Work Health and Safety Division –Organisational Chart
9. Extract from Investigations Manual, pages 32-25 – Categories of Investigations
10. Incident Notification Protocol – RMT 01/08
11. Strategic Assessment Centre Procedures, Chapters 1, 5 and 9
12. List of memoranda of understanding and communication protocols– Section 9, After Hours Emergency Response Service Manual
13. WSMS 2-91455, 11 August 2011
14. WSMS 2-91465, 11 August 2011
15. WSMS 2-91477, 11 August 2011
16. Emails (2), 10 August 11 from MHF to Team Coordinator, Newcastle
17. Email 11 August 2011, 4.37 pm from Team Coordinator, Newcastle
18. Serious Incident Form IM008 dated 12 August 2011
19. House Folder Note sent 12 August 2011
- 19A Email, 13 August 2011
20. Public Health Incident Plan endorsed 13 August 2011
21. Interagency Incident Action Plan endorsed 14 August 2011
22. Updated Public Health Incident Action Plan 15 August 2011
23. Correspondence with Assistant Commissioner of Police Murdoch
24. House Folder Note sent 16 August 2011

25. Updated Incident Action Plan 17 August 2011
26. Notice under s 62, OHS Act and Improvement Notices 7-232534 and 7-232541
27. Incident Action Plan as at 18 August 2011.
28. Ministerial Briefing Note and attached notices sent 19 August 2011
29. Updated Incident Action Plan 23 August 2011
30. House Folder Note sent 23 August 2011
31. Confirmation 25 August 2011 re Incident Action Plan
32. Health surveillance information to Department of Health, 29 August 2011
33. Chemical Incident Improvement Plan



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Occupational Health and Safety Regulation 2001

Current version for 7 June 2011 to date (accessed 23 August 2011 at 16:19)

Chapter 6B

<< page >>

Chapter 6B Major hazard facilities

Part 6B.1 Preliminary

175 Application

- (1) This Chapter applies in relation to major hazard facilities, potential major hazard facilities and other facilities.
- (2) However, this Chapter does not apply to premises that are:
 - (a) a port operational area under the control of a port authority, or
 - (b) a pipeline to which the Gas Supply Act 1996 or the Pipelines Act 1967 applies, or
 - (c) a pipeline to which provisions of the repealed Dangerous Goods Act 1975 and the Dangerous Goods (General) Regulation 1999 apply (by operation of clause 3 of Schedule 3 to this Regulation), or
 - (d) a coal workplace, or
 - (e) a mining workplace.
- (3) In this clause:

port authority means a body established under Part 2 or 4 of the Ports and Maritime Administration Act 1995.

port operational area means the land and sea, including the fixed facilities and vessels, located in any area defined in Schedule 1 to the Ports and Maritime Administration Regulation 2007 and includes any berths adjacent to such an area.

175A Definitions

- (1) In this Chapter:

aggregate quantity ratio or *AQR*, in relation to a Schedule 8 material, means the aggregate quantity ratio as determined in accordance with subclause (2).

facility means the whole of any premises at which Schedule 8 materials are present or likely to be present for any purpose.

major accident means an incident (including an emission, loss of containment, fire, explosion or release of energy or projectiles, but not including the long term, low volume release of any material) involving a Schedule 8 material occurring in the course of the operation, commissioning, shutdown or maintenance of a major

25. Updated Incident Action Plan 17 August 2011
26. Notice under s 62, OHS Act and Improvement Notices 7-232534 and 7-232541
27. Incident Action Plan as at 18 August 2011.
28. Ministerial Briefing Note and attached notices sent 19 August 2011
29. Updated Incident Action Plan 23 August 2011
30. House Folder Note sent 23 August 2011
31. Confirmation 25 August 2011 re Incident Action Plan
32. Health surveillance information to Department of Health, 29 August 2011
33. Chemical Incident Improvement Plan

hazard facility that poses a risk of serious danger or harm (whether immediate or delayed) to any person (including members of the public).

major hazard facility means:

- (a) a facility at which Schedule 8 materials are present or likely to be present in a quantity that exceeds their threshold quantity, or
- (b) a facility where the aggregate quantity ratio of Schedule 8 materials present or likely to be present exceeds 1.0, or
- (c) a facility at which Schedule 8 materials are present or likely to be present, not being a facility to which paragraph (a) or (b) applies, that is, for the time being, determined by WorkCover to be a major hazard facility under Part 6B.5.

modification, in relation to a major hazard facility, means:

- (a) a change to any plant, processes, materials, operating conditions or operating procedures (including the introduction of new plant, processes, materials, operating conditions or operating procedures), or
- (b) a change to the quantity of Schedule 8 materials present or likely to be present (including the introduction of any new Schedule 8 materials), or
- (c) a change to the safety management system of the facility, that has the effect of:
 - (d) significantly increasing the risk of a major accident occurring, or
 - (e) in relation to any major accident that might occur, significantly increasing:
 - (i) its magnitude, or
 - (ii) the severity of its consequences to persons (whether on-site or off-site).

near miss means any incident that, but for mitigating effects, actions or systems, could have escalated into a major accident.

operator, in relation to a facility, means the person who has overall control of the facility.

potential major hazard facility means:

- (a) a facility where Schedule 8 materials are present or likely to be present in a quantity that exceeds 10% of their threshold quantity but does not exceed their threshold quantity, or
- (b) a facility where the aggregate quantity ratio of Schedule 8 materials present or likely to be present at the facility exceeds 0.1 but does not exceed 1.0.

provisionally registered means provisionally registered under clause 175M.

registered means registered under clause 175R.

Schedule 8 material means a material mentioned in Table 1 to Schedule 8 or a material that belongs to one or more of the types, classes and categories mentioned in Table 2 to Schedule 8.

threshold quantity, in relation to a Schedule 8 material, means the threshold

quantity for that material as specified in Schedule 8.

- (2) An aggregate quantity ratio of Schedule 8 materials present or likely to be present at a facility is to be determined using the following formula:

$$AQR = \frac{q_x}{Q_x} + \frac{q_y}{Q_y} + \dots + \frac{q_n}{Q_n}$$

where:

$q_x, q_y \dots q_n$ is the total quantity of each Schedule 8 material present or likely to be present at the facility.

$Q_x, Q_y \dots Q_n$ is the threshold quantity for each Schedule 8 material concerned.

However, a quantity of Schedule 8 material need not be included in the calculation if:

- (a) the quantity is less than 2% of the corresponding threshold quantity for the material, and
 - (b) the quantity is present in such conditions that it is incapable of triggering a major accident.
- (3) For the purposes of determining whether a facility is a major hazard facility, a potential major hazard facility or not such a facility, the quantity of a Schedule 8 material present or likely to be present at the facility is taken to include all amounts of the material, including but not limited to the following:
- (a) for process vessels and related piping systems—the maximum amount of the material normally present in the process vessel or related piping system,
 - (b) for storage vessels including tanks—the maximum capacity of the storage vessel or tank, except where all of the following conditions apply:
 - (i) the storage vessel or tank is nominally empty and the mass of the Schedule 8 material present is as low as is reasonably practical,
 - (ii) the storage vessel or tank will not be filled at the facility,
 - (iii) a secure physical barrier covers the fill point and any other opening that could be used to fill the storage vessel or tank,
 - (iv) the storage vessel or tank is not connected to any pipe,

Note. This includes all tanks, whether above ground, mounded or underground.

- (c) for package or other container storage areas—the maximum quantity of the material that is likely to be present in the package or other container storage area,
 - (d) for pipes, piping and pipelines not included in paragraph (a)—the maximum quantity of materials contained in the pipes, piping or pipelines or the maximum quantity of material that could escape from the pipe, piping or pipeline in the event of its catastrophic failure (whichever is the greater).
- (4) In this Chapter, a material is *present or likely to be present* at a facility if:
- (a) it is reasonably foreseeable that the material will be present at the facility for

any continuous period of 48 hours, or

- (b) the material is able to be produced under reasonably foreseeable abnormal conditions at the facility (for example, conditions such as extreme weather).

175B Dangerous goods to which section 135A of the Act applies

- (1) For the purposes of this Chapter, dangerous goods that are Schedule 8 materials are declared to be dangerous goods to which section 135A of the Act applies.
- (2) This Chapter applies to dangerous goods that are Schedule 8 materials regardless of whether those goods are at a place of work or are for use at work.
- (3) In this clause, *dangerous goods* has the same meaning as in section 135A of the Act.

Part 6B.2 Hazard identification and risk assessment

175C Extension of hazard identification and risk assessment provisions

- (1) Division 1 (General duties of controllers of premises) of Part 4.2 of Chapter 4 extends to operators of major hazard facilities (regardless of whether or not those facilities are places of work or are used for work).
- (2) A reference in Chapter 2 (Places of work—risk management and other matters) and Division 1 (General duties of controllers of premises) of Part 4.2 of Chapter 4 to occupational health and safety (however expressed) includes, where the hazard concerned is a hazard that arises from a major hazard facility, a reference to public health and safety (both at the facility and beyond).
- (3) Without limiting subclause (2), when identifying the hazards that arise from a major hazard facility, the operator of the facility must identify all foreseeable hazards that may lead to, or arise from, a major accident at the facility.

175D Regular risk assessments

- (1) An operator of a major hazard facility must review each risk assessment conducted for the purposes of clause 10 or 35 at the times required by clause 12 or 37, but in any case each risk assessment must be reviewed as follows:
 - (a) before a modification of the major hazard facility,
 - (b) after the occurrence of a major accident or near miss at the major hazard facility,
 - (c) when requested by WorkCover,
 - (d) at least once every 5 years.
- (2) The operator must make a record of each risk assessment and any review of a risk assessment.

Maximum penalty: Level 4.

Note. Clause 175ZD provides that any document or other record required to be created by an operator of a major hazard facility under this Chapter is to be retained by the operator for at least 15 years after the date of its creation.

Part 6B.3 Duties in relation to major hazard facilities

175E Duties in relation to major accidents at major hazard facilities

- (1) An operator of a major hazard facility must ensure that all persons (including members of the public) are not exposed to risks to their health and safety arising from a major accident occurring at the facility.

Maximum penalty: Level 4.

Note. Other general laws and specific legislation may provide that operators have other obligations with regard to the operation of the major hazard facility that relate to risks to property or the environment, both inside or beyond the facility.

- (2) Nothing in this clause is to be construed:
 - (a) as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission, of this clause, or
 - (b) as conferring a defence to an action in any civil proceedings or as otherwise affecting a right of action in any civil proceedings.

Note. Section 10 (2) of the Act provides that a person who has control of any plant or substance used by people at work must ensure that the plant or substance is safe and without risks to health when properly used.

Part 6B.4 Notification regarding operation of major hazard facilities and potential major hazard facilities

175EA Definition

In this Part, a *hazard facility notification* means a notification given under clause 175F or 175FA.

175F Notification by operators and intended operators of major hazard facilities and potential major hazard facilities

- (1) A person who intends to be the operator of a major hazard facility or a potential major hazard facility must, within 3 months after the person forms the intention, notify WorkCover of the intention.

Note. Clause 175L provides that an operator must not operate a major hazard facility unless the facility is registered or provisionally registered.

Clause 175M provides that a notification under this clause is taken to be an application for the provisional registration of the facility.

- (2) WorkCover may, by notice in writing, require a person who, in WorkCover's opinion, is the operator of a facility (whether or not it is a major hazard facility or a potential major hazard facility) to submit a notification to WorkCover within a period specified by WorkCover.
- (3) A person must comply with a requirement made by WorkCover under this clause.
- (4) (Repealed)
- (5) On receiving a notification under this clause, WorkCover is to send the person a written acknowledgement of the notification.
- (6) For the purposes of this clause, a person *intends to be the operator of a major hazard facility or a potential major hazard facility* if:
 - (a) the person intends to be the operator of a major hazard facility or a potential major hazard facility that is:

- (i) designed but not constructed, or
 - (ii) under construction, or
 - (iii) constructed but not yet operational, or
 - (b) the person is the operator of a facility (not being a major hazard facility or a potential major hazard facility) and intends to make alterations to the facility that will result in the facility becoming a major hazard facility or a potential major hazard facility, or
 - (c) the person is the operator of a potential major hazard facility and intends to make alterations to the facility that will result in the facility becoming a major hazard facility.
- (7), (8) (Repealed)

Maximum penalty (subclauses (1) and (3)): Level 4.

175FA Notification by operators of potential major hazard facilities of material change

- (1) A person who is the operator of a potential major hazard facility must notify WorkCover of any proposed material change to the facility.

Maximum penalty: Level 4.

Note. Clause 175L provides that an operator must not operate a major hazard facility unless the facility is registered or provisionally registered.

- (2) A notification under this clause must be given at least 10 days before the material change to the potential major hazard facility occurs.
- (3) On receiving a notification under this clause, WorkCover is to send the person a written acknowledgement of the notification.
- (4) In this clause, **material change** to a potential major hazard facility means any change, as a result of which:
 - (a) a Schedule 8 material that was not included in the most recent hazard facility notification for the facility is present or likely to be present at the facility in a quantity that exceeds 10% of its threshold quantity, or
 - (b) the aggregate quantity ratio of Schedule 8 materials present or likely to be present at the facility exceeds 0.7.

175G Content of hazard facility notification

A hazard facility notification must:

- (a) be in the approved form, and
- (b) if the notification is being given by a corporation, be signed by the chief executive officer of the corporation or another officer of the corporation authorised by the chief executive officer.

175H WorkCover may request further information

On request from WorkCover, a person who has given a hazard facility notification must provide, at any reasonable time specified by WorkCover, such further

information relating to the facility concerned as WorkCover requests.

Maximum penalty: Level 4.

175I Notification of change of operator of major hazard facility or potential major hazard facility

- (1) If an operator of a major hazard facility or a potential major hazard facility is replaced by another person as an operator of the facility, both the former operator and the new operator of the facility must ensure that WorkCover is notified of that change.

Maximum penalty: Level 4.

- (2) Notification under this clause must be given within one month after the former or new operator becomes aware, or should reasonably have been or become aware, of the circumstances giving rise to the obligation to notify.

175J Notification assessment fee

- (1) A person who provides WorkCover with a notification under this Part must pay to WorkCover a notification assessment fee in the amount (if any) specified by WorkCover.
- (2) WorkCover may specify different fee amounts (or no amount) for different types of notifications.

Part 6B.5 WorkCover may determine potential major hazard facilities to be major hazard facilities

175K WorkCover may determine a potential major hazard facility to be a major hazard facility

- (1) WorkCover may determine that a potential major hazard facility is a major hazard facility if it is of the opinion that there is a potential for a major accident to occur at the facility.
- (2) WorkCover must not make a determination under this clause unless it has:
 - (a) consulted with the operator of the potential major hazard facility concerned, and
 - (b) given the operator reasons as to why it proposed to make the determination, and
 - (c) given the operator a reasonable opportunity to make representation as to why the determination should not be made.
- (3) A determination under this clause does not take effect until written notice of it is given to the operator of the facility concerned.

Note. An operator aggrieved by a decision to make a determination under this clause may apply to the Administrative Decisions Tribunal for a review of the decision—see clause 351 (1) (b1) (i).

Part 6B.6 Provisional registration and registration of major hazard facilities

Division 1 Major hazard facility must be registered

175L Major hazard facility must be registered or provisionally registered

- (1) An operator must not operate a major hazard facility unless the facility is registered or provisionally registered.

Maximum penalty: Level 4.

- (2) This clause commences on 13 April 2009.

Division 2 Provisional registration

175M WorkCover may provisionally register major hazard facilities

- (1) Subject to subclause (2), WorkCover may provisionally register a major hazard facility.
- (2) Without limiting the reasons for which provisional registration may be refused, WorkCover must refuse to provisionally register a major hazard facility if it is of the opinion that the following persons are not fit and proper persons to exercise control over the facility:
 - (a) if the operator is an individual—the operator,
 - (b) if the operator is a corporation—each director of the operator.
- (3) A notification under clause 175F in relation to a major hazard facility is taken, for the purposes of this Part, to be an application for the provisional registration of the facility.
- (4) A notification under clause 175F or 175FA in relation to a potential major hazard facility that, after the notification, was determined under clause 175K to be major hazard facility, is taken, for the purposes of this Part, to be an application for the provisional registration of the facility that was made on the date of that determination.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to refuse to provisionally register a major hazard facility under this clause.

175N Duration of provisional registration

- (1) Provisional registration of a major hazard facility continues in force for a period of 3 years (or such longer period as WorkCover may specify to the operator of the facility by notice in writing).
- (2) However, provisional registration is terminated by the following:
 - (a) the facility becoming registered under Division 3,
 - (b) the provisional registration being cancelled under Division 4.
- (3) A provisional registration has no effect while the provisional registration is suspended under Division 4.

175O Provisional registration subject to conditions

- (1) Provisional registration of a major hazard facility is subject to:
 - (a) the conditions set out in this Division, and
 - (b) any general conditions applying to all provisionally registered major hazard facilities:

- (i) that are published in the Gazette by WorkCover from time to time, and
- (ii) notice of which has been given in writing to the operator by WorkCover, and
- (c) any conditions imposed on the provisional registration by WorkCover by notice in writing given to the operator.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to impose a condition on the provisional registration of a major hazard facility under this paragraph.

- (2) An operator of a provisionally registered major hazard facility must comply with the conditions of that provisional registration.

Maximum penalty: Level 4.

175P Conditions of provisional registration

Note. The provisional registration may be subject to other conditions under clause 175O (1) (b) and (c).

- (1) It is a condition of provisional registration of a major hazard facility that the operator of the facility must, within 6 months of the provisional registration or such longer period as WorkCover may allow, ensure that:
 - (a) a plan for the preparation of a safety report for the facility (that complies with any requirements that are published in the Gazette by WorkCover from time to time) is prepared and submitted to WorkCover, and
 - (b) provisional security arrangements (that comply with any requirements that are published in the Gazette by WorkCover from time to time) are prepared and implemented and details of those arrangements are submitted to WorkCover, and
 - (c) when preparing provisional security arrangements:
 - (i) details of those arrangements are provided to the Commissioner of Police, and
 - (ii) regard is taken of any written advice received from the Commissioner of Police, and
 - (d) provisional emergency arrangements (that comply with any requirements that are published in the Gazette by WorkCover from time to time) are prepared and implemented and details of those arrangements are submitted to WorkCover, and
 - (e) when preparing the provisional emergency arrangements:
 - (i) details of those arrangements are provided to:
 - (A) the Commissioner of the New South Wales Fire Brigades, and
 - (B) if the premises to which this clause applies are within a rural fire district within the meaning of the *Rural Fires Act 1997*—the NSW Rural Fire Service, and
 - (ii) regard is taken of any written advice received from the Commissioner of the New South Wales Fire Brigades.

- (2) It is a condition of provisional registration of a major hazard facility that the

operator of the facility must, within 12 months of the provisional registration or such longer period as WorkCover may allow, ensure that a security plan for the facility (that complies with any requirements that are published in the Gazette by WorkCover from time to time) is prepared and submitted to WorkCover and implemented.

- (3) It is a condition of provisional registration of a major hazard facility that the operator of the facility must, within 2 years of the provisional registration or such longer period as WorkCover may allow, ensure that an application under clause 175Q for registration of the facility is made.
- (4) It is a condition of provisional registration of a major hazard facility that the operator of the facility must ensure that, at the time or times specified by WorkCover, such fees are paid to WorkCover as are fixed for the time being by WorkCover to cover expenses in connection with the regulation of facilities under this Part.
- (5) WorkCover may fix different fee amounts (or no amount) for different types of provisionally registered facility.

Division 3 Registration of major hazard facilities

175Q Application for registration

- (1) An operator of a major hazard facility may apply for the registration of the facility.
- (2) An application is to be made in writing to WorkCover and is to be:
 - (a) in the approved form, and
 - (b) accompanied by:
 - (i) a fee in such amount as WorkCover determines as the appropriate amount to cover expenses in connection with the processing of applications for the registration of a major hazard facility, and
 - (ii) such documents as WorkCover requires.

175R WorkCover may register major hazard facilities

- (1) Subject to subclause (3), WorkCover may register a major hazard facility.
- (2) Without limiting the reasons for which registration may be refused, WorkCover must refuse to register a major hazard facility if it is of the opinion that the following persons are not fit and proper persons to exercise control over the facility:
 - (a) if the operator is an individual—the operator,
 - (b) if the operator is a corporation—each director of the operator.
- (3) Without limiting the reasons for which registration may be refused, WorkCover must not register a major hazard facility unless it is satisfied that:
 - (a) a safety management system for the facility (that complies with any requirements that are published in the Gazette by WorkCover from time to time) has been established and maintained, and
 - (b) a security plan for the facility that complies with the following requirements has been submitted to WorkCover and has been implemented:

(i) any requirements that are published in the Gazette by WorkCover from time to time,

(ii) that in preparing the security plan:

(A) a draft of the security plan was provided to the Commissioner of Police, and

(B) regard was taken of any written advice received from the Commissioner of Police, and

Note. The security plan submitted to WorkCover and implemented under clause 175P (2) may satisfy this requirement.

(c) an emergency plan that complies with the following requirements has been submitted to WorkCover and been implemented:

(i) any requirements that are published in the Gazette by WorkCover from time to time,

(ii) that in preparing the emergency plan:

(A) a draft of the emergency plan was provided to:

(I) the Commissioner of the New South Wales Fire Brigades, and

(II) if the facility is within a rural fire district within the meaning of the *Rural Fires Act 1997*—the NSW Rural Fire Service, and

(B) regard was taken of any written advice received from the Commissioner of the New South Wales Fire Brigades, and

(iii) that after the emergency plan was submitted to WorkCover, it was provided to:

(A) the Commissioner of the New South Wales Fire Brigades, and

(B) if the facility is within a rural fire district within the meaning of the *Rural Fires Act 1997*—the NSW Rural Fire Service, and

(d) a safety report for the facility (that complies with any requirements that are published in the Gazette by WorkCover from time to time) has been submitted to WorkCover.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to refuse to register a major hazard facility under this clause.

175S Duration of registration

(1) Unless sooner suspended or cancelled, registration of a major hazard facility continues in force for a period of 5 years.

(2) However, if an application for the renewal of the registration of a major hazard facility has been made to WorkCover before the registration's expiry and the application has not been finally dealt with, the registration continues in force until WorkCover either renews the registration of the facility or refuses the renewal.

175T Registration subject to conditions

(1) Registration of a major hazard facility is subject to:

(a) the conditions set out in this Division, and

- (b) any general conditions applying to all registered major hazard facilities:
 - (i) that are published in the Gazette by WorkCover from time to time, and
 - (ii) notice of which has been given in writing to the operator by WorkCover, and
- (c) any conditions individually imposed on the registration by WorkCover by notice in writing.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to impose a condition on the registration of a major hazard facility under this paragraph.

- (2) An operator of a registered major hazard facility must comply with the conditions of that registration.

Maximum penalty: Level 4.

175U Conditions of registration

Note. The registration may be subject to other conditions under clause 175T (1) (b) and (c).

- (1) It is a condition of registration of a major hazard facility that the operator of the facility must, at the time or times specified by WorkCover, ensure that such fees are paid to WorkCover as are fixed for the time being by WorkCover to cover expenses in connection with the regulation of facilities under this Part.
- (2) WorkCover may fix different fee amounts (or no amount) for different types of registered facility.

175V Renewal of registration

- (1) It is a condition of registration of a major hazard facility that the operator of the facility must ensure that an application for renewal of the registration of the facility is submitted to WorkCover at least 12 months before the expiry of the registration.
- (2) An operator is not required to comply with the condition set out in subclause (1) if the operator has notified WorkCover in writing that it will cease to operate the major hazard facility during that 12 month period.
- (3) An application for renewal of registration is to be made in writing to WorkCover and is to be:
 - (a) in the approved form, and
 - (b) accompanied by:
 - (i) a fee in such amount as WorkCover determines as the appropriate amount to cover expenses in connection with the processing of applications for the renewal of registration of a major hazard facility, and
 - (ii) such documents as WorkCover requires.
- (4) WorkCover may renew a registration of a major hazard facility.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to renew a registration of a major hazard facility under this clause.

Division 4 Provisions relating to both provisional registration and registration of major hazard facilities

175W Suspension and cancellation

- (1) WorkCover may suspend or cancel the provisional registration or registration of a major hazard facility.

Note. See clause 351 as to the review by the Administrative Decisions Tribunal of a decision by WorkCover to suspend or cancel provisional registration or registration of a major hazard facility under this clause.

- (2) Without limiting subclause (1), WorkCover may suspend or cancel the provisional registration or registration of a major hazard facility if it is satisfied that:
 - (a) an operator of the facility has contravened a condition of the provisional registration or registration, or
 - (b) an operator of the facility has contravened a provision of the Act or this Regulation, or
 - (c) the provisional registration or registration was obtained on the basis of false or misleading information or the failure to disclose relevant information to WorkCover, or
 - (d) a major accident at the facility is imminent, or
 - (e) the safety management system, security plan, emergency plan or safety report for the facility is inadequate, or
 - (f) any of the following persons is not a fit and proper person to exercise control over the facility:
 - (i) if the operator is an individual—the operator,
 - (ii) if the operator is a corporation—any director of the operator.

Part 6B.7 Duties of employees at major hazard facilities

175X Duties of employees at major hazard facilities

An employee at a major hazard facility must:

- (a) follow the operator's procedures relating to the prevention and control of major accidents within the facility, and
- (b) follow the operator's provisional emergency arrangements or emergency plan in the event of a major accident occurring or in the event of the emergency procedures being activated, and
- (c) inform the operator, as soon as is practicable, of any circumstance of any kind that he or she considers capable of leading to a major accident, and
- (d) without placing the employee or any other person at risk, take corrective action under those prevention and control and emergency procedures, consistent with the employee's training, even if such corrective action could interrupt the operation of the facility, and
- (e) notify his or her supervisor of any corrective action taken.

Maximum penalty: Level 4.

Part 6B.8 Miscellaneous

175Y Recording of major accidents, near misses and security breaches

- (1) If a major accident or near miss happens at a major hazard facility, the operator of the facility must, as soon as practicable:
 - (a) record the major accident or near miss, and
 - (b) investigate the major accident or near miss and determine, so far as is possible, its cause or likely cause, and
 - (c) record the results of that investigation and any such determination, and
 - (d) consult with the employees at the facility on ways of avoiding major accidents and near misses in the future.
- (2) If a breach of security occurs at a major hazard facility, the operator of the facility must, as soon as practicable:
 - (a) record the breach of security, and
 - (b) investigate the breach of security and determine, so far as is possible, its cause or likely cause, and
 - (c) record the results of that investigation and any such determination, and
 - (d) consult with the employees at the facility on ways of preventing breaches of security in the future.
- (3) The operator must retain a record created under this clause while the major hazard facility continues to operate.

Maximum penalty: Level 4.

175Z Security

- (1) **Access systems and other security**
The operator of a major hazard facility must establish and maintain a system of security for, and controlled access to, the facility.
- (2) The system must, as far as practicable:
 - (a) prevent access by unauthorised persons to the facility, and
 - (b) prevent unauthorised actions at the facility, and
 - (c) ensure that any element of the facility that could affect its safe operation (including security documents, computer hardware and software and boundary infrastructure) is secured.
- (3) **Risk assessments and security**
When identifying the foreseeable hazards that arise from the operation of a major hazard facility that may lead to, or arise from, a major accident at the facility, the operator of the facility must identify the hazards that may be caused by a breach of security at the facility.
- (4) The operator of a major hazard facility must review a risk assessment, and any measures adopted to control the risk, relating to a hazard arising from a major accident caused by a breach of security at the facility whenever:

- (a) there is evidence that the risk assessment is no longer valid, or
 - (b) a significant change is proposed in the facility or in work practices or procedures to which the risk assessment relates, or
 - (c) the Commissioner of Police has directed that such a review take place, and, in any case, at least once every 2 years.
- (5) In carrying out such a risk assessment, the operator of the major hazard facility must take into account any advice received from the Commissioner of Police.

Maximum penalty: Level 4.

175ZA Informing, instructing and training employees

- (1) The operator of a major hazard facility must provide the operator's employees with such information, instruction and training in relation to:
- (a) all major accidents that could foreseeably occur at the facility, and
 - (b) all hazards that could cause, or contribute to causing, those major accidents, and
 - (c) the implementation of control measures to eliminate or control the risk of major accidents, and
 - (d) the content and operation of any security plan for the facility generally, and
 - (e) the content and operation of any safety management system for the facility generally,
- as are necessary to enable the employees to perform their work (including the actions required of the employees under any security plan, emergency plan and any safety role developed for employees) in a manner that is safe and without risks to health.
- (2) The operator must ensure that the information, instruction and training provided under this regulation are recorded, monitored, reviewed and revised in order for them to remain relevant and effective.

Maximum penalty: Level 4.

175ZB Non-employees at the facility

- (1) The operator of a major hazard facility must ensure that any person other than an employee of the operator who enters the facility is, as soon as possible after the person enters:
- (a) informed about the hazards at the facility, and
 - (b) instructed in the safety precautions the person should take while at the facility, and
 - (c) instructed in the actions the person should take in the event of an emergency plan being activated while he or she is at the facility.
- (2) The information and instruction (and the timing of its provision) must be commensurate with the risk to health and safety concerned.

Maximum penalty: Level 4.

175ZC Operator to retain records of training

An operator of a major hazard facility must retain records in a suitable form of all training required by clause 13 and this Chapter to be provided to employees at the facility for at least 5 years after the date of creation of the record concerned.

Maximum penalty: Level 1.

175ZD Records

- (1) Unless this Chapter provides otherwise, any document or other record required to be created by an operator of a major hazard facility under this Chapter is to be retained by the operator for at least 15 years after the date of its creation.

Maximum penalty: Level 1.

- (2) Despite subclause (1), the operator of a major hazard facility must retain the following documents and records for at least 5 years after the date of the document or record's creation:
- (a) a document or record relating to a plan for the preparation of a safety report for the facility prepared under clause 175P (1) (a),
 - (b) a document or record relating to any provisional security arrangements prepared and implemented under clause 175P (1) (b),
 - (c) a document or record relating to any provisional emergency arrangements prepared and implemented under clause 175P (1) (d).

Maximum penalty: Level 1.

- (3) A person who has given WorkCover a notification under clause 175F or 175FA must retain any documents and records relating to that notification for at least 5 years after the date of the document or record's creation.

Maximum penalty: Level 1.

- (4) A person who is required to keep documents or records under this clause must make those documents or records available for inspection by an inspector or an authorised representative in accordance with a request by the inspector or authorised representative and, in any event, no later than 7 days after the date of the request.

Maximum penalty: Level 1.

- (5) In this clause:

authorised representative means an authorised representative within the meaning of Division 3 of Part 5 of the Act who is exercising functions under that Division.

175ZE Providing relevant information to other authorities

- (1) WorkCover may give in the course of its administration of this Chapter any information it has obtained in the course of that administration to other

government departments, relevant local government councils and the emergency services (whether of this State or of the Commonwealth, another State or a Territory).

(2) In this clause, *emergency service* includes the Roads and Traffic Authority.

175ZF Co-ordination of plans and reports

- (1) WorkCover may direct operators of different major hazard facilities to co-ordinate the preparation of any plan, report or other document.
- (2) In order to comply with a direction under subclause (1) relating to health and safety, an operator who is the subject of such a direction must provide to the other operators subject to the direction information concerning any circumstances at the operator's facility that could constitute a hazard in relation to the other operators' facilities.

Maximum penalty: Level 4.

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Schedule 8

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Schedule 8 Identification of a major hazard facility

(Clause 175A)

Determination of threshold quantities

The following rules apply to the determination of threshold quantities from Table 1 and Table 2:

- if the material is specifically listed in Table 1, the threshold quantity is to be determined from Table 1, and
- if a material is not specifically listed in Table 1, the appropriate threshold quantity is to be determined from Table 2 from the description which best applies to the material, and
- if more than one of the descriptions in Table 2 applies to a material, the description with the lowest threshold quantity is to be used.

Table 1

| Material | UN numbers included under name | Threshold quantity (tonnes) |
|---|--------------------------------|-----------------------------|
| ACETONE CYANOHYDRIN | 1541 | 20 |
| ACETYLENE | 1001 | 50 |
| ACROLEIN | 1092 | 200 |
| ACRYLONITRILE | 1093 | 200 |
| ALLYL ALCOHOL | 1098 | 20 |
| ALLYLAMINE | 2334 | 200 |
| AMMONIA, ANHYDROUS, LIQUEFIED or AMMONIA SOLUTIONS, relative density less than 0.880 at 15°C in water, with more than 50% ammonia | 1005 | 200 |
| AMMONIUM NITRATE, with not more than 0.2% combustible substances, including any organic substances calculated as carbon, to the exclusion of any other added material | 1942 | 2500 |
| AMMONIUM NITRATE FERTILIZERS | 2067 2068 2069 2070 | 5000 |

| | | |
|---|--|------|
| ARSENIC PENTOXIDE, Arsenic (V) Acid 1559 and other salts | | 10 |
| ARSENIC TRIOXIDE, Arsenious (III) Acid 1561 and other salts | | 0.10 |
| ARSINE 2188 | | 0.01 |
| BROMINE or BROMINE SOLUTIONS 1744 | | 100 |
| CARBON DISULFIDE 1131 | | 200 |
| CHLORINE 1017 | | 25 |
| DIOXINS | | 0.10 |
| ETHYL NITRATE | | 50 |
| ETHYLENE DIBROMIDE 1605 | | 50 |
| ETHYLENE OXIDE 1040 | | 50 |
| ETHYLENEIMINE 1185 | | 50 |
| FLUORINE 1045 | | 25 |
| FORMALDEHYDE 1198 | | 50 |
| 2209 | | |
| HYDROFLUORIC ACID SOLUTION 1790 (greater than 50%) | | 50 |
| HYDROGEN 1049 | | 50 |
| HYDROGEN CHLORIDE | | |
| —Anhydrous 1050 | | 250 |
| —Refrigerated Liquid 2186 | | 250 |
| HYDROGEN CYANIDE 1051 | | 20 |
| 1614 | | |
| HYDROGEN FLUORIDE 1052 | | 50 |
| HYDROGEN SULFIDE 1053 | | 50 |
| LP GASES 1011 | | 200 |
| 1012 | | |
| 1075 | | |
| 1077 | | |
| 1978 | | |
| METHANE or NATURAL GAS 1971 | | 200 |
| 1972 | | |
| METHYL BROMIDE 1062 | | 200 |
| METHYL ISOCYANATE 2480 | | 0.15 |
| OXIDES OF NITROGEN, including nitrous oxide, nitrogen dioxide and nitrogen trioxide 1067 | | 50 |
| 1070 | | |
| 1660 | | |
| 1975 | | |
| 2201 | | |
| 2421 | | |
| OXYGEN 1072 | | 2000 |
| 1073 | | |
| PHOSGENE 1076 | | 0.75 |
| PROPYLENE OXIDE 1280 | | 50 |
| PROPYLENEIMINE 1921 | | 200 |
| SODIUM CHLORATE, solid 1495 | | 200 |
| SULFUR DICHLORIDE 1828 | | 1 |
| SULFUR DIOXIDE, LIQUEFIED 1079 | | 200 |
| SULFURIC ANHYDRIDE (Alt: SULFUR 1829 TRIOXIDE) | | 75 |

| | | |
|------------------------|------|-----|
| TITANIUM TETRACHLORIDE | 1838 | 500 |
| TOLUENE DIISOCYANATE | 2078 | 200 |

Notes to Table 1.

1 The UN number listed against the named material is given for information only. It does not restrict the meaning of the name, which also applies to material that falls outside the UN number, for example, because it is too dangerous to transport or is part of a mixture covered by another UN number. However, any material that is covered by the listed UN numbers must be included in the quantity of the material named.

2 If a Schedule 8 material is part of a mixture, the equivalent quantity should be calculated as shown by Example 2 in Chapter 16 of the "National Code of Practice for the Control of Major Hazard Facilities" [NOHSC: 2016 (1996)].

Table 2

| Material | Description | Threshold quantity (tonnes) |
|--------------------------------|--|-----------------------------|
| Explosive materials | Explosives of Class 1.1A | 10 |
| | All other Explosives of Class 1.1 | 50 |
| | Explosives of Class 1.2 | 200 |
| | Explosives of Class 1.3 | 200 |
| Compressed and liquefied gases | Compressed or liquefied gases of Class 2.1 or Subsidiary Risk 2.1 | 200 |
| | Liquefied gases of Subsidiary Risk 5 | 200 |
| | Compressed or liquefied gases that meet the criteria for Very Toxic in Table 4 to this Schedule | 20 |
| | Compressed or liquefied gases that meet the criteria for Toxic in Table 4 to this Schedule | 200 |
| Flammable materials | Liquids that meet the criteria for Class 3 Packing Group I (Except for crude oil in remote locations) | 200 |
| | Crude oil in remote locations that meets the criteria for Class 3 Packing Group I | 2000 |
| | Liquids that meet the criteria for Class 3 Packing Group II or III | 50,000 |
| | Liquids with flashpoints <61°C kept above their boiling points at ambient conditions | 200 |
| | Combustible solids that meet the criteria for Class 4.1 Packing Group I | 200 |
| | Spontaneously combustible materials that meet the criteria for Class 4.2 Packing Group I or II | 200 |
| | Materials which liberate flammable gases or react violently on contact with water and that meet the criteria for Class 4.3 Packing Group I or II | 200 |
| | Materials which belong to Classes 3 or 8 Packing Group I or II which have Hazchem codes of 4WE (materials which react violently with water) | 500 |
| | Oxidizing materials identified in the ADG Code as being goods too dangerous to be transported | 50 |
| | Oxidizing materials that meet the criteria for Class 5.1 Packing Group I or II | 200 |
| Peroxides | Peroxides identified in the ADG Code as being goods too dangerous to be transported | 50 |

| | |
|--------------------------|--|
| | Organic Peroxides that meet the criteria for 200 Class 5.2 |
| Toxic solids and liquids | Materials that meet the criteria for Very 20 Toxic in Table 4 to this Schedule |
| | Materials that meet the criteria for Toxic in 200 Table 4 to this Schedule |

Notes to Table 2.

- ADG Code** means the current edition of the *Australian Code for the Transport of Dangerous Goods by Road and Rail*.
- Class** means the Class of dangerous goods referred to in the current edition of the *Australian Code for the Transport of Dangerous Goods by Road and Rail*.
- Packing Group** means the particular Packing Group determined from the current edition of the *Australian Code for the Transport of Dangerous Goods by Road and Rail*.
- Materials referred to in the Table belong to a Class or Packing Group regardless of whether or not they are packaged for transport or under pressure.
- The quantities specified for explosives relate to the weight of explosive exclusive of any non-explosive components.
- If explosives of different Hazard Divisions are present in the same area or storage, all of the explosives shall be classified in accordance with Table 3 to this Schedule.

Table 3: Determination of precedence of hazard division

| Hazard Division | 1.1 | 1.2 | 1.3 | 1.4 | 1.5 | 1.6 |
|-----------------|-----|-----|-----|-----|-----|-----|
| 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 1.2 | 1.1 | 1.2 | 1.1 | 1.2 | 1.1 | 1.2 |
| 1.3 | 1.1 | 1.1 | 1.3 | 1.3 | 1.1 | 1.1 |
| 1.4 | 1.1 | 1.2 | 1.3 | 1.4 | 1.5 | 1.6 |
| 1.5 | 1.1 | 1.1 | 1.1 | 1.5 | 1.5 | 1.5 |
| 1.6 | 1.1 | 1.2 | 1.1 | 1.6 | 1.5 | 1.6 |

Notes to Table 3.

- The precedence of hazard division of explosives of two different hazard divisions is the hazard division determined by taking the hazard division of one explosive in the vertical hazard division column of Table 3, and the hazard division of the other explosive in the horizontal hazard division column of the Table, and reaching the place in the Table where the two columns intersect.
- If explosives of more than two hazard divisions are present together, the precedence of hazard division of those explosives is determined by taking any two of those hazard divisions and determining their precedence of hazard division in accordance with Note 1, then taking that collective hazard division and another of the hazard divisions and determining their precedence of hazard division in accordance with Note 1 and then continuing this process until all hazard divisions present have been considered.

Table 4: Criteria for toxicity

| Description | Oral toxicity ¹ (mg/kg) | LD ₅₀ Dermal LD ₅₀ (mg/kg) | toxicity ² Inhalation toxicity ³ LC ₅₀ (mg/L) |
|-------------|---------------------------------------|---|--|
| Very Toxic | LD ₅₀ ≤ 5 | LD ₅₀ ≤ 40 | LC ₅₀ ≤ 0.5 |
| Toxic | 5 < LD ₅₀ ≤ 50 | 40 < LD ₅₀ ≤ 200 | 0.5 < LC ₅₀ ≤ 2 |

Key

- 1 In rats
- 2 In rats or rabbits
- 3 4 hours in rats

Note to Table 4. The criteria for toxicity are defined according to the *Australian Code for the Transport of Dangerous Goods by Road and Rail* and its appendices.

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158 Definitions

In this Division:

notifiable carcinogenic substance means a substance of the following kind:

Substance Name [Chemical Abstract Number]

Acrylonitrile [107-13-1]

Benzene [71-43-2]—when used as a feedstock containing more than 50% of benzene by volume

Cyclophosphamide [50-18-0] (cytotoxic drug)—when used in preparations for therapeutic use in hospitals and oncological treatment facilities, and in manufacturing operations

3,3'-Dichlorobenzidine [91-94-1] and its salts (including 3,3'-Dichlorobenzidine dihydrochloride [612-83-9])

Diethyl sulfate [64-67-5]

Dimethyl sulfate [77-78-1]

Ethylene dibromide [106-93-4]—when used as a fumigant

4,4'-Methylene bis(2-chloroaniline) [101-14-4]—MOCA

2-Propiolactone [57-57-8]

o-Toluidine [95-53-4] and o-Toluidine hydrochloride [636-21-5]

Vinyl chloride monomer [75-01-4]

prohibited ***carcinogenic substance*** means a substance of the following kind:

Substance Name [Chemical Abstract Number]

2-Acetylaminofluorene [53-96-3]

Aflatoxins—except in foods where specifically permitted under the *Food Act 1989*

4-Aminodiphenyl [92-67-1]

Amosite [12172-73-5] (brown asbestos)—except for removal, disposal, maintenance, encapsulation and enclosure purposes and situations where amosite

occurs naturally and is not used for any new application

Benzidine [92-87-5] and its salts (including benzidine dihydrochloride [531-85-1])

bis(Chloromethyl) ether [542-88-1]

Chloromethyl methyl ether [107-30-2] (technical grade which contains bis (chloromethyl) ether)

Chrysotile [12001-29-5] (white asbestos)—except when:

- (a) used for the purpose of research or analysis, or
- (b) being removed or disposed of, or being handled for storage or stored awaiting disposal, or
- (c) encountered during non-asbestos mining, or
- (d) comprising or included in an item being used for the purpose of a historical or educational display.

Crocidolite [12001-28-4] (blue asbestos)—except for removal, disposal, maintenance, encapsulation and enclosure purposes and situations where crocidolite occurs naturally and is not used for any new application

4-Dimethylaminoazobenzene [60-11-7]

2-Naphthylamine [91-59-8] and its salts

4-Nitrodiphenyl [92-93-3]



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174ZC Planning for emergencies

- (1) This clause applies in relation to premises where dangerous goods are stored and handled in quantities that exceed the relevant quantities specified in the column headed "Manifest quantity" in the Table to Schedule 5.
- (2) An occupier of premises to which this clause applies must ensure that a written plan for dealing with any emergency associated with the storage and handling of dangerous goods on those premises (an *emergency plan*) is:
 - (a) developed, implemented and maintained, and
 - (b) communicated to:
 - (i) persons who are engaged by the occupier to work at the premises and who may be exposed to risk as a result of an emergency, and
 - (ii) persons in control of adjacent premises to the extent that the emergency plan applies to those person, if persons or property on the adjacent premises may be exposed to risk as a result of an emergency.

Maximum penalty: Level 4.

- (3) In developing or reviewing the emergency plan, the occupier must:
 - (a) provide a draft of the emergency plan to the Commissioner of the New South Wales Fire Brigades, and
 - (b) have regard to any written advice received from the Commissioner of the New South Wales Fire Brigades.

Maximum penalty: Level 4.

- (4) The occupier of the premises must provide a copy of the emergency plan to:
 - (a) if the premises to which this clause applies are within a rural fire district within the meaning of the *Rural Fires Act 1997*—the NSW Rural Fire Service, or
 - (b) in any other case—the Commissioner of the New South Wales Fire Brigades.

Maximum penalty: Level 4.

- (5) The occupier must review the emergency plan:

- (a) if there is a change in circumstances at the premises, or any adjacent premises, such as to raise the possibility of an emergency of a kind that is not dealt with by the plan; and
- (b) at intervals of not more than 5 years from the date on which the plan was developed or last reviewed.

Maximum penalty: Level 4.

- (6) The occupier must communicate the revised plan to the persons specified in subclause (2) (b).

Maximum penalty: Level 4.

- (7) This clause commences on 1 September 2006.

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TAB 4



OCCUPATIONAL HEALTH AND SAFETY REGULATION 2001

MAJOR HAZARD FACILITIES

CONDITIONS AND REQUIREMENTS OF PROVISIONAL
REGISTRATION AND OF REGISTRATION

Disclaimer

This publication may contain occupational health and safety and workers compensation information. It may include some of your obligations under the various legislations that WorkCover NSW administers. To ensure you comply with your legal obligations you must refer to the appropriate legislation.

Information on the latest laws can be checked by visiting the NSW legislation website (www.legislation.nsw.gov.au) or by contacting the free hotline service on 02 9321 3333.

This publication does not represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. You should seek independent legal advice if you need assistance on the application of the law to your situation.

MAJOR HAZARD FACILITIES – CONDITIONS AND REQUIREMENTS OF PROVISIONAL REGISTRATION AND OF REGISTRATION

Major hazard facilities (MHFs) in NSW must comply with the provisions of Chapter 6B of the *Occupational Health and Safety Regulation 2001* (OHS Regulation), made under the *Occupational Health and Safety Act 2000* (OHS Act).

Clause 175O(1)(b) of the OHS Regulation provides that the provisional registration of a major hazard facility is subject to, among other things, the conditions set out in Division 2 of Part 6B.6 of the OHS Regulation. Clause 175P(1) and (2) provide for those conditions of provisional registration, which require an operator of a major hazard facility to ensure certain reports and arrangements are prepared and implemented. The reports and arrangements are to comply with any requirements that are published in the Gazette by WorkCover from time to time. The WorkCover requirements referred to in clauses 175P(1) and (2) are set out in Schedule A of this document.

Clause 175R(3) of the OHS Regulation provides that WorkCover must not register a major hazard facility unless it is satisfied of certain matters specified in that clause. Those matters (a safety management system, a security plan, an emergency plan and a safety report for the facility) are to comply with any requirements that are published in the Gazette by WorkCover from time to time. The WorkCover requirements for the matters referred to in clause 175R(3) are set out in Schedule B of this document.

Clause 175T(1)(b) of the OHS Regulation provides that the registration of a major hazard facility is subject to any general conditions applying to all registered major hazard facilities:

- that are published in the Gazette by WorkCover from time to time
- notice of which has been given in writing to the operator by WorkCover.

The general conditions, and requirements of those conditions, applying to registration of a major hazard facility under clause 175T(1)(b) are set out in Schedule C of this document.

Terms used in these conditions and requirements have the same meaning as in the OHS Act and OHS Regulation. Terms that are defined in Chapter 6B of the OHS Regulation have the meanings in Chapter 6B.

SCHEDULE A: WORKCOVER REQUIREMENTS FOR CLAUSE 175P CONDITIONS OF PROVISIONAL REGISTRATION

A1 PLAN FOR THE PREPARATION OF A SAFETY REPORT

A1.1 The requirements for the safety report plan referred to in clause 175P(1)(a) of the OHS Regulation are as follows:

A1.2 The safety report plan must be in writing and must include:

- a. an analysis, showing the work to be done by the operator to submit a safety report within the required timeframe and that meets any conditions or requirements of Chapter 6B of the OHS Regulation
- b. a detailed program and timetable for the preparation of the safety report based on the analysis in (a) above
- c. details of the allocation of tasks, timing and responsibilities for the work to be done
- d. details of the consultation that will be undertaken under Division 2 of Part 2 of the OHS Act when preparing the safety report
- e. a description of the resources that will be available to prepare the safety report, including but not limited to:
 - i. the people to be involved, their knowledge and experience relevant to their involvement
 - ii. the source of technical information
 - iii. the software to be used for consequence modelling (if any).

A2 PROVISIONAL SECURITY ARRANGEMENTS

A2.1 The requirements for provisional security arrangements referred to in clause 175P(1)(b) of the OHS Regulation are as follows:

A2.2 The operator of the major hazard facility must describe and explain in writing how the following requirements are met:

- a. all security provisions under the *Explosives Act 2003* or the *Explosives Regulation 2005* that apply to the amounts of Schedule 8 materials that are present or likely to be present at the facility
- b. all security provisions under Chapter 6A of the OHS Regulation that apply to the amounts of Schedule 8 materials that are present or likely to be present at the facility.

A3 PROVISIONAL EMERGENCY ARRANGEMENTS

- A3.1 The requirements for provisional emergency arrangements referred to in clause 175P(1)(d) of the OHS Regulation are as follows:
- A3.2 The operator of the major hazard facility must describe and explain in writing how the following requirements are met:
- a. all emergency planning provisions under the *Explosives Act 2003* or the *Explosives Regulation 2005* that apply to the amounts of Schedule 8 materials present or likely to be present at the facility
 - b. all emergency planning provisions under Chapter 6A of the OHS Regulation that apply to the amounts of Schedule 8 materials present or likely to be present at the facility. This includes, but is not limited to, the provisions in clauses 174ZB, 174ZC, 174ZD, 174ZJ and 174ZN.

SCHEDULE B: WORKCOVER REQUIREMENTS FOR MATTERS REFERRED TO IN CLAUSE 175R(3) OF THE OHS REGULATION

B1 SAFETY MANAGEMENT SYSTEM REQUIREMENTS

- B1.1 The requirements for the safety management system (SMS) referred to in clause 175R(3)(a) of the OHS Regulation are as follows:
- B1.2 Safety management system means the comprehensive integrated system for managing safety at a major hazard facility and which sets out:
- a. the safety objectives
 - b. the systems and procedures by which these are to be achieved
 - c. the performance standards which are to be met, and
 - d. the means by which adherence to these standards is to be monitored and maintained.
- B1.3 The SMS must be documented.
- B1.4 When establishing, maintaining and reviewing the SMS, the results of any risk management processes under clause 175C or 175D of the OHS Regulation must be taken into account.
- B1.5 The SMS must be systematically reviewed, revalidated and updated as necessary to keep it current, following:
- a. near miss or major accident at the major hazard facility
 - b. change to a risk assessment
 - c. change to a risk control
- and, in any case, at least once every five years.
- B1.6 A comprehensive, documented system of auditing must be established to verify the adequacy and continued use of the SMS.

B2 EMERGENCY PLAN REQUIREMENTS

B2.1 The requirements for the emergency plan referred to in clause 175R(3)(c) of the OHS Regulation are as follows:

B2.2 The emergency plan must:

- a. be documented
- b. list and describe the emergency planning assumptions
- c. be used to prevent major accidents occurring at the facility and be used to minimise the consequences from major accidents
- d. consider both on-site and off-site consequences from potential major accidents that have been identified under the hazard identification and risk assessment provisions of Chapter 6B of the OHS Regulation
- e. include maps that identify areas surrounding the facility where a major accident may cause substantial harm
- f. identify types of occupancies and their location in areas identified in paragraph (e) above where groups of people may be at a higher risk of harm because of limitations such as mobility, age or confinement. These groups of people may be found in occupancies such as hospitals, aged care facilities, nursing homes, hospices, child-care facilities, schools, universities, technical colleges and correctional/detention facilities
- g. consider the availability of specialised medical treatment if such treatment may be required. The NSW Department of Health, NSW Ambulance Service, local area health services, and local doctors may need to be consulted, as appropriate, to check that such treatment is available for the numbers of people that might be affected
- h. identify significant plant, infrastructure or utilities in the area identified in paragraph (e) and show its location. This includes, but is not limited to, transport interchanges, train lines, airports, electrical substations and major public water supplies such as dams.

B3 SAFETY REPORT REQUIREMENTS

B3.1 The requirements for the safety report referred to in clause 175R(3)(d) of the OHS Regulation are as follows:

B3.2 A safety report is a written presentation of the technical, management and operational information covering the hazards and risks that may lead to a major accident at a major hazard facility and their control, and which provides justification for the measures taken to ensure the safe operation of the facility.

B3.3 The safety report must demonstrate the adequacy of measures the operator has taken to:

- a. minimise the likelihood of a major accident
- b. minimise the consequences of any major accident that does occur.

B3.4 The safety report must:

- a. identify the major hazard facility to which it applies
- b. contain a summary of the documentation prepared under clauses 175C and 175D of the OHS Regulation, including a complete list of major accidents that could occur at the major hazard facility
- c. identify the type, likelihood and consequences of major accidents that might occur
- d. demonstrate the adequacy and appropriateness of the risk control measures adopted or reviewed under clauses 175C and 175D of the OHS Regulation
- e. provide a summary of the Safety Management System (SMS) for the major hazard facility, including performance standards that are to be achieved by the operator of the major hazard facility and how they will be measured and reported, and the arrangements that ensure:
 - i. the safe operation of the facility during normal operations (including maintenance work) and when significant deviations occur that could lead to a major accident
 - ii. that the means of operation at the major hazard facility are properly operated and maintained, and that new or altered facilities are safely designed and constructed
- f. include a summary of the systems for reporting and investigating major accidents and near misses
- g. report on the adherence to the performance standards set by the SMS
- h. describe the system of auditing that is used to verify the adequacy and continued use of the SMS
- i. report on any changes made to the SMS in response to any deficiencies identified in the adequacy of the SMS
- j. report on the functioning, maintenance and performance of the critical controls
- k. include a signed statement by which the operator certifies that:
 - i. the information contained in the safety report is accurate, and
 - ii. the risk control measures eliminate or reduce, so far as is reasonably practicable, the risk of a major accident occurring, and
 - iii. in the event of a major accident occurring, the risk control measures minimise, so far as is reasonably practicable, its magnitude and the severity of its consequences to persons both on-site and off-site, and
 - iv. the persons who participate in the establishment and maintenance of the SMS have the necessary knowledge and skills to enable them to undertake their tasks and discharge their responsibilities in relation to the SMS.

B3.5 If the operator is a corporation, the signed statement referred to in B3.4(k) above is to be signed by the Chief Executive Officer (CEO) or an officer of the corporation authorised by the CEO.

B3.6 The safety report must include:

- a. a description of the main products of the major hazard facility
- b. a description of the main activities at the major hazard facility, particularly those activities associated with Schedule 8 materials
- c. a description of the Schedule 8 materials and any other dangerous goods present or likely to be present at the facility, including:
 - i. their identification by name and by any other means necessary for a clear identification
 - ii. the quantity present or likely to be present at the major hazard facility
 - iii. their physical, chemical and toxicological characteristics, and any hazardous effects, both immediate and delayed
 - iv. their physical and chemical behaviour under normal conditions of use or under foreseeable abnormal conditions
- d. a description of the chemical and physical processes associated with any Schedule 8 materials, including:
 - i. the main units of process equipment used in those processes
 - ii. a process flow diagram, or set of flow diagrams, describing the processes
- e. a plan of the general layout of the major hazard facility, containing the location of:
 - i. the main process units, and
 - ii. the main storage areas
- f. a scale plan of the facility and its surrounding area showing:
 - i. the location of the facility within the surrounding area
 - ii. topographical information
 - iii. surrounding land uses
 - iv. areas surrounding the facility where a major accident may cause substantial harm
 - v. the location of any identified external threats (including other major hazard facilities or other facilities that could affect the safety of the major hazard facility)
 - vi. graphically presented demographic information for the local community, including surrounding land uses permitted by the local planning authority
 - vii. meteorological data relevant to the estimation of the effects of any major accident
- g. a description of the risk control measures that are in place to limit the consequences of major accidents, including a detailed description of:
 - i. the instrumentation and other equipment installed in the facility and the procedures in place that constitute the risk control measures for preventing or limiting the consequences of a major accident
 - ii. the critical operating parameters for those risk control measures

- iii. key personnel and resources (internal and external) available to intervene in the event of any failure of a control measure, whether or not that failure results in a major accident
 - iv. the emergency plan, including specific information about how this plan can be expected to limit the consequences of a major accident
 - v. the means of ensuring that there is at all times in place a command structure for the major hazard facility that applies in the event of an emergency, and that this command structure has been communicated throughout the major hazard facility
- h. a description of those parts of the documented Safety Management System that address the maintenance of the Safety Management System (that is, its ongoing effective implementation and its ongoing improvement)
 - i. a description of the steps taken to ensure that safety and reliability are incorporated into the design and construction of all aspects of the major hazard facility itself, whether the operator is directly engaged in the design and construction or has engaged another person to carry out the design and construction
 - j. a summary of the major accidents that have occurred at the major hazard facility over the previous five years.

B3.7 In B3.6(g), "critical operating parameters" means the upper or lower performance limits of any equipment, process or procedure, compliance with which is necessary to avoid a major accident.

B3.8 In B3.6(g), "failure of a control measure" means:

- a. if the risk control measure is a positive action or event: the non-occurrence or the defective occurrence of that action or event, or
- b. if the risk control measure consists of a limitation on an operational activity, process or procedure: the breach of that limitation.

B3.9 At all points in the safety report where the matter addressed is covered by the facility's SMS, a clear reference to the relevant part of the documented SMS must be included.

SCHEDULE C: GENERAL CONDITIONS APPLYING TO REGISTRATION OF A MAJOR HAZARD FACILITY UNDER CLAUSE 175T(1)(B) OF THE OHS REGULATION

The following general conditions apply to all registered major hazard facilities under clause 175T(1)(b) of the OHS Regulation:

C1 SAFETY MANAGEMENT SYSTEM

C1.1 The Safety Management System (SMS) referred to in clause 175R(3)(a) of the OHS Regulation must be used to prevent and mitigate major accidents at the major hazard facility.

C2 EMERGENCY PLANNING AND RESPONSE

C2.1 The emergency plan, referred to in clause 175R(3)(c) of the OHS Regulation, must be comprehensively reviewed every five years.

C2.2 A copy of the emergency plan must be kept at the major hazard facility so that it is readily available for use by emergency services.

C2.3 The emergency plan must be regularly tested. Every two years the operator must hold a practical test of the emergency response to specific potential major accidents with the participation of the appropriate emergency services. The specific scenario to be tested must be decided on in consultation with employees and the appropriate emergency services.

C2.4 The operator must take all steps necessary to arrange for the participation by the emergency services in the testing of the emergency plan.

C2.5 The operator must take all reasonably practicable steps to ensure that members of the community in areas identified in B2.2(e) and B2.2(f) above are made aware of the actions to take and procedures to follow in the case of a major accident. The communication methods used may include, but are not limited to, newsletters, information in the local paper, meetings with local residents and persons in control of the types of occupancies identified in B2.2(f).

C2.6 The emergency plan must be put into effect without delay if:

- a. a major accident occurs, or
- b. a near miss occurs which could reasonably be expected to lead to a major accident.

C2.7 Immediately after becoming aware of the likelihood of a major accident occurring, the operator of a major hazard facility must notify the emergency services.

C3 SAFETY REPORT

C3.1 An operator of a major hazard facility must review and update the safety report referred to in clause 175R(3)(d) of the OHS Regulation for the major hazard facility at least once every five years.

C3.2 A safety report updated under these conditions or updated by the operator on the operator's own initiative must be lodged with WorkCover as soon as possible after the revision is made.

C4 INFORMATION PROVISION

C4.1 The operator of a major hazard facility must ensure that:

- a. any employees at the facility
- b. any employee who is a member of an OHS committee
- c. any OHS representative
- d. any person elected by the persons employed at the place of work to represent a group of employees on health and safety matters, or
- e. if the employees agree: an appropriate representative of an industrial organisation of employees

are informed of content of the major hazard facility's safety report, including any revision to the safety report, and that the safety report is readily accessible to those persons.

C4.2 The operator of a major hazard facility must ensure that the Safety Management System, the emergency plan and the security plan are readily accessible to people who have a duty under these systems or plans to the extent necessary for them to be able to discharge their duties.

C4.3 The operator of a major hazard facility must ensure that the Safety Management System, the emergency plan and the security plan are readily accessible to all non-employees working at the facility to the extent necessary for them to be able to discharge their duties safely.

C5 RE-NOTIFICATION

C5.1 The operator of a major hazard facility must ensure that WorkCover is provided with a further notification in accordance with clause 175G within 30 days if:

- a. the quantity of any schedule 8 material exceeds by more than 10 per cent the quantity listed for that material in the most recent notification provided by that facility, or
- b. the AQR for the facility exceeds by more than 10 per cent the AQR listed in the most recent notification provided by that facility.

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Part 9.1 Preliminary

CHAPTER 9 MAJOR HAZARD FACILITIES**Part 9.1 Preliminary****Division 1 Application and interpretation****530 This Chapter does not apply to certain facilities**

- (1) This Chapter does not apply in relation to a facility that is regulated by the National Offshore Petroleum Safety Authority under the [.....].

Note

See jurisdictional note in the Appendix.

- (2) This Chapter does not apply in relation to [.....].

Note

See the jurisdictional note in the Appendix.

531 Meaning of *major incident*

- (1) In this Part, a *major incident* at a major hazard facility is an occurrence that:
- (a) results from an uncontrolled event at the major hazard facility involving, or potentially involving, Schedule 15 chemicals; and
 - (b) exposes a person to a serious risk to health or safety emanating from an immediate or imminent exposure to the occurrence.
- (2) Without limiting subregulation (1), an *occurrence* includes any of the following:
- (a) escape, spillage or leakage; or
 - (b) implosion, explosion or fire.

532 Meaning of hazardous chemicals that are *present or likely to be present*

- (1) A reference in these Regulations to hazardous chemicals, including Schedule 15 chemicals, being *present or likely to be present* at a facility is a reference to the quantity of hazardous chemicals that would, if present, meet the maximum capacity of the facility, including:
 - (a) the maximum capacity of process vessels and interconnecting pipe systems that contain the hazardous chemicals; and
 - (b) the maximum capacity of storage tanks and vessels used for the hazardous chemicals; and
 - (c) the maximum capacity of other storage areas at the facility that could contain the hazardous chemicals; and
 - (d) the maximum capacity of pipe work outside process areas to contain the hazardous chemicals; and
 - (e) the maximum quantity of hazardous chemicals that would, in the event of failure, escape into the facility from pipe work that is situated off the premises but is connected to the facility; and
 - (f) the maximum quantity of hazardous chemicals loaded into or onto, or unloaded from, vehicles, trailers, rolling stock and ships that are from time to time present at the facility in the course of the facility's operations.
- (2) Subregulation (1) applies with any necessary changes to hazardous chemicals that are *likely to be present* at a proposed facility.

- (3) Schedule 15 chemicals present or likely to be present in the tailings dam of a mine are not to be considered in determining whether a mine is a facility or a major hazard facility.

533 Meaning of *operator* of a facility or proposed facility

- (1) In this Chapter, the *operator* of a facility is the person conducting the business or undertaking of operating the facility who has:
 - (a) management or control of the facility; and
 - (b) the power to direct that the whole facility be shut down.
 - (2) In this Chapter, *operator of a proposed facility* means:
 - (a) the operator of a proposed facility that is an existing workplace; or
 - (b) the person who is to be the operator of a proposed facility that is being designed or constructed.
 - (3) If more than 1 person is an operator of the facility within the meaning of subregulation (1):
 - (a) 1 of those persons must be selected as the operator of the facility for the purposes of this Chapter; and
 - (b) that person's details must be given to the regulator.
 - (4) The person selected:
 - (a) must inform the regulator of the nomination; and
 - (b) may do so by including it in a notification under regulation 536.
 - (5) The person selected under subregulation (3) is the *operator* of the facility for the purposes of this Chapter.
-

- (6) If a selection is not made, each of the following persons is taken to be an *operator* of the facility for the purposes of this Chapter:
- (a) each operator within the meaning of subregulation (1) who is an individual;
 - (b) for each operator within the meaning of subregulation (1) that is a body corporate—each officer of the body corporate.

534 Meaning of *modification* of a facility

- (1) In these Regulations, a reference to a *modification* of a major hazard facility is a reference to a change or proposed change at the major hazard facility that has or would have the effect of:
- (a) creating a major incident hazard that has not previously been identified; or
 - (b) significantly increasing the likelihood of a major incident occurring; or
 - (c) in relation to a major incident that may occur—significantly increasing:
 - (i) its magnitude; or
 - (ii) the severity of its health and safety consequences.
- (2) For the purposes of subregulation (1), a *change or proposed change* at a major hazard facility means a change or proposed change of any kind, including any of the following:
- (a) a change to any plant, structure, process or chemical or other substance used in a process, including the introduction of new plant, a new structure, a new process or a new chemical;
 - (b) a change to the quantity of Schedule 15 chemicals present or likely to be present at the major hazard facility;
-

- (c) a change to the operation, or the nature of the operation, of the major hazard facility;
- (d) a change in the workers' safety role;
- (e) a change to the major hazard facility's safety management system;
- (f) an organisational change at the major hazard facility, including a change in its senior management.

Division 2 Requirement to be licensed

535 A major hazard facility must be licensed

- (1) A facility at which Schedule 15 chemicals are present or likely to be present in a quantity that exceeds their threshold quantity must be licensed under Part 9.7.

Note

See section 41 of the Act.

- (2) A facility that is determined to be a major hazard facility under regulation 541 must be licensed under Part 9.7.

Note

See section 41 of the Act.

- (3) Despite subregulation (1) or (2), a determined major hazard facility is exempt from the requirement to be licensed during the exemption period if the operator of the major hazard facility is taken to be a suitable person to operate the facility for the purposes of Part 9.2.
- (4) The operator of a licensed major hazard facility must hold the licence for the major hazard facility.

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- (5) In this regulation, *exemption period*, in relation to a determined major hazard facility, means the period beginning on the determination of the facility and ending on the first of the following to occur:
- (a) the revocation of the determination of the facility under regulation 546;
 - (b) the end of the period for applying for a licence given under regulation 549, unless an application for a licence for the facility is made within that period;
 - (c) the grant of a licence for the facility under Part 9.7;
 - (d) if the regulator decides to refuse to grant a licence for the facility:
 - (i) the end of the period for applying for an external review of that decision, unless an application for external review is made within that period; or
 - (ii) the making of the decision on the external review.

Notes

- 1 The licensing process is provided for in Part 9.7.
- 2 Under Part 9.2, an operator of a determined major hazard facility is taken to be a suitable operator if no determination is made under regulation 543.
- 3 Under Part 9.3 the operator of a determined major hazard facility is given a limited time to prepare the major hazard facility to be licensed, including by preparing a safety case.
- 4 Part 9.2 provides for the notification and determination of facilities and operators of facilities. The purpose of notification is to enable the regulator to determine whether:
 - (a) a facility or proposed facility is a major hazard facility; and

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- (b) the operator of a determined major hazard facility is a suitable person to:
 - (i) operate the facility while the determination under paragraph (a) is in force; and
 - (ii) apply for a licence for the facility.

Part 9.2 Determinations about Major Hazard Facilities

536 Operators of certain facilities must notify regulator

- (1) The operator of a facility at which Schedule 15 chemicals are present or likely to be present in a quantity that exceeds 10 per cent of their threshold quantity must notify the regulator of this circumstance in accordance with this Part.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (2) Notification must be given:

- (a) as soon as practicable (but no more than 3 months) after the operator becomes aware, or ought reasonably to have become aware, of the circumstance giving rise to the requirement to notify; or
- (b) within any longer period that the regulator determines if satisfied on application by the operator that there is a reasonable excuse for the delayed notification.

Note

See the jurisdictional note in the Appendix.

537 Notification—proposed facilities

- (1) The operator of a proposed facility at which Schedule 15 chemicals are likely to be present in a quantity that exceeds 10 per cent of their threshold quantity may notify the regulator of this circumstance.

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Part 9.2 Determinations about Major Hazard Facilities

Notes

- 1 See definition of *proposed facility* in regulation 5(1).
 - 2 For the meaning of *likely to be present*, see regulation 532.
- (2) Any notification under this regulation must include the information required by regulation 538 (with any necessary changes).

538 Content of notification

- (1) A notification under regulation 536 must be made in the manner and form required by the regulator.
- (2) The notification must include the following:
 - (a) information about the facility, including the nature of its operations;
 - (b) information about the operator, including the matters specified in subregulation (2);
 - (c) information about the Schedule 15 chemicals present or likely to be present at the facility;
 - (d) the nomination of a contact person with whom the regulator can communicate for the purposes of:
 - (i) this Part; and
 - (ii) the licensing process;
 - (e) any additional information required by the regulator.
- (3) The information given under subregulation (2)(b) must include:
 - (a) if the operator is an individual:
 - (i) a declaration as to whether or not the operator has ever been convicted or found guilty of any offence under the Act or these Regulations or under any corresponding WHS law; and

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Part 9.2 Determinations about Major Hazard Facilities

Note

See the jurisdictional note in the Appendix.

- (ii) details of any conviction or finding of guilt declared under subparagraph (i); and
- (iii) a declaration as to whether or not the operator has entered into an enforceable undertaking under the Act or under any corresponding WHS law; and
- (iv) details of any enforceable undertaking declared under paragraph (iii); and
- (v) if the operator has previously been refused an equivalent licence under a corresponding WHS law, a declaration giving details of that refusal;
- (vi) if the operator has previously held an equivalent licence under a corresponding WHS law, a declaration:
 - (A) describing any condition imposed on that licence; and
 - (B) stating whether or not that licence had been suspended or cancelled and, if so, whether or not the operator had been disqualified from applying for an equivalent licence; and
 - (C) giving details of any suspension, cancellation or disqualification;
- (vii) a declaration that the information contained in the application is, to the best of the operator's knowledge, true and correct;
- (viii) any additional information required by the regulator; or

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(b) if the operator is a body corporate, the information specified in paragraph (a) in relation to:

- (i) the operator; and
- (ii) each officer of the operator.

539 When regulator may conduct inquiry

The regulator may conduct an inquiry under this Division if a notification under regulation 536 or 537 discloses, or if for some other reason the regulator reasonably suspects, that:

- (a) the quantity of Schedule 15 chemicals present or likely to be present at a facility (or proposed facility) exceeds 10 per cent of their threshold quantity but does not exceed their threshold quantity; or
- (b) the operator of the facility (or proposed facility) may not be a suitable person to operate the facility (or proposed facility).

540 Inquiry procedure

- (1) This regulation sets out the procedure for an inquiry.
- (2) The regulator must give a written notice to the person referred to in subregulation (3):
 - (a) informing the person of the reasons for the inquiry; and
 - (b) advising the person that the person may, by a specified date (being not less than 28 days after the notice is given), make a submission to the regulator in relation to the inquiry.

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(3) Notice under subregulation (2) must be provided:

- (a) for an inquiry about a facility in relation to which a notification has been given under regulation 536 or 537—to the contact person identified in the notification; and
- (b) in any other case—to the operator of the facility.

(4) The regulator must:

- (a) if the recipient of the notice has made a submission in relation to the inquiry—consider that submission; and
- (b) consult with interested persons including:
 - (i) health and safety representatives at the facility; and
 - (ii) the emergency service organisations that have responsibility for the area in which the facility is located; and
 - (iii) any government department or agency with a regulatory role in relation to major hazard facilities; and
- (c) decide whether or not to make a determination under regulation 541 or 542; and
- (d) if it decides to make a determination under regulation 541 or 542—decide whether or not to make a determination in relation to the operator under regulation 543.

541 Determination in relation to facility, on inquiry

- (1) This regulation applies if an inquiry discloses that the quantity of Schedule 15 chemicals present or likely to be present at a facility or proposed facility exceeds 10 per cent of their threshold quantity, but does not exceed their threshold quantity.
-

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Part 9.2 Determinations about Major Hazard Facilities

- (2) The regulator may determine the facility or proposed facility to be a major hazard facility if the regulator considers that there is a potential for a major incident to occur at the facility or proposed facility having regard to any relevant matter, including:
- (a) the quantity and combination of Schedule 15 chemicals present or likely to be present at the facility; and
 - (b) the type of activity at the facility that involves the Schedule 15 chemicals; and
 - (c) land use and other activities in the surrounding area.

Notes

- 1 If an inquiry discloses that the quantity of Schedule 15 chemicals present or likely to be present at a facility exceeds their threshold quantity, the facility is a major hazard facility. See definition of *major hazard facility* in regulation 5(1).
- 2 A determination that a facility is a major hazard facility is a reviewable decision (see regulation 676).

542 Determination in relation to over-threshold facility

- (1) This regulation applies if a notification under regulation 536 or 537 discloses that the quantity of Schedule 15 chemicals present or likely to be present at a facility (or proposed facility) exceeds their threshold quantity.
- (2) The regulator must make a determination confirming the facility (or proposed facility) to be a major hazard facility.

Note

A determination that a facility is a major hazard facility is a reviewable decision (see regulation 676).

543 Suitability of facility operator

- (1) This regulation applies if the regulator determines a facility or a proposed facility to be a major hazard facility under regulation 541 or 542.
- (2) The regulator may determine that the operator of the major hazard facility or proposed major hazard facility is not a suitable person to operate the major hazard facility if the regulator:
 - (a) has conducted an inquiry under regulation 540 into the suitability of the operator; and
 - (b) is satisfied on reasonable grounds that the operator is not a suitable person to operate the major hazard facility or proposed major hazard facility.
- (3) If no determination is made under this regulation, the operator of the major hazard facility or proposed major hazard facility is taken to be a suitable person to operate the major hazard facility and to apply for a major hazard facility licence.

Note

A determination that a person is not a suitable operator is a reviewable decision (see regulation 676).

544 Conditions on determination of major hazard facility

- (1) The regulator may impose conditions on a determination made under regulation 541 or 542.
- (2) Without limiting subregulation (1), the regulator may impose conditions in relation to any of the following matters:
 - (a) additional control measures that must be implemented in relation to the carrying out of work or activities at the determined major hazard facility;

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Part 9.2 Determinations about Major Hazard Facilities

- (b) the recording or keeping of additional information;
 - (c) the provision of additional information, training and instruction or the provision of specified information, training and instruction to additional persons or classes of persons;
 - (d) the provision of additional information to the regulator;
 - (e) if the operator is a person conducting a business or undertaking, the additional class of persons who may carry out work or activities on the operator's behalf.
- (3) The operator of a determined major hazard facility, in relation to which conditions are imposed under this regulation, must ensure that the conditions are complied with.

Note

A decision to impose a condition on a determination is a reviewable decision (see regulation 676).

545 Notice and effect of determinations

- (1) If the regulator makes a determination under this Part, the regulator must give the operator of the determined major hazard facility a written notice of the determination, stating:
- (a) the reasons for the determination; and
 - (b) the date on which the determination takes effect, which must be at least 28 days after the date of the notice; and
 - (c) any conditions imposed on the determination under regulation 544.
- (2) The notice must be given within 14 days of the making of the determination.
-

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- (3) The effect of a determination under regulation 543 is that:
- (a) the operator is not taken to be a suitable person to operate the determined major hazard facility;
 - (b) the exemption provided by regulation 535(3) does not apply to the determined major hazard facility.

Note

For the effect of a determination under regulation 541 or 542, see definition of *determined major hazard facility* in regulation 5(1).

- (4) A determination takes effect on the date specified in the notice.
- (5) A determination is of unlimited duration unless it is revoked.

546 When regulator may revoke a determination

The regulator may revoke a determination under this Part if, after consultation with the major hazard facility's contact person or operator (as applicable), the regulator is satisfied that the reasons for the determination no longer apply.

547 Re-notification if quantity of Schedule 15 chemicals increases

- (1) This regulation applies to a facility or proposed facility:
- (a) at which the quantity of Schedule 15 chemicals present or likely to be present exceeds 10% of their threshold quantity but does not exceed their threshold quantity; and
 - (b) in relation to which notification was given under regulation 536 or 537; and
 - (c) that is not determined to be a major hazard facility under regulation 541.
-

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Part 9.2 Determinations about Major Hazard Facilities

- (2) The operator of the facility or proposed facility must re-notify the regulator in accordance with this Part if the quantity of Schedule 15 chemicals present or likely to be present at the facility or proposed facility increases, or is likely to increase, to a level that exceeds the level previously notified to the regulator.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

- (3) The provisions of this Part apply, to the extent that they relate to a re-notification under this regulation, as if the re-notification were a notification under regulation 536.

548 Notification by new operator

- (1) This regulation applies:
- (a) in relation to a determined major hazard facility that is proposed to be operated by a new operator;
 - (b) whether or not a determination under regulation 543 was made in relation to the current operator.
- (2) A proposed new operator of the determined major hazard facility must give the regulator a notification that contains the information specified in regulation 538(2) in relation to the proposed new operator.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

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Part 9.2 Determinations about Major Hazard Facilities

- (3) The provision of this Part apply, to the extent that they relate to the suitability of an operator, as if the notification under subregulation (2) were a notification under regulation 536.

549 Time in which major hazard facility licence must be applied for

- (1) Subject to this regulation, the operator of a determined major hazard facility must apply for a major hazard facility licence within 24 months after the determination of the facility.
- (2) The regulator may extend the time in which the operator of a determined major hazard facility must apply for a licence if satisfied, on application by the operator, that there has not been sufficient time to comply with Part 9.3.

Note

The exemption from the requirement to be licensed is conditional on an application for a licence being made within the time specified by this regulation (see regulation 535(3) and (5)).

Part 9.3 Duties of Operators of Determined Major Hazard Facilities

Notes

- 1 The operator of a determined major hazard facility is required to comply with this Part for a specified period and to prepare a safety case in order to apply for a major hazard facility licence.
- 2 The Act and Chapter 7 of these Regulations (Hazardous Chemicals) continue to apply to a determined major hazard facility.

Division 1 Application of Part 9.3

550 Application of Part 9.3

This Part ceases to apply to a determined major hazard facility at the end of the exemption period applying to that facility under regulation 535.

Division 2 Safety case outline

551 Safety case outline must be provided

The operator of a determined major hazard facility must provide the regulator with a safety case outline for the major hazard facility within 3 months after the facility is determined to be a major hazard facility.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

552 Content

A safety case outline provided under regulation 551 must include the following:

- (a) a written plan for the preparation of the safety case, including key steps and timelines, with reference being made to each element of the safety case;
- (b) a description of the methods to be used in preparing the safety case, including methods for ensuring that all the information contained in the safety case is accurate and up to date when the safety case is provided to the regulator;
- (c) details of the resources that will be applied to the preparation of the safety case, including the number of persons involved, their relevant knowledge and experience and sources of technical information;
- (d) a description of the consultation with workers that:
 - (i) occurred in the preparation of the safety case outline; and
 - (ii) will occur in the preparation of the safety case;
- (e) a draft of the emergency plan prepared or to be prepared under regulation 557;
- (f) a summary of any arrangements that are to be made in relation to the security of the major hazard facility.

Example

Arrangements for preventing unauthorised access to the major hazard facility.

Note

See the jurisdictional note in the Appendix.

553 Alteration

- (1) If the regulator is not satisfied that a safety case outline provided by the operator of a determined major hazard facility will lead to the development of a safety case that complies with regulation 561, the regulator may require the operator to alter the outline.
- (2) If the regulator proposes to require an operator to alter a safety case outline, the regulator must provide a written notice to the operator:
 - (a) informing the operator of the proposed requirement and the reasons for it; and
 - (b) advising the operator that the operator may make a submission to the regulator in relation to the proposed requirement; and
 - (c) specifying the date (being not less than 28 days) by which the submission must be made.
- (3) The regulator must:
 - (a) if the operator has made a submission in relation to the proposed requirement to alter a safety case outline—consider that submission; and
 - (b) whether or not the operator has made a submission—decide whether or not to require the operator to alter the outline; and
 - (c) within 14 days after deciding, give the operator written notice of the decision, including details of the alteration required and the reasons why it is required.

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Part 9.3 Duties of Operators of Determined Major Hazard Facilities

- (4) The operator must alter the outline as required.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

- (5) The operator must give the regulator a copy of a safety case outline that has been altered:

(a) under this regulation; or

(b) by the operator on the operator's initiative.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

- (6) The safety case outline as altered becomes the safety case outline for the major hazard facility.

Division 3 Management of risk

554 Identification of major incidents and major incident hazards

- (1) The operator of a determined major hazard facility must identify:

(a) all major incidents that could occur in the course of the operation of the major hazard facility; and

(b) all major incident hazards for the major hazard facility, including major incident hazards relating to the security of the major hazard facility.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

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Part 9.3 Duties of Operators of Determined Major Hazard Facilities

- (2) In complying with subregulation (1), the operator must have regard to any advice and recommendations given by:
 - (a) the emergency service organisations with responsibility for the area in which the major hazard facility is located; and
 - (b) any government department or agency with a regulatory role in relation to major hazard facilities.
- (3) The operator must document:
 - (a) all identified major incidents and major incident hazards; and
 - (b) the criteria and methods used in identifying the major incidents and major incident hazards; and
 - (c) any external conditions under which the major incident hazards, including those relating to the security of the major hazard facility, might give rise to the major incidents.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

555 Safety assessment

- (1) The operator of a determined major hazard facility must conduct a safety assessment in relation to the operation of the major hazard facility.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

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Part 9.3 Duties of Operators of Determined Major Hazard Facilities

- (2) In order to provide the operator with a detailed understanding of all aspects of risks to health and safety associated with major incidents, a safety assessment must involve a comprehensive and systematic investigation and analysis of all aspects of risks to health and safety associated with all major incidents that could occur in the course of the operation of the major hazard facility, including the following:
 - (a) the nature of each major incident and major incident hazard;
 - (b) the likelihood of each major incident hazard causing a major incident;
 - (c) in the event of a major incident occurring, its potential magnitude and the severity of its potential health and safety consequences;
 - (d) the range of control measures considered;
 - (e) the control measures the operator decides to implement.
 - (3) In conducting a safety assessment, the operator must:
 - (a) consider major incidents and major incident hazards cumulatively as well as individually; and
 - (b) use assessment methods (whether quantitative or qualitative, or both), that are suitable for the major incidents and major incident hazards being considered.
 - (4) The operator must document all aspects of the safety assessment, including:
 - (a) the methods used in the investigation and analysis; and
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Part 9.3 Duties of Operators of Determined Major Hazard Facilities

- (b) the reasons for deciding which control measures to implement.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (5) The operator must keep a copy of the safety assessment at the major hazard facility.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

556 Control of risk

- (1) The operator of a determined major hazard facility must implement control measures that:
 - (a) eliminate, so far as is reasonably practicable, the risk of a major incident occurring; or
 - (b) if it is not reasonably practicable to eliminate that risk—minimise that risk so far as is reasonably practicable.

Note

WHS Act—section 20 (see regulation 9).

- (2) The operator of a determined major hazard facility must implement risk control measures designed to minimise, in the event of a major incident occurring, its magnitude and the severity of its consequences to persons both on-site and off-site.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

557 Emergency plan

- (1) The operator of a determined major hazard facility must prepare an emergency plan for the major hazard facility that:
 - (a) addresses all health and safety consequences of a major incident occurring; and
 - (b) includes all matters specified in Schedule 16; and
 - (c) provides for testing of emergency procedures, including the frequency of testing.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (2) In preparing an emergency plan, the operator must consult with:
 - (a) the emergency service organisations with responsibility for the area in which the major hazard facility is located; and

Note

See the jurisdictional note in the Appendix.

- (b) in relation to the off-site health and safety consequences of a major incident occurring—the local authority.

Note

See the jurisdictional note in the Appendix.

- (3) The operator must ensure that the emergency plan addresses any recommendation made by the emergency service organisations consulted under subregulation (2) in relation to:
 - (a) the testing of the emergency plan, including the manner in which it will be tested, the frequency of testing and whether or not the
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emergency service organisations will participate in the testing;

- (b) what incidents or events at the major hazard facility should be notified to the emergency service organisations.

- (4) The operator must have regard to any other recommendation or advice given by a person consulted under subregulation (2).

- (5) The operator must:

- (a) keep a copy of the plan at the major hazard facility; and

- (b) provide a copy of the plan to:

- (i) the emergency service organisations consulted under subregulation (2); and
 - (ii) any other relevant emergency service organisations.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (6) The operator must test the emergency plan in accordance with the recommendations made by the emergency service organisations consulted under subregulation (2) before applying for a licence for the major hazard facility.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (7) The operator must immediately implement the emergency plan if:

- (a) a major incident occurs in the course of the operation of the major hazard facility; or
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- (b) an event occurs that could reasonably be expected to lead to a major incident.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (8) The operator must notify the emergency service organisations consulted under subregulation (2) of the occurrence of an incident or event referred to in subregulation (3)(b).

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

Note

This regulation applies in addition to regulation 27.

558 Safety management system

- (1) The operator of a determined major hazard facility must establish a safety management system for the operation of the major hazard facility, in accordance with this regulation.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (2) The operator of a determined major hazard facility must implement the safety management system for the major hazard facility, so far as is reasonably practicable.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

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Part 9.3 Duties of Operators of Determined Major Hazard Facilities

- (3) The safety management system must:
 - (a) provide a comprehensive and integrated system for the management of all aspects of risk control in relation to the occurrence and potential occurrence of major incidents at the major hazard facility; and
 - (b) be designed to be used by the operator as the primary means of ensuring the safe operation of the major hazard facility.
- (4) The safety management system must:
 - (a) be documented; and
 - (b) state the operator's safety policy, including the operator's broad aims in relation to the safe operation of the major hazard facility; and
 - (c) state the operator's specific safety objectives and describe the systems and procedures that will be used to achieve those objectives; and
 - (d) include the matters specified in Schedule 17; and
 - (e) be readily accessible to persons who use it.

559 Review of risk management

- (1) The operator of a determined major hazard facility must review and as necessary revise each of the following, in accordance with this regulation:
 - (a) the safety assessment conducted under regulation 555 in order to ensure the adequacy of the control measures to be implemented by the operator;
 - (b) the major hazard facility's emergency plan;

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- (c) the major hazard facility's safety management system.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (2) Without limiting subregulation (1), the operator must conduct a review and revision in each of the following circumstances:

- (a) a modification to the major hazard facility is proposed;
- (b) a control measure implemented under regulation 556 does not minimise the relevant risk so far as is reasonably practicable;

Example

An effectiveness test indicates a deficiency in the control measure.

- (c) a new major hazard risk is identified;
 - (d) the results of consultation by the operator under Part 9.5 indicate that a review is necessary;
 - (e) a health and safety representative requests the review;
 - (f) the regulator requires the review.
- (3) In reviewing and revising the emergency plan, the operator must consult with the emergency service organisations referred to in regulation 557(2).
 - (4) For the purposes of subregulation (2)(e), a health and safety representative at a workplace may request a review if the representative reasonably believes that:

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Part 9.3 Duties of Operators of Determined Major Hazard Facilities

- (a) a circumstance referred to in subregulation (2)(a), (b), (c) or (d) affects or may affect the health and safety of a member of the work group represented by the health and safety representative; and
- (b) the operator has not adequately conducted a review in response to the circumstance.

Division 4 Safety case

560 Safety case must be provided

The operator of a determined major hazard facility must provide the regulator with a completed safety case for the major hazard facility, that has been prepared in accordance with regulation 561, within 24 months after the facility was determined to be a major hazard facility.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

561 Content

- (1) The operator must prepare the safety case in accordance with the safety case outline prepared or altered under this Division.
 - (2) A safety case must contain the following:
 - (a) a summary of the identification conducted under regulation 554, including a list of all major incidents identified;
 - (b) a summary of the safety assessment conducted under regulation 555;
 - (c) a summary of the major hazard facility's emergency plan;
 - (d) a summary of the major hazard facility's safety management system;
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- (e) a description of any arrangements made in relation to the security of the major hazard facility;

Note

See the jurisdictional note in the Appendix.

- (f) a description of the consultation with workers that took place under regulation 575 in the preparation of the safety case;
 - (g) the additional matters specified in Schedule 18.
- (3) The safety case must include any further information that is necessary to ensure that all information contained in the safety case is accurate and up to date.
 - (4) A safety case must demonstrate:
 - (a) that the major hazard facility's safety management system will, once implemented, control risks arising from major incidents and major incident hazards; and
 - (b) the adequacy of the measures to be implemented by the operator to control risks associated with the occurrence and potential occurrence of major incidents.
 - (5) The operator must include in the safety case a signed statement that:
 - (a) the information provided under subregulations (1) and (2) is accurate and up to date; and
 - (b) as a consequence of conducting the safety assessment, the operator has a detailed understanding of all aspects of risk to health and safety associated with major incidents that may occur; and
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- (c) the control measures to be implemented by the operator:
 - (i) will eliminate the risk of a major incident occurring, so far as is reasonably practicable; and
 - (ii) if it is not reasonably practicable to eliminate the risk of a major incident occurring—will minimise the risk so far as is reasonably practicable; and
 - (iii) in the event of a major incident occurring—will minimise its magnitude and the severity of its health and safety consequences so far as is reasonably practicable; and
 - (d) all persons to be involved in the implementation of the safety management system have the knowledge and skills necessary to enable them to carry out their role safely and competently.
- (6) If the operator is a body corporate, the safety case must be signed by the most senior executive officer of the body corporate who resides in [this jurisdiction].

Note

See the jurisdictional note in the Appendix.

562 Co-ordination for multiple facilities

- (1) The regulator may require the operators of 2 or more major hazard facilities to co-ordinate the preparation of the safety cases for their major hazard facilities if the regulator is satisfied on reasonable grounds that such co-ordination is necessary in the interests of the safe operation and effective safety management of any or all of those major hazard facilities.

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Part 9.3 Duties of Operators of Determined Major Hazard Facilities

- (2) If the regulator requires the co-ordinated preparation of safety cases, each operator must provide the other operators with information concerning any circumstances at the operator's facility that could constitute a major incident hazard in relation to any of the other major hazard facilities.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

- (3) In complying with this regulation, the operator is not required to disclose information that may expose the major hazard facility to a major incident hazard in relation to the security of the major hazard facility.

563 Review

The operator of a determined major hazard facility must review and as necessary revise the major hazard facility's safety case after any review is conducted under regulation 559.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

Note

The operator of a licensed major hazard facility is required to tell the regulator about any change in relation to certain information about the licence (see regulation 588).

Part 9.4 Licensed Major Hazard Facilities—Risk Management

Note

This Part applies to a major hazard facility that is licensed under Part 9.7.

564 Identification of major incidents and major incident hazards

- (1) The operator of a licensed major hazard facility must identify:
 - (a) all major incidents that could occur in the course of the operation of the major hazard facility; and
 - (b) all major incident hazards for the major hazard facility, including major incident hazards relating to the security of the major hazard facility.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (2) In complying with subregulation (1), the operator must have regard to any advice and recommendations given by:
 - (a) the emergency service organisations with responsibility for the area in which the major hazard facility is located; and
 - (b) any government department or agency with a regulatory role in relation to major hazard facilities.

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Part 9.4 Licensed Major Hazard Facilities—Risk Management

(3) The operator must document:

- (a) all identified major incidents and major incident hazards; and
- (b) the criteria and methods used in identifying the major incidents and major incident hazards; and
- (c) any external conditions under which the major incident hazards, including those relating to the security of the major hazard facility, might give rise to the major incidents.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (4) All major incidents and major incident hazards identified and documented under regulation 554 in relation to the major hazard facility are taken to have been identified and documented under this regulation.

565 Safety assessment

The operator of a licensed major hazard facility must keep a copy of the safety assessment documented under regulation 555 as revised under Part 9.3 and this Part at the facility.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

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Part 9.4 Licensed Major Hazard Facilities—Risk Management

566 Control of risk

- (1) The operator of a licensed major hazard facility must implement risk control measures that:
 - (a) eliminate, so far as is reasonably practicable, the risk of a major incident occurring; or
 - (b) if it is not reasonably practicable to eliminate that risk—minimise that risk so far as is reasonably practicable.

Note

WHS Act—section 20 (see regulation 9).

- (2) The operator of a licensed major hazard facility must implement risk control measures designed to minimise, in the event of a major incident occurring, its magnitude and the severity of its consequences to persons both on-site and off-site.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

567 Emergency plan

- (1) The operator of a licensed major hazard facility must keep a copy of the major hazard facility's emergency plan prepared under regulation 557 as revised under Part 9.3 and this Part at the facility.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (2) The operator must test the emergency plan in accordance with the recommendations made by the emergency service organisations referred to in regulation 557(2).

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Part 9.4 Licensed Major Hazard Facilities—Risk Management

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (3) The operator must immediately implement the emergency plan if:
- (a) a major incident occurs in the course of the operation of the major hazard facility; or
 - (b) an event occurs that could reasonably be expected to lead to a major incident.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (4) The operator must notify the regulator and the emergency service organisations referred to in regulation 557(2) of the occurrence of an incident or event referred to in regulation 557(3) as soon as practicable after the incident or event occurs.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

568 Safety management system

- (1) The operator of a licensed major hazard facility must implement the major hazard facility's safety management system established under regulation 558 as revised under Part 9.3 and this Part.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

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Part 9.4 Licensed Major Hazard Facilities—Risk Management

- (2) The operator must use the safety management system as the primary means of:
- (a) ensuring the health and safety of workers engaged or caused to be engaged by the operator and workers whose activities in carrying out work are influenced or directed by the operator while the workers are at work in the operation of the major hazard facility; and
 - (b) ensuring that the health and safety of other persons is not put at risk from work carried out as part of the operation of the major hazard facility.

Note

The operator of a licensed major hazard facility is required to inform the regulator about any change in relation to certain information about the licence (see regulation 588).

569 Review of risk management

- (1) The operator of a licensed major hazard facility must review and as necessary revise the following, in accordance with this regulation:
- (a) the safety assessment for the facility in order to ensure the adequacy of the control measures to be implemented by the operator;
 - (b) the major hazard facility's emergency plan;
 - (c) the major hazard facility's safety management system.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

- (2) Without limiting subregulation (1), the operator must conduct a review and revision in each of the following circumstances:
-

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Part 9.4 Licensed Major Hazard Facilities—Risk Management

- (a) a modification to the major hazard facility is proposed;
- (b) a control measure implemented under regulation 566 does not minimise the relevant risk so far as is reasonably practicable;

Example

An effectiveness test indicates a deficiency in the control measure.

- (c) a new major hazard risk is identified;
 - (d) the results of consultation by the operator under Part 9.5 indicate that a review is necessary;
 - (e) a health and safety representative requests the review;
 - (f) the regulator requires the review;
 - (g) at least once every 5 years.
- (3) In reviewing and revising the safety assessment, the operator must comply with the requirements set out in regulation 555(2), (3) and (4).
 - (4) In reviewing and revising the emergency plan, the operator must consult with the emergency service organisations referred to in regulation 557(2).
 - (5) For the purposes of subregulation (2)(e), a health and safety representative at a workplace may request a review if the representative reasonably believes that:
 - (a) a circumstance referred to in subregulation (2)(a), (b), (c) or (d) affects or may affect the health and safety of a member of the work group represented by the health and safety representative; and
 - (b) the operator has not adequately conducted a review in response to the circumstance.
-

570 Safety case—review

The operator of a licensed major hazard facility must review and as necessary revise the safety case after any review is conducted under regulation 569.

Maximum penalty:

In the case of an individual—\$3 600.

In the case of a body corporate—\$18 000.

Note

The operator of a licensed major hazard facility is required to tell the regulator about any change in relation to certain information about the licence. See regulation 588.

571 Information for visitors

The operator of a licensed major hazard facility must ensure that a person other than a worker who enters the major hazard facility is as soon as practicable:

- (a) informed about hazards at the major hazard facility that may affect that person; and
- (b) instructed in safety precautions the person should take; and
- (c) instructed in the actions the person should take if the emergency plan is implemented while the person is on-site.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

572 Information for local community—general

- (1) The operator of a licensed major hazard facility must ensure the provision of the following information to the local community and the local authority:
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Part 9.4 Licensed Major Hazard Facilities—Risk Management

- (a) the name and location of the major hazard facility;
- (b) the name, position and contact details of a contact person from whom information may be obtained;
- (c) a general description of the major hazard facility's operations;
- (d) the means by which the local community will be notified of a major incident occurring;
- (e) the actions, as specified in the major hazard facility's emergency plan, that members of the local community should take if a major incident occurs;
- (f) a summary of the safety case for the major hazard facility.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

Note

See the jurisdictional note in the Appendix.

- (2) The operator must ensure that the information provided under subregulation (1) is:
 - (a) set out and expressed in a way that is readily accessible and understandable to persons who are not familiar with the major hazard facility and its operations; and
 - (b) reviewed and as necessary revised if a modification is made to the major hazard facility; and
 - (c) sent in writing to any community or public library serving the local community.
-

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Part 9.4 Licensed Major Hazard Facilities—Risk Management

- (3) In complying with subregulation (1), the operator is not required to disclose information that may expose the major hazard facility to a major incident hazard in relation to the security of the major hazard facility.
- (4) The operator of a licensed major hazard facility who receives a written request from a person who reasonably believes that the occurrence of a major incident at the major hazard facility may adversely affect his or her health or safety must provide that person with a copy of the information provided to the local community under this regulation.

Maximum penalty:

In the case of an individual—\$1 250.

In the case of a body corporate—\$6 000.

573 Information for local community—major incident

- (1) As soon as practicable after a major incident occurs, the operator of the major hazard facility must take all reasonable steps to provide the persons specified in subregulation (2) with information about the major incident, including:
 - (a) a general description of the major incident; and
 - (b) a description of the actions the operator has taken and proposes to take to prevent any recurrence of the major incident or the occurrence of a similar major incident; and
 - (c) recommended actions that the local authority and members of the local community should take to eliminate or minimise risks to health and safety.

Maximum penalty:

In the case of an individual—\$6 000.

In the case of a body corporate—\$30 000.

Schedule 15 Hazardous chemicals at major hazard facilities (and their threshold quantity)

Chapter 9

1 Definitions

In this Schedule:

Class has the same meaning as in the ADG Code.

Division has the same meaning as in the ADG Code.

LD₅₀ (median lethal dose) for acute oral toxicity is the statistically derived single dose of a substance that can be expected to cause death within 14 days in 50% of young adult albino rats when administered by the oral route. The LD₅₀ value is expressed in terms of mass of test substance per mass of test animal (mg/kg).

LD₅₀ for acute dermal toxicity is that dose of the substance which, administered by continuous contact for 24 hours with the bare skin of albino rabbits, is most likely to cause death within 14 days in one half of the animals tested. The number of animals tested must be sufficient to give a statistically significant result and be in conformity with good pharmacological practice. The result is expressed in milligrams per kg body mass.

LC₅₀ for acute toxicity on inhalation is that concentration of vapour, mist or dust which, administered by continuous inhalation to both male and female young adult albino rats for one hour, is most likely to cause death within 14 days in one half of the animals tested. A solid substance must be tested if at least 10% (by mass) of its total mass is likely

to be dust in a respirable range, e.g. the aerodynamic diameter of that particle fraction is 10 microns or less. A liquid substance must be tested if a mist is likely to be generated in a leakage of the transport containment. Both for solid and liquid substances exceeding 90% (by mass) of a specimen prepared for inhalation toxicity must be in the respirable range as defined above. The result is expressed in milligrams per litre of air for dusts and mists or in millilitres per cubic metre of air (parts per million) for vapours.

Packing Group has the same meaning as in the ADG Code.

subsidiary risk has the same meaning as in the ADG Code.

2 Relevant hazardous chemicals

The hazardous chemicals that characterise a workplace as a facility for the purposes of these Regulations are the chemicals specifically referred to in table 15.1 and chemicals that belong to the types, classes and categories referred to in table 15.2.

3 Threshold quantity of one hazardous chemical

- (1) In relation to each hazardous chemical referred to in clause 2, column 3 of Tables 15.1 and 15.2 provides a quantity that is described as the "threshold quantity" of that chemical.
- (2) If a hazardous chemical is referred to in table 15.1, the *threshold quantity* of the chemical is that described in table 15.1, whether or not the chemical also belongs to a type, class or category referred to in table 15.2.

-
- (3) If a hazardous chemical is not referred to in table 15.1, and the chemical belongs to a type, class or category referred to in table 15.2, the *threshold quantity* of that chemical is that of the type, class or category to which it belongs.
- (4) If a hazardous chemical is not referred to in table 15.1, and the chemical appears to belong to more than one of the types, classes or categories referred to in table 15.2, the *threshold quantity* of that chemical is that of the relevant type, class or category which has the lower or lowest threshold quantity.

4 Threshold quantity of more than one hazardous chemical

If there is more than 1 hazardous chemical, a threshold quantity of chemicals exists where, if a number of chemicals are present, the result of the following aggregation formula exceeds 1:

$$\frac{q_x}{Q_x} + \frac{q_y}{Q_y} + [...] + \frac{q_n}{Q_n}$$

Where—

- (a) x, y, [...] and n are the hazardous chemicals present or likely to be present;
- (b) q_x , q_y , [...] and q_n is the total quantity of hazardous chemicals x, y, [...] and n present or likely to be present, other than:
- (i) a hazardous chemical that is present or likely to be present in an isolated quantity less than 2% of its threshold quantity;
 - (ii) hazardous chemicals that are solely the subject of intermediate temporary storage, while in transit by road or rail (unless it is reasonably foreseeable that, despite the transitory nature of the

storage, hazardous chemicals are or are likely to be present frequently or in significant quantities);

- (c) Q_x , Q_y , [...] and Q_n is the individual threshold quantity for each hazardous chemical x , y , [...] and n ;
- (d) a hazardous chemical is present or likely to be present in an *isolated quantity*, for the purposes of paragraph (b)(i), if its location at the facility is such that it cannot, on its own, act as an initiator of a major incident.

5 How table 15.1 must be used

- (1) The UN number listed against the named hazardous chemical does not restrict the meaning of the name, which also applies to hazardous chemicals that fall outside the UN number.

Examples

- 1 The hazardous chemicals are too dangerous to be transported.
 - 2 The hazardous chemicals are part of mixtures covered by a different UN number.
- (2) Any hazardous chemicals that are covered by the listed UN numbers must be included in the quantity of the chemical named.

6 How table 15.2 must be used

- (1) The quantities specified for explosives in table 15.2 relate to the weight of explosive exclusive of packagings, casings and other non-explosive components.
- (2) If explosives of different hazard divisions are present in the same area or storage, all of the explosives must, before table 15.2 is applied, be classified in accordance with the following table:

Model Work Health and Safety Regulations

| Div. | 1.1 | 1.2 | 1.3 | 1.4 | 1.5 | 1.6 |
|------|-----|-----|-----|-----|-----|-----|
| 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 | 1.1 |
| 1.2 | 1.1 | 1.2 | 1.1 | 1.2 | 1.1 | 1.2 |
| 1.3 | 1.1 | 1.1 | 1.3 | 1.3 | 1.1 | 1.3 |
| 1.4 | 1.1 | 1.2 | 1.3 | 1.4 | 1.5 | 1.6 |
| 1.5 | 1.1 | 1.1 | 1.1 | 1.5 | 1.5 | 1.5 |
| 1.6 | 1.1 | 1.2 | 1.3 | 1.6 | 1.5 | 1.6 |

Table 15.1

| Column 1 | | Column 2 | Column 3 |
|----------|---|------------------------------|-----------------------------|
| Item | Hazardous chemical | UN Nos included under name | Threshold quantity (tonnes) |
| 1 | ACETONE CYANOHYDRIN | 1541 | 20 |
| 2 | ACETYLENE | 1001 | 50 |
| 3 | ACROLEIN | 1092 | 200 |
| 4 | ACRYLONITRILE | 1093 | 200 |
| 5 | ALLYL ALCOHOL | 1098 | 20 |
| 6 | ALLYLAMINE | 2334 | 200 |
| 7 | AMMONIA, ANHYDROUS, LIQUEFIED or AMMONIA SOLUTIONS, relative density less than 0.880 at 15 degrees C in water, with more than 50% ammonia | 1005 | 200 |
| 8 | AMMONIUM NITRATE FERTILISERS | 2067 2068 2069 2070 | 5000 |
| 9 | AMMONIUM NITRATE, with not more than 0.2% combustible substances, including any organic substance calculated as carbon, to the exclusion of any other added substance | 1942 | 2500 |

Model Work Health and Safety Regulations

| Column 1 | | Column 2 | Column 3 |
|----------|--|----------------------------|-----------------------------|
| Item | Hazardous chemical | UN Nos included under name | Threshold quantity (tonnes) |
| 10 | ARSENIC PENTOXIDE, Arsenic (V) Acid and other salts | 1559 | 10 |
| 11 | ARSENIC TRIOXIDE, Arsenious (III) Acid and other salts | 1561 | 0.1 |
| 12 | ARSINE | 2188 | 1.0 |
| 13 | BROMINE or BROMINE SOLUTIONS | 1744 | 100 |
| 14 | CARBON DISULFIDE | 1131 | 200 |
| 15 | CHLORINE | 1017 | 25 |
| 16 | DIOXINS | — | 0.1 |
| 17 | ETHYL NITRATE | — | 50 |
| 18 | ETHYLENE DIBROMIDE | 1605 | 50 |
| 19 | ETHYLENE OXIDE | 1040 | 50 |
| 20 | ETHYLENEIMINE | 1185 | 50 |
| 21 | FLUORINE | 1045 | 25 |
| 22 | FORMALDEHYDE (greater than 90%) | — | 50 |
| 23 | HYDROFLUORIC ACID SOLUTION (greater than 50%) | 1790 | 50 |
| 24 | HYDROGEN | 1049 | 50 |
| 25 | HYDROGEN CHLORIDE | | |
| | — Anhydrous | 1050 | 250 |
| | — Refrigerated Liquid | 2186 | 250 |
| 26 | HYDROGEN CYANIDE | 1051 1614 | 20 |
| 27 | HYDROGEN FLUORIDE | 1052 | 50 |
| 28 | HYDROGEN SULFIDE | 1053 | 50 |

Model Work Health and Safety Regulations

| Column 1 | | Column 2 | Column 3 |
|----------|---|--|-----------------------------|
| Item | Hazardous chemical | UN Nos included under name | Threshold quantity (tonnes) |
| 29 | LP GASES | 1011 1012 1075 1077 1978 | 200 |
| 30 | METHANE or NATURAL GAS | 1971 1972 | 200 |
| 31 | METHYL BROMIDE | 1062 | 200 |
| 32 | METHYL ISOCYANATE | 2480 | 0.15 |
| 33 | OXIDES OF NITROGEN, including nitrous oxide, nitrogen dioxide and nitrogen trioxide | 1067 1070 1660 1975 2201 2421 | 50 |
| 34 | OXYGEN | 1072 1073 | 2000 |
| 35 | PHOSGENE | 1076 | 0.75 |
| 36 | PROPYLENE OXIDE | 1280 | 50 |
| 37 | PROPYLENEIMINE | 1921 | 200 |
| 38 | SODIUM CHLORATE, solid | 1495 | 200 |
| 39 | SULFUR DICHLORIDE | 1828 | 1 |
| 40 | SULFUR DIOXIDE, LIQUEFIED | 1079 | 200 |
| 41 | SULFURIC ANHYDRIDE (Alt. SULFUR TRIOXIDE) | 1829 | 75 |
| 42 | TITANIUM TETRACHLORIDE | 1838 | 500 |
| 43 | TOLUENE DIISOCYANATE | 2078 | 200 |

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Table 15.2

| Column 1 | | Column 2 | Column 3 |
|----------|--------------------------------|---|-----------------------------|
| Item | Hazardous chemical | Description | Threshold quantity (tonnes) |
| 1 | Explosive materials | Explosive of Division 1.1A | 10 |
| | | All other explosives of Division 1.1 | 50 |
| | | Explosive of Division 1.2 | 200 |
| | | Explosive of Division 1.3 | 200 |
| 2 | Compressed and liquefied gases | Compressed or liquefied gases of Division 2.1 or Subsidiary Risk 2.1 | 200 |
| | | Liquefied gases of Subsidiary Risk 5 | 200 |
| | | Compressed or liquefied gases that meet the criteria for Very Toxic in table 15.3 | 20 |
| | | Compressed or liquefied gases that meet the criteria for Toxic in table 15.3 | 200 |
| 3 | Flammable materials | Liquids that meet the criteria for Class 3 Packing Group I Materials (except for crude oil in remote locations) | 200 |
| | | Crude oil in remote locations that meet the criteria for Class 3 Packing Group I | 2000 |
| | | Liquids that meet the criteria for Class 3 Packing Group II or III | 50000 |

Model Work Health and Safety Regulations

| Column 1 | | Column 2 | Column 3 |
|----------|---------------------|---|-----------------------------|
| Item | Hazardous chemical | Description | Threshold quantity (tonnes) |
| | | Liquids with flash points <61°C kept above their boiling points at ambient conditions | 200 |
| | | Materials that meet the criteria for Division 4.1 Packing Group I | 200 |
| | | Spontaneously combustible materials that meet the criteria for Division 4.2 Packing Group I or II | 200 |
| | | Materials that liberate flammable gases or react violently on contact with water which meet the criteria for Division 4.3 Packing Group I or II | 200 |
| | | Materials that belong to Classes 3 or 8 Packing Group I or II which have Hazchem codes of 4WE (materials that react violently with water) | 500 |
| 4 | Oxidising materials | Oxidising material listed in Appendix A to the ADG Code | 50 |
| | | Oxidising materials that meet the criteria for Division 5.1 Packing Group I or II | 200 |
| 5 | Peroxides | Peroxides that are listed in Appendix A to the ADG Code | 50 |
| | | Organic Peroxides that meet the criteria for Division 5.2 | 200 |

Model Work Health and Safety Regulations

| | Column 1 | Column 2 | Column 3 |
|------|--------------------------|--|-----------------------------|
| Item | Hazardous chemical | Description | Threshold quantity (tonnes) |
| 6 | Toxic solids and liquids | Materials that meet the criteria for Very Toxic in table 15.3 except materials that are classified as Infectious Substances (Division 6.2) or as Radioactive (Class 7) | 20 |
| | | Materials that meet the criteria for Toxic in table 15.3 | 200 |

Table 15.3 Criteria for toxicity

| Description | Oral Toxicity ¹ LD ₅₀ (mg/kg) | Dermal Toxicity ² LD ₅₀ (mg/kg) | Inhalation Toxicity ³ LC ₅₀ (mg/L) |
|-------------|--|--|---|
| Very Toxic | LD ₅₀ ≤ 5 | LD ₅₀ ≤ 40 | LC ₅₀ ≤ 0.5 |
| Toxic | 5 < LD ₅₀ ≤ 50 | 40 < LD ₅₀ ≤ 200 | 0.5 < LC ₅₀ ≤ 2 |

Key

- 1 In rats
- 2 In rats or rabbits
- 3 Four hours in rats

**Schedule 16 Matters to be included in emergency
plan for major hazard facility**

Regulation 557

1 Site and hazard detail

- 1.1 The location of the facility, including its street address and the nearest intersection (if any).

Note

Sufficient detail must be provided to enable a person not familiar with the site to find it.

- 1.2 A map:

- (a) showing the site of the major hazard facility; and
 - (b) showing land use and occupancy in the surrounding area, and any other closely located major hazard facilities and hazardous chemical storage sites; and
 - (c) identifying all potentially hazardous inventories in the area that are known to the operator and the location of all staging points for emergency services.
- 1.3 An inventory of all hazardous chemicals present or likely to be present at the facility, and their location.
- 1.4 A brief description of the nature of the facility and its operation.
- 1.5 The maximum number of persons, including workers, likely to be present at the facility on a normal working day.
- 1.6 The emergency planning assumptions, including emergency measures planned for identified incidents and likely areas affected.

- 1.7 The protective resources available to control an incident.
- 1.8 The emergency response procedures.
- 1.9 The infrastructure (on-site and off-site) likely to be affected by a major incident.

2 Command structure and site personnel

- 2.1 The command philosophy and structure to be activated in an emergency, so that it is clear what actions will be taken, who will take these actions and how, when and where they will be taken.
- 2.2 Details of the person who can clarify the content of the emergency plan if necessary.
- 2.3 The contact details of, and the means of contacting, the persons at the facility responsible for liaising with emergency services.
- 2.4 A list of 24 hour emergency contacts.
- 2.5 Arrangements for assisting emergency services and nearby facilities with control actions taken in the surrounding area.

3 Notifications

- 3.1 In the event of the occurrence of a major incident or an event that could reasonably be expected to lead to a major incident, procedures for notifying the emergency services with which the emergency plan was prepared under regulation 567.
- 3.2 After a major incident has occurred, procedures for providing the local community and the local authority for the local authority area in which the facility and the surrounding area are located with information about the major incident under regulation 573.

3.3 On-site and off-site warning systems.

3.4 Contact details for emergency services and other support services that can assist in providing resources and implementing evacuation plans in the event of a major incident.

3.5 On-site communication systems.

4 Resources and equipment

4.1 On-site emergency resources, including emergency equipment, personnel, gas detectors, wind velocity detectors, sand, lime, neutralising agents, absorbents, spill bins and decontamination equipment.

4.2 Off-site emergency resources, including arrangements for obtaining additional external resources (specific to the likely major incidents) to assist the control of major incidents and major incident hazards.

5 Procedures

5.1 Procedures for the safe evacuation of, and accounting for, all people on site.

5.2 Procedures and control points for utilities, including gas, water and electricity.

5.3 Procedures for the control of any incident involving Schedule 15 chemicals.

5.4 Procedures for decontamination following an incident involving Schedule 15 chemicals.

**Schedule 17 Additional matters to be included in
safety management system of major
hazard facility**

Regulation 558

1 Safety policy and safety objectives

- 1.1 A description of the means by which the operator's safety policy and specific safety objectives are to be communicated to all persons who are to participate in the implementation of the safety management system.
- 1.2 The safety policy must include an express commitment to ongoing improvement of all aspects of the safety management system.

2 Organisation and personnel

- 2.1 The identification (according to position description and location) of the persons who are to participate in the implementation of the safety management system, and a description of the command structure in which these persons work and of the specific tasks and responsibilities allocated to them.
- 2.2 A description of the means of ensuring that these persons have the knowledge and skills necessary to enable them to undertake their allocated tasks and discharge their allocated responsibilities, and that they retain such knowledge and skills.

3 Operational controls

- 3.1 A description of the procedures and instructions for:
 - (a) the safe operation of plant (including as to inspection and maintenance); and
 - (b) the mechanical integrity of plant; and

- (c) plant processes; and
- (d) the control of abnormal operations and emergency shut down or decommissioning.

3.2 Provision of adequate means of achieving isolation of the major hazard facility or any part of the major hazard facility in the event of an emergency.

3.3 Provision of adequate means of gaining access for service and maintenance of the major hazard facility or any part of the major hazard facility.

3.4 A description of the roles of persons and of the interfaces between persons and plant.

3.5 Provision for alarm systems.

4 Duties of operators

4.1 A description of the means by which the operator proposes to comply with the Act and with Division 2 of Part 9.3, Part 9.4 and Part 9.5 of these Regulations.

4.2 In relation to each part of the documented safety management system that describes the means of compliance with a provision of Chapter 9, an annotation or cross-reference identifying the specific provision being complied with.

5 Management of change

A description of the procedures for planning modifications to major hazard facilities.

6 Principles and standards

6.1 A statement of the principles, especially the design principles and engineering standards, being used to ensure the safe operation of the major hazard facility.

6.2 A description of any technical standards, whether published or proprietary, being relied on in relation to such principles and standards.

7 Performance monitoring

7.1 Performance standards for measuring the effectiveness of the safety management system, that:

- (a) relate to all aspects of the safety management system; and
- (b) are sufficiently detailed to ensure that the ability of the operator to ensure the effectiveness of all aspects of the safety management system is apparent from the documentation; and
- (c) include steps to be taken to continually improve all aspects of the safety management system.

7.2 A description of the way in which these performance standards are to be met.

7.3 Performance indicators for the effectiveness of control measures implemented, including:

- (a) tests of the effectiveness of the control measures; and
- (b) indicators of the failure of any control measure; and
- (c) actions to be taken in reporting any such failure; and
- (d) other corrective actions to be taken in the event of any such failure.

8 Audit

Provision for the auditing of performance against the performance standards, including the methods, frequency and results of the audit process.

**Schedule 18 Additional matters to be included in
safety case for a major hazard facility**

Regulation 561

Part 1 Facility description

1 The facility

- 1.1 A brief description of the nature of the facility and its operation, including a description of on-site activities and processes that involve or will involve Schedule 15 chemicals.
- 1.2 A description of the Schedule 15 chemicals and any other hazardous chemicals present or likely to be present at the facility, including:
 - (a) their identification by name and by any other means necessary for a clear identification; and
 - (b) the quantity present or likely to be present at the major hazard facility; and
 - (c) their physical, chemical and toxicological characteristics, and any other hazardous characteristics, both immediate and delayed; and
 - (d) their physical and chemical behaviour under normal conditions of use or under foreseeable abnormal conditions.
- 1.3 A description of the chemical and physical processes associated with any Schedule 15 chemicals present or likely to be present at the facility, including:
 - (a) the main units of plant used in those processes; and

- (b) a process flow drawing, or set of flow drawings, describing the processes.

1.4 A drawing of the major hazard facility's general layout, containing the location of:

- (a) the main process units; and
- (b) the main storage areas; and
- (c) major incident hazards and major incident initiators.

1.5 In relation to proposed changes at the major hazard facility for which no new control measures are implemented:

- (a) a description of any proposed changes to the major hazard facility that would:
 - (i) alter the production capacity or profile of the major hazard facility; or
 - (ii) involve the deletion, addition or modification of any processes; and
- (b) a statement as to how existing control measures and WHS management systems are capable of maintaining the safe operation of the major hazard facility.

2 The surrounding area

2.1 A detailed scale plan of the facility and its surrounding area showing:

- (a) the location of the facility within the surrounding area; and
- (b) topographical information; and
- (c) land use, occupancy and activities in the surrounding area and any other closely located major hazard facilities and hazardous chemical storage sites; and

Model Work Health and Safety Regulations

- (d) the location of any identified external conditions (including other major hazard facilities or other facilities that could affect the safety of the major hazard facility).
- 2.2 Graphically presented demographic information for the local community, including surrounding land uses permitted by the local authority.
- 2.3 Meteorological data relevant to the estimation of the effects of any major incident.

Part 2 Safety information

3 Control measures to limit the consequences of major incidents

3.1 A detailed description of:

- (a) the instrumentation and other equipment installed in the facility and the processes and procedures in place that are the control measures to be implemented by the operator; and
- (b) the critical operating parameters for those control measures; and
- (c) key personnel and resources (internal and external) available to intervene in the event of any failure of a control measure, whether or not that failure results in a major incident; and
- (d) a summary of the emergency plan, including specific information about how the plan can be expected to limit the consequences of a major incident; and
- (e) the means of ensuring that there is at all times in place a command structure for the major hazard facility that applies in the event of an emergency, and that this command structure has been communicated to workers throughout the major hazard facility.

3.2 In item 3.1:

critical operating parameters means the upper or lower performance limits of any equipment, process or procedure, compliance with which is necessary to avoid a major incident.

failure of a control measure means:

- (a) if the control measure is a positive action or event—the non-occurrence or the defective occurrence of that action or event; or
- (b) if the control measure consists of a limitation on an operational activity, process or procedure—the breach of that limitation.

4 Performance monitoring

A detailed description of the performance standards and performance indicators required by item 7 of Schedule 17 to be included in the safety management system.

5 Safety management system

- 5.1 At all points in the safety case where the matter addressed is covered by the safety management system, a clear reference to the relevant part of the documented safety management system.
- 5.2 A description of those parts of the documented safety management system that address the ongoing effective implementation and ongoing review and revision of the safety management system.

6 Safety and reliability of facility structures and plant

A description of the steps taken to ensure that safety and reliability are incorporated into the design and construction of all aspects of the major hazard facility itself, whether the operator is directly engaged in the design and construction or has engaged another person to carry out the design and construction.

7 Major incident history

A summary of the major incidents that have occurred at the major hazard facility over the previous 5 years.



COMPLIANCE POLICY AND PROSECUTION GUIDELINES

June 2010

CONTENTS

Section A General

Section B Policy Considerations – Compliance

Section C Compliance – Occupational Health & Safety

Section D Compliance – Workers compensation

Section E Prosecution Guidelines

Disclaimer

This publication contains information regarding occupational health, safety, injury management or workers compensation. It includes some of your obligations under the various workers compensation and occupational health and safety legislation that WorkCover NSW administers.

To ensure you comply with your legal obligations you must refer to the appropriate Acts. This publication may refer to WorkCover NSW administered legislation that has been amended or repealed. When reading this publication you should always refer to the latest laws. Information on the latest laws can be checked at www.nsw.gov.au.

For the latest on National OHS legislative reform go to www.safeworkaustralia.gov.au

WORKCOVER AUTHORITY **OF NEW SOUTH WALES**

COMPLIANCE POLICY AND PROSECUTION GUIDELINES

SECTION A – GENERAL

1. INTRODUCTION

- 1.1 The WorkCover Authority of New South Wales (WorkCover) is committed to providing a transparent and consistent approach to its compliance and prosecution activities in both workers compensation and occupational health and safety.
- 1.2 The National Occupational Health and Safety Compliance and Enforcement Policy (NCEP) is an interim policy, in force pending the development and jurisdictional implementation of national model OHS laws.
- 1.3 WorkCover has endorsed the NCEP as the New South Wales OHS Compliance Policy whilst retaining the current New South Wales Workers Compensation Compliance Policy and the current New South Wales Prosecution Guidelines, such policies being consistent with the national approach, pending implementation of national model OHS laws.

ROLE OF WORKCOVER

- 1.4 WorkCover is a statutory corporation constituted pursuant to section 14 of the *Workplace Injury Management and Workers Compensation Act 1998*. WorkCover exercises various powers and authorities and has duties and functions under the legislative framework for occupational health and safety and workers compensation in NSW.
- 1.5 The legislative framework includes the following:
- *Occupational Health and Safety Act 2000* and the regulation and codes of practice made under the Act;
 - *Explosives Act 2003* and its regulation;
 - *Workers Compensation Act 1987*, the *Workplace Injury Management and Workers Compensation Act 1998*, the *Workers' Compensation (Dust Diseases) Act 1942*, the *Workers Compensation (Bush Fire, Emergency and Rescue Services) Act 1987* and the regulations, instruments and guidelines made under the authority of those acts; and
 - *Sporting Injuries Insurance Act 1978* and its regulations;
 - *Rural Workers Accommodation Act 1969*;
 - *Dangerous Goods (Road and Rail Transport) Act 2008* (jointly administered with the Department of Environment and Climate Change).
- 1.6 The functions of WorkCover include:
- ensuring compliance with the workers compensation legislation and the occupational health and safety legislation;
 - responsibility for the day to day operational matters relating to the schemes to which any such legislation relates;
 - investigating workplace incidents; and
 - assisting in the provision of measures to deter and detect fraudulent workers compensation claims.
- 1.7 In exercising its functions, WorkCover is required to:
- promote the development of healthy and safe places of work;
 - promote the prompt, efficient and effective management of injuries to persons at work;
 - ensure the efficient operation of workers' compensation insurance arrangements; and
 - ensure the appropriate co-ordination of arrangements for the administration of the schemes to which the workers compensation legislation and the occupational health and safety legislation relates.

WORKCOVER'S APPROACH

- 1.8 WorkCover's Corporate Plan 2009-2012 has the following focus:

Vision: safe, secure and productive workplaces.

Mission: to work in partnership with New South Wales employers, employees and the NSW community to achieve safer and more productive workplaces, effective recovery, return to work and security for injured workers.

- 1.9 In the exercise of its functions of ensuring compliance with workers compensation and occupational health and safety laws, WorkCover may take a number of different approaches (education, information, incentives and enforcement) depending on the nature of the issue that has arisen. The approach to be adopted in any particular matter will depend on an assessment of the circumstances of the workplace issue as well as consideration of a range of relevant factors, outlined in Section C.

SECTION B

2. POLICY CONSIDERATIONS – COMPLIANCE¹

2.1 Scope of OHS Jurisdiction

The scope of the OHS legislation does not include every incident or risk to health and safety. Those relating to places of work and work activities will normally be included. Incidents or risks such as those on public roads or associated with recreational or leisure activities taking place in open areas would usually be outside the scope of the OHS legislation.

Issues of public safety in these places and involving these activities are usually the responsibility of other agencies such as the Roads and Traffic Authority, the Department of Environment and Climate Change, Police, the Department of Health or the Department of Sport and Recreation.

WorkCover has a number of agreements in place with other State agencies to prevent duplication in areas where there is potential for a number of legislative provisions to be called into action.

¹ These may change when National model OHS legislation is implemented. Details of the national review process are at www.safeworkaustralia.gov.au

2.2 Compliance Generally

WorkCover's OHS and injury management functions constitute a comprehensive framework for preventing injury and illness at work. The primary aim of the framework is prevention.

WorkCover's principal focus is upon assisting NSW employers and employees to achieve safer workplaces and therefore more productive workplaces, as well as maintaining a financially and socially responsible workers compensation system through:

- applying an appropriate mix of information, assistance, education, advice, incentives and deterrents;
- building capability so that workplace health and safety risks are properly controlled;
- working co-operatively to develop a workplace safety culture and harmonised and practical workplace standards, information, testing and workable solutions;
- improving the workers compensation system for employers and employees through responsible financial management, improved health social and return to work outcomes for injured workers and fair and equitable dispute resolution;
- managing performance and ensuring accountability of agents, insurers and service providers;
- effective management of workers compensation scheme investments;
- engaging stakeholders to improve OHS and workers compensation outcomes.

WorkCover's role in enforcing compliance is a limited part of this larger role in injury and illness prevention and management.

2.3 National OHS Compliance and Enforcement Policy

In line with the Intergovernmental Agreement², WorkCover NSW is a signatory to the National OHS Compliance and Enforcement Policy (NCEP), endorsed by all Australian States and Territories in December 2008.

Consequently, the NCEP is at Section C of this document and is endorsed and adopted as the current NSW OHS compliance policy.

² Intergovernmental Agreement signed on 3rd July 2008 at:
www.safeworkaustralia.gov.au/swa/ModelLegislation/Background/

The NCEP is intended to ensure consistency in approaches and outcomes by OHS authorities in all Australian States and Territories. It promotes an effective mix of positive motivators and strong deterrents to achieve compliance with the law and improve workplace health and safety.

The NCEP specifies nationally agreed:

- aims and purposes of enforcement
- key principles underpinning compliance and enforcement activities
- compliance and enforcement strategy
- compliance and enforcement measures
- enforcement, investigation and prosecution criteria

The NCEP is an interim policy, in force pending the development and jurisdictional implementation of national model OHS laws.

SECTION C

3. COMPLIANCE – OCCUPATIONAL HEALTH & SAFETY

working
across
borders

VC/ACT/CONCARE/NSW/NT/QLD/SA/TAS/WA

NATIONAL OCCUPATIONAL HEALTH & SAFETY (OHS) COMPLIANCE AND ENFORCEMENT POLICY

NATIONAL OCCUPATIONAL HEALTH & SAFETY (OHS) COMPLIANCE AND ENFORCEMENT POLICY

1. Preamble

A broadly similar approach to workplace health and safety regulation is taken by the Australian jurisdictions. It comprises a principal occupational health and safety act which codifies common law duties of care, complemented by detailed regulations and codes of practice, and incorporates a system of education, inspection, advice, enforcement and, where warranted, prosecution. The importance of harmonisation of these occupational health and safety ("OHS") laws is reflected by the Commonwealth's current national review into model occupational health and safety laws.

2. Purpose of the National OHS Compliance and Enforcement Policy

The purpose of the National OHS Compliance and Enforcement Policy is to assist workplace health and safety authorities³ to adopt a consistent enforcement effort that is effective (in terms of reducing the incidence of work related injury and disease) and efficient in achieving compliance while also maintaining community confidence that the laws are being administered fairly and consistently.⁴

This policy operates to support the achievement of the national targets established in the *National OHS Strategy 2002-2012*. In this regard the HWSA⁵ jurisdictions may target compliance and enforcement strategies to address the national priorities of:

- reducing high incidence/severity risks;
- improving the capacity of business operators and workers to manage OHS effectively;
- preventing occupational disease more effectively;
- eliminating hazards at the design stage; and
- strengthening the capacity of government to influence OHS outcomes.

To promote transparency and consistency, this policy will be available on the website of each workplace health and safety authority.

3. Scope

This national policy is a principles-based document endorsed by each HWSA jurisdiction. It is interim in nature, pending the development and jurisdictional implementation of model national OHS laws. It is intended to ensure consistency in outcomes and that common approaches are taken by workplace health and safety authorities to the laws they administer. Each workplace health and safety authority will customise its policies to reflect its particular legislative and administrative framework and the national policy.

³ See Appendix B

⁴ Workplace health and safety authorities strive to ensure compliance with the OHS laws that they administer. Achieving safer and more productive workplaces through compliance with the law is the desired end result or outcome. Enforcement activities are but one of a range of tools used by workplace safety authorities to secure this outcome. Strategies that do not involve enforcement, but are designed to achieve the compliance outcome, are referred to in this document as compliance strategies.

⁵ Heads of Workplace Safety Authorities at www.hwsa.org.au

4. Aims/Purpose of Compliance and Enforcement

Workplace health and safety authorities implement compliance and enforcement strategies in order to:

- ensure dutyholders have access to information about OHS laws and how to comply;
- ensure dutyholders comply with OHS laws or if they fail to comply ensure they are held to account;
- ensure duty holders eliminate or properly control risks;
- take action to deal immediately with serious risks;
- promote and achieve sustained compliance with the law; and
- deter non-compliance and prevent workplace injury.

5. Key Principles

The key principles of regulation underpinning compliance and enforcement activities of the workplace health and safety authorities are that they be:

Consistent – regulators will endeavour to ensure that similar circumstances at workplaces lead to similar enforcement outcomes, thus providing greater protection and certainty at the workplace

Constructive – regulators provide support, advice and guidance to help people comply with OHS laws

Transparent – regulators demonstrate impartiality, balance and integrity

Accountable - regulators are willing to explain their enforcement decision making and uphold avenues of complaint or appeal

Proportionate – compliance and enforcement responses are proportionate to the seriousness of the non-compliance

Targeted - to areas of highest risk or strategic enforcement (eg to protect vulnerable workers)

6. Compliance and Enforcement strategy

How do workplace health and safety authorities go about ensuring compliance?

The modern workplace health and safety authority uses a wide selection of compliance strategies ranging from information, advice, persuasion, co-operation, inspection, verification and compulsion through to deterrence activities. The primary emphasis is on assisting industry to comply with occupational health and safety obligations through the provision of programs that build industry capability to properly manage workplace risks.

Workplace health and safety authorities have adopted a strategy to use an effective mix of positive motivators and strong deterrents to achieve compliance with the law and improved health and safety. This strategy seeks to encourage dutyholders to comply while ensuring that there are fair and swift consequences for those who do not. A wide range of measures are available to authorities ranging from advice, education and information to the issue of compliance notices and prosecution and/or removal of licence or other authorisation or permission. The provision of information, advice, education and assistance are important elements in achieving compliance.

7. The compliance and enforcement strategy is two pronged:

Risk based compliance and enforcement

Firstly, the policy aims to apply resources and target compliance and enforcement actions to areas of greatest risk to health and safety. Risk-based compliance and enforcement seeks to target the resources available to each workplace health and safety authority to areas of greatest need and where they are most likely to have the greatest impact on improved working environments.

Responsive compliance and enforcement

Secondly, in order to ensure that regulatory response is effective at leading to sustained compliance at the workplace, compliance and enforcement measures also seek to be responsive to the particular circumstances of the dutyholder or workplace that is the subject of attention.

Responsive regulation seeks to use the most effective and appropriate enforcement measures to achieve compliance.

Responsive sanctioning complements responsive compliance and enforcement. The principles governing such sanctioning aim to:

- (i) change the behaviour of the dutyholder;
- (ii) eliminate any financial incentive of non-compliance ;
- (iii) be proportionate to the nature of the offence and the harm caused;
- (iv) reduce the harm caused by regulatory non-compliance, where appropriate;
- (v) deter future non-compliance; and
- (vi) be responsive and consider what is appropriate for the particular dutyholder.

8. Compliance and Enforcement Measures

What are the workplace health and safety authority's tools when non-compliance is detected?

A mixture of measures both formal and informal are available to workplace health and safety authorities to require a dutyholder to remedy any identified breach of OHS laws however not all have the same enforcement tools.

The following measures are common to all jurisdictions and might be invoked or implemented alone or in combination:

- immediate compliance by the dutyholder;
- issue of an improvement notice requiring compliance by a certain date;
- issue of a prohibition notice that prohibits a practice or use of plant or equipment until it can be undertaken or used safely;
- oral or written directions ;
- prosecution.

Measures available to some workplace safety authorities include:

- enforceable undertakings;

- non-disturbance notices;
- cease work or other directions by health and safety representatives;
- infringement notices, expiation notices;
- injunctions;
- civil remedies; and
- loss of licence.

In addition there are a range of informal measures that may be adopted which might include conferencing with the identified dutyholder and warnings issued to such dutyholders.

The availability of administrative challenges to inspectors' decisions is supported by all workplace safety authorities.

9. Enforcement Criteria

What criteria are applied when enforcing the OHS legislation?

Most enforcement activity is undertaken by inspectors who adopt a flexible and responsive approach with the provision of advice, education and assistance being recognised as important elements in achieving compliance.

In making a decision whether or not to take enforcement action, and what type of enforcement action is appropriate in the circumstances, relevant considerations are:

- adverse effect, that is, the extent of the risk, the seriousness of the breach and the actual or potential consequences;
- culpability of the dutyholder, that is, not necessarily the consequence of the lack of compliance, but rather how far below acceptable standards the conduct has fallen;
- compliance history and attitude of the dutyholder; and the likelihood of the offence being repeated;
- whether the dutyholder has a licence or permission to undertake any activity;
- impact of enforcement on encouragement or deterrence;
- any mitigating or aggravating circumstances, including the extent of effort a dutyholder has expended in controlling risks;
- whether the risk to health and safety is imminent or immediate; and
- whether the safety issue can be rectified in the presence of an inspector.

An inspector will consider the dutyholders in the workplace and determine if each has discharged his or her duties under the Act. Such dutyholders might include:

- employers, including contractors and labour hire companies;
- employees and other workers;
- officers and/or directors of corporations;
- persons who control or manage workplaces;
- designers of plant, buildings and structures;
- manufacturers of plant and substances;
- suppliers of plant or substances and persons, who install, erect or commission plant.

10. Criteria for investigation

The compliance strategy consists of a graduated approach as illustrated in the "compliance pyramid".⁶ Information, advice and assistance are the preferred elements of interaction with a workplace and the foundation of the compliance pyramid. Compliance strategies may need to escalate if an advisory approach does not achieve the desired outcome, or is otherwise not appropriate given the circumstance. Escalation strategies graduate from inspectors' notices, warnings, suspension or removal of a licence through to prosecution where, for example, a duty holder is demonstrating wilful disregard for health and safety obligations.

The pyramid illustrates the increasing severity of the compliance options at the workplace health and safety authority's disposal, any of which may be utilised in isolation or combination depending on the severity of the matter in question.

Workplace health and safety authorities exercise discretion in deciding whether incidents, cases of ill health, or complaints should be investigated. The importance of maintaining a proportionate response, and particular factors to be taken into account in deciding the level and type of response to be used/taken, is recognised. In order to ensure consistency in responses to similar incidents or breaches, transparent criteria are adopted for escalation to an investigation which can potentially lead to prosecution.

Investigations are undertaken in order to determine:

- compliance with the legislation;
- causes;
- whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- lessons to be learnt and to influence the law and guidance;
- what response is appropriate to an alleged breach of the law.

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. It is neither possible nor necessary to investigate all issues of non-compliance with the law which are uncovered in the course of preventive inspection, or in the investigation of reported events.

The workplace health and safety authority will generally carry out an investigation of a reportable work-related death, unless there are specific reasons for not doing so, in which case those reasons should be recorded, such as when the incident appears not to be work-related or is outside the authority's jurisdiction.

In selecting which complaints or reports of incidents, injury or occupational ill health to investigate and in deciding the level of resources to be used, the workplace health and safety authority will generally take account of the following factors:

- the severity and scale of potential or actual harm;
- the seriousness of any potential breach of the law;
- the dutyholder's compliance history, including such matters as prior convictions and notices issued;
- the enforcement priorities;

⁶ See Appendix A

- the practicality of achieving results;
- the wider relevance of the event, including matters of significant community concern or emerging issues

The workplace health and safety authority, in determining whether or not a matter should be further investigated, will have regard to the following priority areas for investigation:

- work-related fatalities and serious injuries or where there is a risk of such consequences;
- non-compliance with notices or directions;
- offences against inspectors;
- offences against persons exercising OHS responsibilities at the workplace (e.g. health and safety representatives, workplace health and safety officers, union officers or other persons authorised under the legislation);
- discrimination against employees on the basis of their OHS activities;
- failure to notify incidents.

Where an investigation reveals non-compliance the workplace health and safety authority will consider whether or not a prosecution should be commenced, or another sanction applied, or other appropriate action taken.

11. Prosecution

Prosecution in court for an OHS offence is one of several options available to the workplace health and safety authority. Prosecution is a discretionary action. Not every breach of the OHS laws is automatically prosecuted.

Who may be prosecuted?

The OHS legislation in the Commonwealth, States and Territories imposes duties on a number of persons, although their precise statutory definitions may vary⁷, and these duties co-exist and overlap. When determining liability, and whether or not to prosecute, the workplace health and safety authorities will consider all relevant dutyholders and whether they have discharged their legal duties. Those who are alleged to have breached OHS laws may be subject to a range of enforcement measures, including prosecution. When making such a decision the workplace health and safety authority will consider the role, involvement, and circumstances of each dutyholder. Consequently the authority may choose to prosecute some but not all dutyholders.

When and why will a decision to prosecute be made?

The decision on whether to bring a prosecution for a breach of OHS laws is one of the most significant as the effect on those impacted by the decision (the defendant, worker or family of a deceased worker for instance) will be considerable. Workplace health and safety authorities operate within a broader prosecutorial framework as part of the criminal justice system that requires the highest standard of integrity to be applied to prosecutorial decision making.

⁷ See list of dutyholders under heading "Enforcement Criteria"

Each authority adopts and will apply the Director of Public Prosecution (DPP) guidelines specific to that HWSA jurisdiction however the Australian DPPs have agreed upon a common set of principles to be used in determining the question as to whether or not a prosecution should be commenced or, if commenced, should be permitted to proceed. Although in some jurisdictions these criteria are expressed in different language, they do not differ in substance.⁸

In determining whether or not to prosecute, three criteria common to all jurisdictions in the DPP guidelines need to be met. They are as follows:

- The existence of a prima facie case, that is, whether the evidence is sufficient to justify the institution of proceedings.
- There needs to be a reasonable prospect of conviction, that is, an evaluation of how strong is the case likely to be when presented in court. This takes into account such matters as the availability, competence and credibility of witnesses and their likely impression on the court or tribunal that will determine the matter, and the admissibility of any confession or other evidence, and any lines of defence available to the defendant.
- The public interest which may include (but is not limited to) the following considerations:
 - the seriousness or, conversely, the triviality of the alleged offence or whether it is only of a technical nature;
 - any mitigating or aggravating circumstances;
 - the characteristics of the dutyholder – any special infirmities, prior compliance history and background;
 - the age of the alleged offence;
 - the degree of culpability of the alleged offender;
 - whether the prosecution would be perceived as counter-productive, that is, by bringing the law into disrepute;
 - the availability and efficacy of any alternatives to prosecution;
 - the prevalence of the alleged offence and the need for deterrence, both specific and general;
 - whether the alleged offence is of considerable public concern.

Within what timeframe must a prosecution be brought?

Various jurisdictional time limits will apply to prosecutions under the OHS legislation of each workplace health and safety authority.

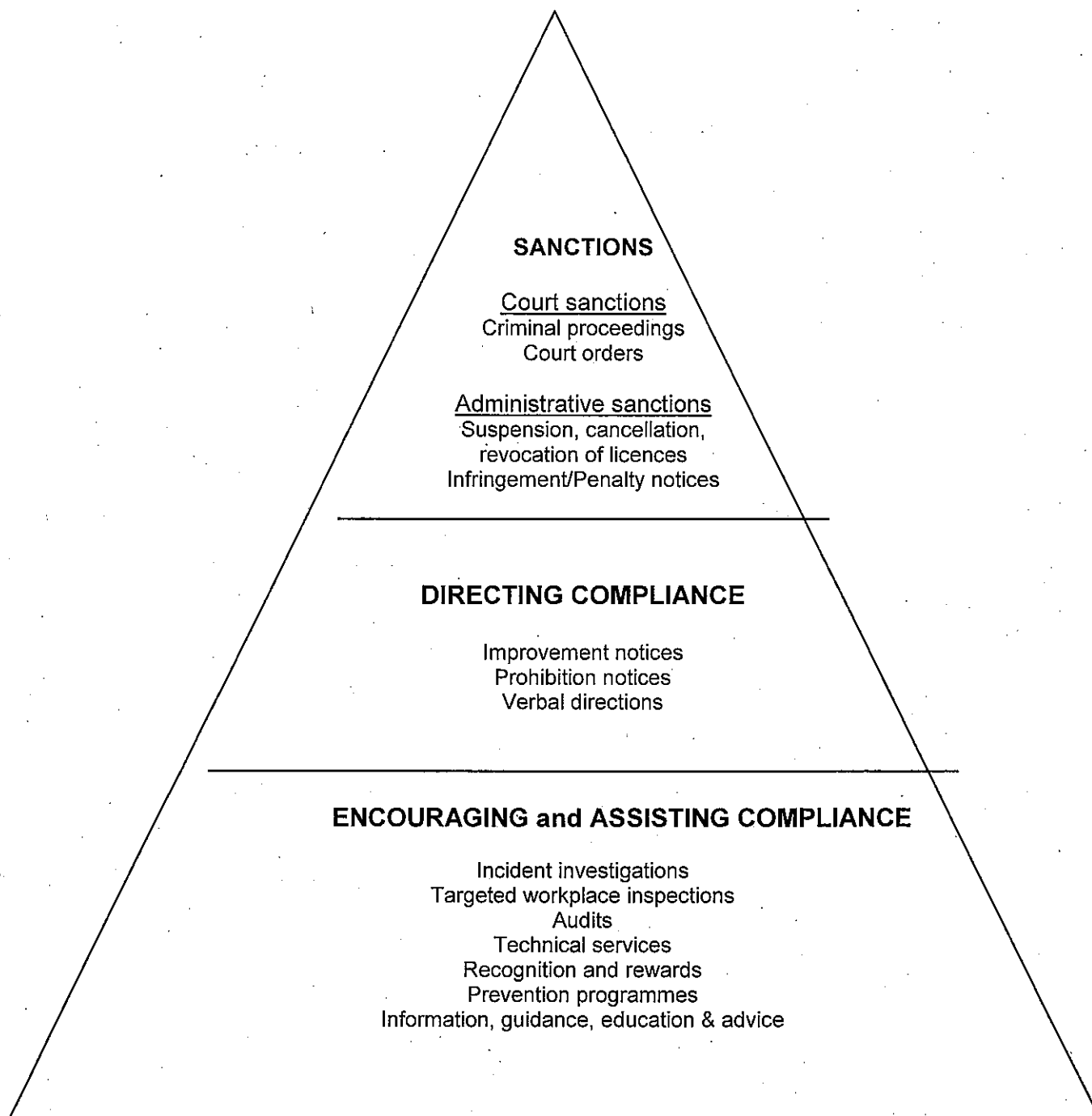
What avenues of appeal are available?

In relation to appeals from prosecutions, the various workplace health and safety authorities will be guided by the principles set out in the applicable legislation and DPP guidelines.

⁸ See "Prosecutorial Guidelines" agreed by the Australian Directors of Public Prosecutions, as first articulated in 30 June 1993.

How will a decision be communicated?

It benefits all parties to have the outcomes of investigations communicated and each jurisdiction has processes to deal with the communication of such outcomes. Similarly it is considered that the publication of prosecution results is an effective tool for maximising the deterrent value of prosecutions and educating dutyholders.

NCEP- Appendix A

NCEP- Appendix B**Australian Workplace Safety Authorities**

ACT WorkCover

Comcare

SafeWork SA

WorkCover NSW

Workplace Health and Safety Queensland

WorkSafe VIC

WorkSafe NT

WorkSafe Western Australia

Workplace Standards Tasmania

NCEP- Appendix C**Schedule of Principal Acts**

Occupational Health and Safety Act 1991 (Cth)

Occupational Health and Safety Act 1989 (ACT)

Occupational Health and Safety Act 2000 (NSW)

Workplace Health and Safety Act 2007 (NT)

Workplace Health and Safety Act 1995 (Qld)

Occupational Health, Safety and Welfare Act 1986 (SA)

Workplace Health and Safety Act 1995 (Tas)

Occupational Health and Safety Act 2004 (Vic)

Occupational Safety and Health Act 1984 (WA)

Signatories

| | | |
|-------------------|-------------|---|
| John Watson | Chair | WorkCover NSW |
| Michele Patterson | HWSA Member | SafeWork SA |
| Steve Kibble | HWSA Member | Comcare and Seacare |
| John Merritt | HWSA Member | WorkSafe VIC |
| Simon Blackwood | HWSA Member | Workplace Health and Safety Queensland |
| Laurene Hull | HWSA Member | WorkSafe NT |
| Nina Lyhne | HWSA Member | WorkSafe Western Australia |
| Roy Ormerod | HWSA Member | Workplace Standards Tasmania |
| Jon Quiggin | HWSA Member | ACT WorkCover |

SECTION D

4. COMPLIANCE - WORKERS' COMPENSATION AND INJURY MANAGEMENT

- 4.1 There are two major pieces of legislation that guide the administration of workers compensation and injury management in New South Wales. These are the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* and the regulations made under these Acts, collectively termed the workers compensation legislation. The workers compensation legislation establishes the WorkCover Scheme. This section outlines the obligations under the WorkCover Scheme and the compliance policy and strategies of WorkCover under the workers compensation legislation.

THE WORKCOVER SCHEME

- 4.2 The main objectives of the WorkCover Scheme are to:
- assist in securing the health, safety and welfare of workers and prevent work-related injuries;
 - in order to assist injured workers and promote their return to work as soon as possible, provide:
 - prompt treatment of injuries,
 - effective and proactive management of injuries, and
 - necessary medical and vocational rehabilitation following injury,
 - provide injured workers and their dependants with income support during incapacity, payment for permanent impairment or death, and payment for reasonable treatment and other related expenses;
 - be fair, affordable, and financially viable,
 - ensure contributions by employers are commensurate with the risks faced, taking into account strategies and performance in injury prevention, injury management, and return to work,
 - deliver the above objectives efficiently and effectively.
- 4.3 The WorkCover Scheme is funded from the premiums paid by employers. Under the Scheme all employers are assigned to a Workcover Industry Classification (WIC) code, based on the claims history of employers in that industry. As an incentive for safe work practices the basic "rate" for an employer may be adjusted according to the employer's claims experience. WorkCover acts on behalf of the Nominal Insurer, which is the legal entity responsible for the performance of the Scheme. The Nominal Insurer contracts Scheme Agents to deliver case management and policy services within the Scheme. WorkCover also regulates and manages the workers

compensation system, including the licensing of self and specialised insurers and the oversight of service providers.

- 4.4 Early return to work is a key element in injury management. Research shows that the earlier a worker returns to work or begins a rehabilitation program, the greater the likelihood of recovery from injury. This in turn reduces the amount of time a worker remains on financial benefits and enhances the viability of the Scheme. The premium structure, penalties for non-compliance and the benefits available to workers are all designed to ensure that an injured worker receives early and effective treatment. Returning the worker to maximum productivity is the shared responsibility of the treating doctor and the employer in co-operation with the worker. The insurer is responsible for overseeing the development of injury management plans.
- 4.5 WorkCover also administers the Uninsured Liability Indemnity Scheme (ULIS). This is also funded from workers' compensation premiums. The scheme ensures that workers who are injured at work, whose employers do not hold a workers' compensation insurance policy, are still entitled to the same assistance as those workers whose employer holds insurance. WorkCover will take action against uninsured employers to recover any monies paid to injured workers from the scheme.
- 4.6 As the financial viability of the Scheme is based on all employers sharing the costs of workplace injury equitably, failure to comply with the legislation, especially to pay workers' compensation premiums, is viewed very seriously.
- 4.7 Non-insurance places an unfair burden on those employers who do comply, as it increases their premiums and places them at a competitive disadvantage.

OBLIGATIONS UNDER THE WORKCOVER SCHEME

- 4.8 The workers compensation legislation imposes general obligations on employers, employees and others.
- 4.9 Some key obligations for employers are to:
 - hold a valid workers' compensation insurance policy;
 - comply with the obligations imposed by the insurer's injury management program;
 - keep a record of wages paid for at least the last seven years;

- notify the insurer within 48 hours after becoming aware that a worker has been significantly injured and is likely to be off work for seven days or more;
- not dismiss a person wholly or mainly because of a work-related injury within six months after the worker first became unfit for work;
- notify the insurer if unable to provide suitable employment (either at all or immediately) when requested by a partially incapacitated worker;
- have a Register of Injuries book in which workers should write work related injury details.

4.10 Workers must:

- notify their employer of an injury as soon as possible;
- not provide false or misleading statements in a notice of injury to an employer, or in a claim for workers' compensation payments, or in medical certificates or other documents;
- comply with the injury management program and plan;
- return to work as soon as possible; and
- notify the payer of workers' compensation payments of any changes in employment that affect the worker's earnings.

4.11 The workers compensation legislation should be consulted for full details of all obligations. As from 1 July 2003, there are obligations on principal contractors to ensure that subcontractors who engage employees have in place workers compensation policies.

COMPLIANCE STRATEGIES

4.12 WorkCover provides a range of information and advice through the WorkCover Assistance Service. Workers Compensation insurers also provide advice on managing workplace safety risks, as well as insurance requirements, managing compensation claims and injury management issues.

4.13 WorkCover uses information derived from a variety of sources including from its inspectors and authorised officers and from data and research to identify areas of possible non-compliance with the workers compensation legislation.

4.14 As with OHS, WorkCover uses a range of compliance measures depending on the particular characteristics of the alleged non-compliance. For some breaches of the workers compensation legislation, an inspector may provide advice on how to comply with the legislation or may direct an employer to rectify a problem. Where the inspector is of the opinion that it is not sufficient merely to provide advice or direction about workers compensation obligations, a penalty notice will be issued. More serious offences may warrant prosecution before either the Chief Industrial

Magistrate or the Local Court. From the commencement of the Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009 all prosecutions for breaches of the Workers Compensation Act 1987 and the Workplace Injury Management and Workers Compensation Act 1998 will be commenced in the Industrial Court of New South Wales.

- 4.15 WorkCover has a discretion in determining the appropriate method of achieving compliance. Decision-making in terms of compliance is, however, structured and involves consideration of the factors outlined in this policy. The decision to take court action is often not the compliance action of first choice-rather it is made after a careful consideration of a range of factors, including whether advice or some other form of compliance option is more appropriate.

COMPLIANCE OPTIONS

ORDERS: S 174 WORKERS COMPENSATION ACT 1987

- 4.16 Section 174 of the *Workers Compensation Act 1987* provides inspectors and authorised officers with powers to issue orders to employers in relation to the supply of information and the keeping of records. Orders under this section are usually issued as part of an investigation into compliance with obligations under the workers compensation legislation.

PENALTY NOTICES (ON-THE-SPOT FINES): S 246, WORKPLACE INJURY MANAGEMENT AND WORKERS COMPENSATION ACT 1998

- 4.17 Penalty notices are used as an effective and efficient method of dealing with less serious breaches of the legislation. If the fine attached to the penalty notice is paid then no further action will be taken by WorkCover in relation to that offence. The offences in respect of which notices can be issued and the amounts that can be imposed by way of fine are set out in Schedule 5 to the *Workers Compensation Regulation 2003*. A person served with a penalty notice may elect not to pay the penalty and to have the matter dealt with by the court. The procedure for making an election is set out on the on the back of the penalty notice.
- 4.18 The factors a WorkCover inspector considers when determining whether to issue a penalty notice include:
- whether the breach is a minor one;
 - in the case of a failure to insure, the number of employees and the length of time the employer was uninsured;
 - whether the breach can be remedied quickly;
 - whether the issuing of a penalty notice is likely to have the desired deterrent effect; and

- if the breach is a one-off situation or part of an ongoing pattern of noncompliance.

DEBT RECOVERY AND REIMBURSEMENT

- 4.19 Where there has been a failure to insure under the workers compensation legislation, WorkCover may take action to recover as a debt up to double the amount of the avoided premium. WorkCover may also seek reimbursement of any compensation paid to a worker under the Uninsured Liability and Indemnity Scheme. These actions are in addition to the issue of a penalty notice or taking action to prosecute an offence.

PROSECUTION

- 4.20 The fact that a penalty notice can be issued for an offence does not mean that only this action can be taken. WorkCover has discretion to undertake a prosecution for an offence and it has discretion to waive prosecution in circumstances where the offender pays a sum equal to double the amount of avoided premium. Where a penalty notice is considered under the circumstances to be inappropriate, prosecution action may be initiated.
- 4.21 Specific offences for which WorkCover may prosecute include non-insurance, under-insurance and fraud.

NON-INSURANCE

- 4.22 Section 155 of the *Workers Compensation Act 1987* requires all NSW employers to obtain and maintain workers compensation insurance. Employers who fail to obtain a workers compensation policy place an unfair burden on those employers who do comply, as this increases their premiums and places them at a competitive disadvantage.

UNDER-INSURANCE

- 4.23 Under-insurance constitutes the primary financial risk to the WorkCover Scheme. Under-insurance may involve direct under-declaration of wages, autorenewing a policy in order to reduce premium, provision of misleading information to obtain an incorrect WIC code and therefore "rate" or avoidance of claims experience to deliberately reduce premium.
- 4.24 The level of non-compliance varies across industry sectors. WorkCover pursues a number of different compliance strategies to ensure equity is maintained among employers in bearing the Scheme's financial burden and meeting obligations through the premiums paid.

FRAUD

- 4.25 There are various types of fraud, means of committing fraud and parties that commit fraud within the Workers Compensation Scheme. In general, fraud is the attainment of a benefit or advantage by means of deception. Specifically, it is when employers, service providers, employees or others receive payments from the Scheme due to deceptive means. WorkCover views fraud offences very seriously and will actively pursue these cases.
- 4.26 Making a false or misleading statement while claiming for workers compensation is a serious offence. A false or misleading statement can include making a claim for workers compensation where there was no injury, or a claim falsifying the degree of injury suffered. The WorkCover fraud investigation unit investigates allegations of fraud and prosecutes in accordance with this policy.
- 4.27 More serious breaches of fraud are referred to the Director of Public Prosecutions for prosecution under the *Crimes Act 1900*.

SECTION E

5. PROSECUTION GUIDELINES

THE DECISION TO PROSECUTE

- 5.1 As indicated in earlier sections of this document, prosecution in a court for an offence under the OHS legislation or the workers compensation legislation is one of several options available to WorkCover.
- 5.2 Prosecution is a discretionary action. Not every breach of the laws passed by Parliament is automatically prosecuted.
- 5.3 The dominant factor in the exercise of the discretion to prosecute or not to prosecute is the public interest.
- 5.4 WorkCover, by commencing a prosecution, aims to change the behaviour of the offender and deter future offenders. Prosecution in appropriate circumstances sends a message to the community that failures of legislative responsibilities will be enforced through the Courts. The decision to prosecute is made on the basis of the applicable law at the time and public interest considerations.
- 5.5 WorkCover is committed to a policy of prosecuting whenever significant breaches of OHS legislation take place. Prosecution of significant cases include cases involving fatalities and incidents of serious injury where potential risks to health and safety are high. Breaches of workers compensation legislation involving fraudulent conduct, whether by an employer or worker or service provider, and non-insurance and under-insurance by employers, will also be prosecuted.

FACTORS TAKEN INTO ACCOUNT

- 5.6 The general public interest is the paramount concern to be taken into account in the decision to prosecute. As provided for in the Prosecution Guidelines of the Office of the Director of Public (the ODPP Guidelines), the question of whether or not the public interest requires that a matter be prosecuted is resolved by determining:
 - whether or not the admissible evidence available is capable of establishing each element of the offence, i.e. a prima facie case;
 - whether or not it can be said that there is no reasonable prospect of conviction; and if not
 - whether or not discretionary factors nevertheless dictate that the matter should not proceed in the public interest.

PRIMA FACIE CASE

- 5.7 Before any prosecution is considered, there must be enough evidence to establish a prima facie case.

REASONABLE PROSPECT OF CONVICTION

- 5.8 As noted by in the ODPP Guidelines, this consideration requires an exercise of judgment which will depend in part upon an evaluation of the weight of the available evidence and the persuasive strength of the prosecution case in light of the anticipated course of proceedings, including the circumstances in which they will take place.
- 5.9 A relevant consideration in the evaluation of the strength of a prosecution case will be the existence or otherwise of evidence to support any defence that may be raised by the defendant. This includes considerations of, for example, whether compliance with the relevant provisions was "reasonably practicable" or due to causes over which the person had no control and against which it was impracticable for the person to make provision.
- 5.10 In relation to section 32A offences under the Occupational Health and Safety Act 2000, the prosecution will consider whether there is evidence to establish the offence. An offence under this section involves a person:
- Whose conduct causes the death of another person at any place of work;
 - Owes a duty under Part 2 with respect to the health and safety of that person when engaging in that conduct; and
 - Who is reckless to the danger of death or serious injury to any person to whom that duty is owed that arises from that conduct.
- 5.11 A person's conduct causes death if it substantially contributes to the death.
- 5.12 When considering whether to prosecute a section 32A offence, the prosecution will also consider the existence or otherwise of any defences available to the defendant.

PUBLIC INTEREST

- 5.13 In considering the public interest, the main criteria for consideration will be similar to that adopted by the ODPP Guidelines and will include:
- a) the seriousness or triviality of the offence and/or whether the breach is of a technical nature only; WorkCover tends to prosecute when a death has occurred, when there has been a serious injury, or when there has been a risk of fatal or serious injury;

- b) any mitigating or aggravating circumstances;
 - c) the length of time since the alleged offence;
 - d) the degree of culpability of the alleged offender in relation to the offence;
 - e) whether the prosecution would be perceived as counterproductive, for example, by bringing the law into disrepute;
 - f) the prevalence of the alleged offence and the need for deterrence both specific and general;
 - g) any prior breaches of or convictions under the OHS or workers compensation insurance laws;
 - h) whether the alleged offence is of considerable public concern;
 - i) any precedent which may be set by not instituting proceedings;
 - j) the age, physical or mental health or special infirmity of the alleged offenders or witnesses;
 - k) the length and expense of a Court hearing;
 - l) whether proceedings are to be instituted against others arising out of the same incident;
 - m) community expectations that proceedings will be instituted;
 - n) the availability and efficacy of any alternatives to prosecution.
- 5.14 The applicability of and weight to be given to these and other factors will vary and depend on the particular circumstances of each case.
- 5.15 The resources available to WorkCover to conduct prosecutions are finite. They will therefore not be expended in pursuing inappropriate cases.

IRRELEVANT CONSIDERATIONS

- 5.16 WorkCover adopts the principle that a prosecution must not be brought for improper purposes. A decision whether or not to prosecute will not be influenced by:
- any elements of discrimination against the person, e.g., race, nationality, political associations;
 - personal empathy or antipathy towards the offender; or
 - the political or other affiliations of those responsible for the prosecution decision.
- 5.17 WorkCover prosecution policy involves giving priority to prosecuting offences relevant to:
- a) target industries and or hazards;
 - b) injury types and workplace fatalities;
 - c) alleged failure to comply with a prohibition notice;
 - d) offences against inspectors or authorised officers which prevent them from exercising their powers;

- e) offences relating to impersonating an inspector;
- f) employer, worker or service provider fraud;
- g) non-insurance or under insurance by employers.

5.18 When considering the exercise of prosecutorial discretion in prosecutions under the workers compensation legislation, WorkCover considers:

- how long the person has been uninsured;
- the particular circumstances of the breach;
- the conduct of the person since the offence. For example, whether any liability to the ULIS has been repaid, or how soon after the breach was detected was insurance taken out;
- the efficacy of such prosecution, for example whether the offender is an invalid pensioner, a liquidated company where there are no assets or where the offender is a bankrupt;
- the need to actively deter employer, worker or service provider fraud of the workers compensation scheme;
- the need to ensure that employers meet their workers compensation premium responsibilities; and
- any other factor peculiar to the circumstances.

WHO MAY PROSECUTE

5.19 For general offences under the *Occupational Health and Safety Act 2000* and the *Occupational Health and Safety Regulation 2001*, proceedings may only be instituted:

- (a) with the written consent of the Minister, or
- (b) with the written consent of an officer prescribed by the regulations, or
- (c) by an inspector appointed under Division 1 of Part 5 of the Act, or
- (d) by the secretary of an industrial organisation of employees any member or members of which are concerned in the matter to which the proceedings relate.

(See section 106 of the OHS Act 2000)

In relation to a workplace death offence under section 32A of the *Occupational Health and Safety Act 2000* proceedings may only be instituted:

- (a) with the written consent of the Minister; or
- (b) by an inspector.

5.20 For offences under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* proceedings are commenced in accordance with the provision of section 245 of the 1998 Act.

SELECTING DEFENDANTS

GENERAL PRINCIPLES

- 5.21 Employers, including corporations and the managers and directors of corporations, persons in control of premises/plant/substances made available to non-employees for work, manufacturers, suppliers and designers of plant/substances and employees can be defendants. This may mean that a number of people commit an offence arising out of the same incident.
- 5.22 In addition to the factors set out at 5.13 above, further general considerations that may be taken into account in choosing the appropriate defendant in a particular case are:
- a) who is primarily responsible for the alleged offence, that is, who was primarily responsible for the acts or omissions giving rise to the alleged offence or the material circumstances leading to the alleged offence or who formed any relevant intention;
 - b) in relation to (a) above, what was the culpability of the proposed defendant;
 - c) the effectiveness of any Court order that might be made against the proposed defendant.

CORPORATE AND DIRECTOR/MANAGER LIABILITY

- 5.23 WorkCover's policy is to prosecute duty holders, including corporations, directors and those concerned in the management of those corporations, for breaches of the OHS and workers compensation legislation where it is in the public interest to do so. In considering whether such prosecutions are in the public interest, regard will be had to the factors set out in paragraph 5.6 above. In relation to decisions concerning prosecutions of directors and persons concerned in the management of corporations, particular regard will be paid to the steps taken by such persons to ensure compliance by the corporation with the OHS Act 2000.

Directors and persons concerned in the management must apply all due diligence to ensure occupational health and safety. There are a number of core concepts that underpin the application of due diligence by a director and a person concerned in the management in respect of occupational health and safety. These include ensuring that the corporation has safe work systems to address risks to workplace safety and ensuring compliance with and regular review of the safe work systems.

PUBLIC AUTHORITIES

- 5.24 The legislation administered by WorkCover binds the Crown and Government authorities. The law applies with equal force to both the private and public sectors. It is generally in the OHS area that a public authority is likely to be prosecuted by WorkCover.
- 5.25 WorkCover recognises that the issue of deciding in what circumstances public authorities should be prosecuted for breaches of the OHS legislation is a specific instance of determining whether prosecution is in the public interest and acknowledges that there are two competing public interests in relation to the prosecution of public authorities. These are:
- (a) the public has an interest in Government authorities abiding by the law; and
 - (b) it is the taxpayer that bears the cost of any prosecution of public authorities. Such expenditure needs to be justified as being in the public interest.
- 5.26 Public authorities are usually under the control and direction of a Minister who can direct compliance with the OHS legislation. However, this position does not always achieve the requisite compliance. In the interests of general deterrence there will be instances where it is important that compliance not only be achieved but be seen to be achieved.
- 5.27 In prosecuting Government authorities however, the current Premier's Memorandum No. 97-26: *"Guidelines for litigation involving or between Government departments and authorities"*, applies to the parties to proceedings. This procedure is designed to minimise the factual issues between the parties and provide an opportunity for open and frank discussion. The consultation envisaged by the guidelines operates as an adjunct and not necessarily an alternative to prosecution. This level of consultation can be applied to the private sector.

CHARGES

GENERAL PRINCIPLE

- 5.28 Once a decision is made to deal with an incident by way of prosecution, it is in the public interest for that prosecution to proceed. It is WorkCover's responsibility to select charges where there is a reasonable prospect of conviction. The charges must clearly reflect the seriousness of the alleged criminal conduct. The charge laid and any statement of facts must reflect adequately the nature and extent of the conduct disclosed by the evidence with the aim of providing a basis for the Court to impose an appropriate penalty. Charges under the Occupational Health and Safety legislation are

prepared taking into account the decision of the High Court in *Kirk v Industrial Relations Commission; Kirk Group Holdings Pty Limited v WorkCover Authority of New South Wales (Inspector Childs)* [2010] HCA 1.

SIMILAR CHARGES FOR THE SAME OFFENCE

- 5.29 WorkCover has a duty to refine its case to avoid laying either duplicitous or multiple charges. There will be instances where the same act will be prohibited under two separate pieces of legislation and involve an offence under each. Where there is another prosecuting authority involved as well as WorkCover, WorkCover will liaise with the other organisation to ensure the most appropriate charge(s) are laid.

DEATH AT WORK

- 5.30 Where there has been a breach of the law leading to a work-related death, the Police and WorkCover need to consider whether the circumstances of the case might justify a charge of manslaughter under the *Crimes Act 1900* or a charge under section 32A of the *Occupational Health and Safety Act 2000*. In accordance with the *Protocol For The Investigation And Provision Of Advice In Relation To Workplace Deaths And Incidents Of Serious Injury And Prosecutions Arising Therefrom*, the Police and WorkCover have agreed on certain investigative principles the aims of which are to maximise the expertise and resources of each agency to ensure that the most appropriate charges are laid in the circumstances. The decision as to which agency will lead an investigation is to be made at the commencement of the process and where the facts support a charge of manslaughter the Police may seek the opinion of the ODPP. Both agencies on completion of their respective investigations will provide the Coroner with a brief of evidence to assist the Coroner in his or her deliberation of whether an inquest is to held. If the ODPP decide not to pursue a manslaughter case, WorkCover may still bring a prosecution under the OHS legislation.

CHARGE –BARGAINING

- 5.31 Charge-bargaining involves negotiations between the defence and the prosecution in relation to the charges which will proceed to hearing with a view to the defence entering a plea of guilty to fewer than all the charges initially laid or to a lesser charge in return for the prosecution withdrawing the remaining charges. However, if appropriate charges are laid initially there is little scope for charge-bargaining and hence there will be only limited circumstances where bargaining will be considered.
- 5.32 A charge-bargaining proposal will not be considered by WorkCover unless:

- (a) the remaining charges adequately reflect the nature of the criminal conduct of the defendant and the plea provides adequate scope for sentencing; and/or
- (b) the evidence available to support the prosecution case is weak in any material respect; and/or
- (c) the saving of cost and time weighed against the likely outcome of the matter if it proceeded to trial is substantial.

MODE OF TRIAL

- 5.33 All trials are conducted summarily. Currently prosecutions for workplace fatalities and incidents of serious injury under the occupational health & safety legislation are instituted in the Industrial Court of New South Wales and in all other matters before the Chief Industrial Magistrate's Court and Local Courts.
- 5.34 In relation to the workplace death offence under section 32A of the *Occupational Health and Safety Act 2000*, proceedings must be instituted in the Industrial Court.
- 5.35 Prosecutions for breaches of workers compensation legislation will generally be instituted before the Chief Industrial Magistrate's Court and Local Courts. Where an investigation or review of a workers' compensation prosecution matter reveals a breach of the provisions of the *Crimes Act 1900*, the matter may be referred to the ODPP for appropriate action. It is then a matter for the ODPP as to whether the prosecution is brought before the Local Court or District Court.
- 5.36 Unless there are good reasons to the contrary, all charges arising out of the same incident will normally be instituted in the same jurisdiction (and preferably at the same time) so the Court has the option to hear them together.

From the commencement of the *Industrial Relations Amendment (Jurisdiction of Industrial Relations Commission) Act 2009* all prosecutions for breaches of the *Occupational Health and Safety Act 2000*, the *Occupational Health and Safety Regulation 2001*, the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* will be commenced in the Industrial Court of New South Wales.

SENTENCING OPTIONS

- 5.37 Where a Court finds that an OHS offence is proved, there are a number of sentencing options available. These include a monetary fine, a term of imprisonment, and a range of orders available under the *Occupational*

Health and Safety Act 2000, including orders to publicise or notify the offence (section 115), and orders to undertake OHS projects (section 116).

SENTENCING

5.38 In New South Wales, the purposes of sentencing and a list of factors relevant to sentence are set out in sections 3A and 21A of the *Crimes (Sentencing Procedure) Act 1999*. Section 3A provides that the purposes for which a court may impose a sentence on an offender are as follows:

- to ensure that the offender is adequately punished for the offence,
- to prevent crime by deterring the offender and other persons from committing similar offences,
- to protect the community from the offender,
- to promote the rehabilitation of the offender,
- to make the offender accountable for his or her actions,
- to denounce the conduct of the offender,
- to recognise the harm done to the victim of the crime and the community.

5.39 Section 21A of the *Crimes (Sentencing Procedure) Act* states that in determining the appropriate sentence for an offence, the court is to take into account the following matters:

- the aggravating factors referred to in section 21A(2) that are relevant and known to the court,
- the mitigating factors referred to in section 21A(3) that are relevant and known to the court,
- any other objective or subjective factor that affects the relative seriousness of the offence.

Further details are set out in sections 21A(2) – (6).

5.40 The primary factor for consideration in relation to determining the appropriate sentence is the objective seriousness of the offence. In prosecutions under the OHS legislation this has been expressed as “the nature and quality of the offence”. (*Lawrenson Diecasting (1999) 90 IR 464*).

5.41 A particular offence is assessed in terms of its relative seriousness in relation to the worst offence for which the maximum penalty is provided (*Kirby P Camilleri's Stock Feeds Pty Ltd v EPA (1993) 32 NSWLR 683 at 698-699*). A breach that was unlikely to lead to serious consequences might be assessed on a different basis to a breach where there was every prospect of serious consequences. (*Inspector Hannah v Wonar Pty Limited* unreported, Fisher CJ, Glynn and Cullen JJ, Matter No. 1214 of 1990).

- 5.42 It is also appropriate to have regard to a plea of guilty and when it is offered, cooperation of the defendant with WorkCover, expressed contrition by the defendant and measures introduced by the defendant to overcome deficiencies in safety which the incident has highlighted (*WorkCover Authority of New South Wales (Inspector Petar Ankucic) v McDonald's Australia Limited and Anor* (2000) 95 IR 383)). Other relevant factors are good industrial citizenship and the absence of prior convictions (*Byrne Civil Engineering Constructions Pty Ltd* (2001) 109 IR 347), and the propensity for the offender to reoffend. Section 21A of the *Crimes (Sentencing Procedure) Act*, referred to above, codifies many of the sentencing principles to be applied in assessing penalty.

SENTENCING – ROLE OF THE PROSECUTOR

- 5.43 The role of the prosecutor in the sentencing process is set out in Rules 62 – 72 of the New South Wales Barristers Rules, referred to in the Prosecution Guidelines of the Director of Public Prosecutions for New South Wales. Rule 71 of the Barristers Rules states that a prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:

- must correct any error made by the opponent in address on sentence;
- must inform the court of any relevant authority or legislation bearing on the appropriate sentence;
- must assist the court to avoid appealable error on the issue of sentence;
- may submit that a custodial or non-custodial sentence is appropriate;
- and
- may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority.

- 5.44 As part of its duty to assist the Court and represent the public interest, WorkCover will generally make submissions on sentencing if it is invited to do so. In making such submissions, WorkCover takes into account the relevant sentencing principles, and its submissions on sentence cannot depart from such relevant sentencing principles, but where appropriate may refer to the offence as being at the upper or lower end of the range of seriousness. In this way WorkCover assists the Court in its determination of the appropriate sentence.

ROLE OF CO-ORDINATOR- COUNSELLING AND LIAISON

- 5.45 The role of the Co-ordinator is to provide support, information and referral to family members when someone dies in a workplace incident or suffers

a serious injury in the workplace. People witnessing fatalities or serious incidents may receive counselling through the Co-ordinator in the initial stages following an incident and also later, if they are required to attend Court as witnesses for WorkCover. As noted below, the Co-ordinator is also able to assist families or injured people prepare Victim Impact Statements. The Co-ordinator also provides court support for families attending matters at the Industrial Court, and can arrange for support to be provided to families attending coronial inquests.

VICTIM IMPACT STATEMENTS

WHAT IS A VICTIM?

5.46 A victim can be either a primary victim or a family victim.

PRIMARY VICTIM

5.47 A primary victim is:

- a person against whom the offence was committed, or
- a person who was a witness to the act of actual or threatened violence, the death or the infliction of the physical bodily harm concerned.

In order to be a primary victim, a person must have suffered personal harm as a direct result of an offence.

Personal harm can include actual physical bodily harm, mental illness or nervous shock.

FAMILY VICTIM

5.48 Where a primary victim has died as a direct result of an offence, a family victim is a person who was, at the time when the offence was committed, a member of the primary victim's immediate family.

A person can be a family victim whether or not the person has suffered personal harm as a direct result of the offence. The following are considered to be members of the primary victim's immediate family:

- the victim's spouse
- the victim's de facto spouse or same sex-partner if that person has cohabited with the victim for at least 2 years
- a person to whom the victim was engaged to be married
- a parent, grandparent, guardian or step-parent of the victim
- a child or step-child of the victim or a child for whom the victim is the guardian
- a brother, sister, step-brother or half brother or step-sister or half sister of the victim.

WHAT IS A VICTIM IMPACT STATEMENT?

- 5.49 A victim impact statement is a written statement prepared by a victim. In the case of a primary victim, a victim impact statement contains information about any personal harm suffered by the victim as a direct result of the offence. Personal harm includes actual physical bodily harm, mental illness or nervous shock suffered by the primary victim.

In the case of a family victim, a victim impact statement contains information about the impact of the death of the primary victim on the members of the immediate family of the primary victim.

WHEN CAN A VICTIM IMPACT STATEMENT BE GIVEN ABOUT AN OCCUPATIONAL HEALTH AND SAFETY OFFENCE

- 5.50 The *Crimes (Sentencing Procedure) Act 1999* allows a victim impact statement to be received and considered in the Industrial Court in relation to a general duty offence (Division 1 of Part 2) of the *Occupational Health and Safety Act 2000* only where the offence results in:

- the death of any person, or
- actual physical bodily harm to any person.

Victim impact statements cannot be tendered in relation to a general duty offence where the offence results in non-physical harm, such as mental illness, nervous shock, post-traumatic stress syndrome etc unless bodily harm is also present.

Division 1 contains the duties relating to health, safety and welfare at workplaces on employers, self-employed persons, controllers of work premises, plant or substances and on designers, manufacturers and suppliers of plant and substances for use at work.

A victim impact statement may also be received and considered in the Local Court in relation to an offence that involves the death of any person.

WHO CAN MAKE A VICTIM IMPACT STATEMENT?

- 5.51 The following people can make a victim impact statement:

1. A primary victim.
2. A family victim.

A VICTIM IMPACT STATEMENT IS VOLUNTARY

- 5.52 A victim does not have to make a statement if they do not want to – the decision is his or hers. No one may make a statement on behalf of a victim

if the victim objects to the statement being made. If the primary victim is incapable of objecting to the statement, a member of the primary victim's immediate family or other representative may object to a victim impact statement about the personal harm suffered by the victim.

The court cannot infer that because there is no victim impact statement that there was little or no impact on a victim.

A VICTIM IMPACT STATEMENT CAN ONLY RELATE TO THE OFFENCE(S) FOR WHICH THE OFFENDER HAS BEEN CONVICTED

- 5.53 The victim impact statement describes the direct effects of the offence on the victim. The court will only consider the effect of offences for which the offender is convicted. If the victim statement refers to other offences for which the offender was not convicted by the court, those parts cannot be admitted into evidence. It is best to speak to WorkCover before preparing the statement if it is unclear as to the offences for which the offender was convicted.

WHAT INFORMATION SHOULD BE CONTAINED IN A VICTIM IMPACT STATEMENT?

- 5.54 There must be accurate detail about any personal harm suffered – that is any physical injury, short or long term and any psychological/emotional harm, short or long term. If the victim is preparing his or her own statement, he or she may attach any relevant medical reports that support the statement.

The defence is entitled to cross-examine the victim or the author of the report about the contents of the statement. This may happen because the offender does not agree with parts of the statement.

The victim impact statement must not contain anything that is offensive, threatening, intimidating or harassing towards the offender. The victim impact statement is about the impact on the victim. It gives the victim an opportunity to participate in the justice process by fully informing the court about the effects of the offence upon the victim.

PROFESSIONAL REPORTS

- 5.55 In some circumstances the victim may attach a professional report such as a medico-legal report or a social work/psychological assessment. The emphasis of this report must be on the impact of the offence and the resultant personal harm on the victim.

WHO CAN PREPARE A VICTIM IMPACT STATEMENT?

- 5.56 A victim impact statement may be prepared by:
1. Any qualified person nominated by the victim or their representative; or nominated by the prosecutor in the proceedings to which the statement relates.

A qualified person is either:

- a. A counsellor who is authorised to provide approved counselling services under section 21A of the *Victims Support and Rehabilitation Act 1996*, or
 - b. Any other person who is qualified by training, study or experience to provide the particulars required for inclusion in a victim impact statement.
2. The victim.
 3. A victim's representative.

ROLE OF WORKCOVER

- 5.57 WorkCover's solicitor in the matter will write to relevant parties and advise when a victim impact statement is available.
- 5.58 Where a victim or their representative requests WorkCover assistance in preparing a victim impact statement, assistance will be provided by the WorkCover Co-ordinator, Counselling and Liaison.

REPRESENTATIVES OF THE PRIMARY VICTIM

- 5.59 Where a primary victim is incapable of providing information for a victim impact statement, a member of the primary victim's immediate family, friend or a qualified person e.g., counsellor, psychologist, social worker, medical specialist, may act on behalf of the victim.

Similarly, a member of the primary victim's immediate family or other representative may object to a victim impact statement about the personal harm suffered by the victim if the primary victim is incapable of objecting to the statement.

WHEN SHOULD A VICTIM IMPACT STATEMENT BE PREPARED?

- 5.60 A court may receive and consider a victim impact statement at any time after it convicts but before it sentences an offender. In practice, as convictions are generally not recorded until the sentencing judge publishes his or her reasons, it may be advisable to prepare a victim impact statement after the offender has entered a plea of guilty but prior to the sentencing hearing.

WorkCover will liaise with a victim to advise and assist if necessary with the preparation of a victim impact statement.

WHEN MAY A VICTIM IMPACT STATEMENT BE RECEIVED AND CONSIDERED BY A COURT?

- 5.61 If the court considers it appropriate to do so, a court may receive and consider a victim impact statement at any time after a person has been convicted, but before the person is sentenced.

Only the prosecutor in the proceedings may actually tender the victim impact statement to the court.

If the primary victim has died as a direct result of the offence, the court must receive a victim impact statement given by a family victim and acknowledge its receipt. A court may make any comment on the statement that the court considers appropriate.

However, the court must not consider a victim impact statement unless it has been given by or on behalf of the victim to whom it relates, or by or on behalf of the prosecutor.

Also, the court must not consider a victim impact statement given by a family victim in connection with the determination of punishment for the offence, unless it considers that it is appropriate to do so.

AMENDING A VICTIM IMPACT STATEMENT

- 5.62 A victim impact statement can be amended by WorkCover's prosecutor in consultation with the person who wrote the statement before it is handed up to the court.

ATTENDANCE AT COURT

- 5.63 WorkCover's prosecutor will give the victim impact statement to the court and will inform the victim if he or she is required at the court. If the victim is not required to attend by the court, the victim may still attend if she or he wishes.

READING OUT A VICTIM IMPACT STATEMENT IN COURT

- 5.64 If a victim impact statement has been given to a court, the victim or a member of the immediate family of the victim, or other representative of the victim, is entitled to read out the whole or any part of the statement to the court.

The statement can be read out when the court decides it is appropriate. This will be at some point after the offender has been convicted but before the offender is sentenced.

WHO CAN SEE THE VICTIM IMPACT STATEMENT?

- 5.65 When a victim impact statement is received by the court, the court may make the statement available to the prosecutor, the offender or to any other person as it considers appropriate. If the court gives the offender access to the victim impact statement, it must do so on the basis that the offender will not keep copies of the statement.

FORMAL REQUIREMENTS FOR A VICTIM IMPACT STATEMENT

- 5.66 The victim impact statement must comply with the requirements as to format and content set out in the Crimes (Sentencing Procedure) Regulation 2005.
- 5.67 A court may only receive or consider a victim impact statement if it complies with the following requirements:
- is in writing
 - identifies the victim or victims.
 - includes the full name of the person who prepared the statement and is signed and dated by that person.
 - does not contain anything that is offensive, threatening, intimidating or harassing.
 - is legible,
 - is on A4 size paper
 - is no longer than 20 pages in length (including medical reports or other annexures), except with the leave (or consent) of the court.

A victim impact statement may be either typed or hand-written.

If the statement has been prepared by a person who is not a victim or a victim's representative, the victim impact statement must state that the victim does not object to the statement being given to the court. The victim, or the victim's representative, must sign the statement to verify that they do not object.

IF THE VICTIM IMPACT STATEMENT CONCERNS A FAMILY VICTIM –

- 5.68 The victim impact statement must identify the primary victim and state the nature and duration of the relationship between the primary victim and the family victim. However, it is not necessary to state the duration of the relationship between the primary and family victim if the family victim is a relative by blood or marriage.

IF A VICTIM'S REPRESENTATIVE ACTS ON BEHALF OF A PRIMARY VICTIM TO PROVIDE INFORMATION FOR A VICTIM IMPACT STATEMENT –

- 5.69 The victim impact statement must indicate the name of the victim's representative and the nature and duration of the relationship between the primary victim and the victim's representative. However, it is not necessary to state the duration of the relationship between the primary victim and their representative if the representative is a relative by blood or marriage.

Please note, only one victim impact statement can be given in respect of each victim.

SOME POINTS TO NOTE

- 5.70 Victim impact statements are tendered by WorkCover's prosecutor and become exhibits in the case. It is possible for the person who makes the statement to be cross-examined.

A copy of the victim impact statement must be supplied by the prosecutor to the offender.

It is not possible for a victim impact statement to be treated confidentially or to prevent its publication.

APPEALS

- 5.71 WorkCover may appeal a decision of the Industrial Court constituted by a single member, or the Chief Industrial Magistrate or other Magistrate, to the Full Bench of the Industrial Court. In deciding whether to appeal a sentence/conviction, WorkCover will be guided by the principles set out in the ODPP Guidelines. The key factors to be taken into account are:

- (a) appeals should only be brought to establish and maintain adequate standards of punishment for offences under the OHS legislation or to correct sentences that are so disproportionate to the seriousness of the offence as to lead to a loss of confidence in the administration of criminal justice; and

- (b) appellate courts will intervene only where it is clear that the sentencer has made a material error of fact or law or has imposed a sentence that is manifestly inadequate.

5.72 In general, an appeal will only be instituted where it is considered likely to succeed. Any such appeal should be brought promptly.

APPEAL RIGHTS AGAINST CONVICTION AND SENTENCE FOR SECTION 32A OFFENCES

- 5.73 A person convicted of an offence under s32A of the *Occupational Health and Safety Act 2000* and sentenced to a term of imprisonment may appeal both the conviction and the sentence to the Court of Criminal Appeal. This right of appeal applies after the person has exhausted all appeal rights in the Industrial Court.

CONCLUSION

These Guidelines do not attempt to cover all questions that can arise in the prosecution process for breaches of the legislation administered by WorkCover. They address those issues which WorkCover considers are of immediate concern and in respect of which clarification is desirable. These Guidelines will be reviewed regularly, and any changes will be made public.

NSW Government Independent Inquiry into Orica Incident

Terms of Reference Area: Training provided to first responders.

Introduction:

WorkCover Inspectors are equipped with powers provided under the Occupational Health and Safety Act 2000, Explosives Act 2003 and Associated Regulations, to enter workplaces for the purpose of undertaking investigations into potential breaches of legislation.

WorkCover inspectors work closely with agencies who lead the primary field response to chemical and/or pollution incidents or emergencies. Workcover has a key role in supporting agencies including NSW Fire Brigades (Hazmat unit), NSW Police and the Office of Environment and Heritage who are trained in and equipped for primary incident control and site cleanup.

Following an incident site being declared safe, WorkCover inspectors will then enter a site for the purpose of commencing investigations in relation to Workplace Health and Safety and Major Hazard Facility Matters.

Training:

WorkCover Inspectors are provided with extensive training to enable them to competently and confidently perform their duties as a WorkCover Inspector.

The core element of this training is the New Inspector Training Program (NITP) which is provided to all newly appointed WorkCover Inspectors (referred to as New or Entry Level Inspectors).

Characteristics of the New Inspector Training Program include:

- It is structured to provide participants with the opportunity to develop the foundation skills and knowledge to meet the level of competence required by the National Workplace Inspection Competency Standards that comprise the Diploma of Government (Workplace Inspection).
- It has a formal training component spread out over approximately 40 weeks.
- It consists of 17 weeks of intensive formal classroom based learning blocks coupled with 23 weeks of structured field experiences to apply the classroom based learning.
- Approximately five (5) months into the NITP new inspectors have gained sufficient skills and experience to qualify for issuance of 'Authorities', thus empowering them to conduct workplace inspections unaccompanied.
- Field learning is carried out within the new inspector's assigned team under the supervision of their Team Coordinator.
- Field learning is supported by an assigned mentor and is carried out in the company of more experienced inspectors.
- It requires the new inspector to satisfactorily complete written assignments based on application of the learning.
- It includes key formal classroom training subject areas such as Legislative, Technical, Professional Development Skills and Operational / Processes.

- It allows the new inspector to operate solo over a period of 26 weeks after the formal class and field weeks, to further consolidate their learning, complete course requirements and focus on developing competency in preparation for formal assessment against the required Diploma of Government in Workplace Inspection competencies.
- It has a further final 12 weeks dedicated to preparation of evidence for assessment against the required Diploma competencies.

It is important to note that successful completion of all components is mandatory within their 18 months of probationary service before an Inspector's appointment is confirmed.

In order to assist in the consolidation of key learning areas the NITP contains a variety of formal learning activities including orientation activities, assignments, core activities and a structured field reflection process.

There are 10 assignments that must be satisfactorily completed. Some of these assignments are completed in class and others are completed as field based assignments over a period of several months.

At the end of the formal class training (and in addition to the 23 field training weeks), new inspectors rotate through the Response Management Team (RMT) in small groups. During this 3-4 month rotation new Inspectors gain experience in Investigations Management and the activities of the RMT.

In order to facilitate operational consistency all WorkCover Inspectors are trained in the use of WorkCover's Workplace Compliance & Assessment Manual (WICAM). The Manual provides operational policies and procedures that are to be followed by inspectors who are involved in issuing, following up and reviewing workplace improvement and compliance assessment tools, such as Improvement, Prohibition & Penalty Notices.

Specific training related to hazardous substances and dangerous goods:

Incorporated into the NITP are a range of training modules specifically related to hazardous substances and dangerous goods. Following is a summary of these modules identifying the topic area and learning outcomes.

Topic: CHEMICAL MANAGEMENT INTRODUCTION AND OVERVIEW

Learning outcomes:

1. Outline the key initiatives for Chemical Exposure and Dangerous Goods.
2. Recognise the different classifications of chemicals.
3. Outline the Workplace Hazardous Chemical Management Framework.

Topic: PYRAMID OF CHEMICAL HAZARDS

Learning outcomes:

1. Identify the elements of the Workplace Hazardous Chemical Management Framework.
2. Recognise the application of broad hazard controls relative to the risk posed.
3. Outline the importance of risk management and consultation.

Topic: CLASSIFICATION OF CHEMICALS

Learning outcomes:

1. Identify the difference between a Dangerous Good and Hazardous Substance.
2. Identify the classes and divisions of Dangerous Goods.
3. Understand the classifications and effects of Hazardous Substances.

Topic: MSDS AND LABELS

Learning outcomes:

1. Refer to applicable sections of the OHS Regulation and relevant OHS Legislative Framework when assessing MSDS and Labels.
2. Refer to relevant Codes of Practice when assessing MSDS and Labels.
3. Recognise basic concerns with content for MSDS and Labels.
4. Apply relevant information from MSDSs and Labels to workplace chemicals risk assessments.
5. Outline how and when to seek specialist assistance in assessing MSDS and Labels.

Topic: EXPOSURE STANDARDS / HSIS

Learning outcomes:

1. Outline the role of Exposure Standards and what they represent
2. Outline limitations in the use of ES.
3. Identify ES in Safety Data Sheets (SDS)
4. Access HSIS to find Exposure Standards.

Topic: ATMOSPHERIC MONITORING

Learning outcomes:

1. Outline the different types of monitoring
2. Interpret the clauses relating to atmospheric monitoring
3. Understand the purpose of atmospheric monitoring

Topic: HEALTH SURVEILLANCE

Learning outcomes:

1. Recognise when Health Surveillance is needed.
2. State the Regulations that cover Health Surveillance.
3. Outline the types of Health Surveillance.
4. Identify the limitations of Health Surveillance.
5. Describe the aims of Health Surveillance.

Topic: SCID DATABASE

Learning outcomes:

1. Identify the purpose of SCID as it relates to DG notification.
2. Identify the search criteria used in SCID searches to find DG sites or chemicals.
3. Conduct a search in SCID for a DG site.
4. Conduct a search in SCID for a specific chemical.

Topic: DANGEROUS GOODS – EXPLOSIVES & SSAN

Learning outcomes:

1. Identify Security Sensitive Dangerous Substances (SSDS).
2. Recognise explosives and/or improvised devices.
3. Apply the explosives – SSDS legislation.
4. Outline the powers of an Inspector under the relevant legislation.
5. Explain the requirements of security risk assessments.

Topic: DANGEROUS GOODS – SPECIFICS

Learning outcomes:

1. Outline LPG Installation Legislation in NSW and how it applies to workplaces.
2. Identify the legislation as it applies to Pipelines in NSW.
3. Describe what a hazardous zone is and how it relates to hot work and ignition sources.
4. Describe what separation and segregation is and how it relates to Dangerous Goods storage.

Topic: RISK ASSESSMENT (Chemicals)

Learning outcomes:

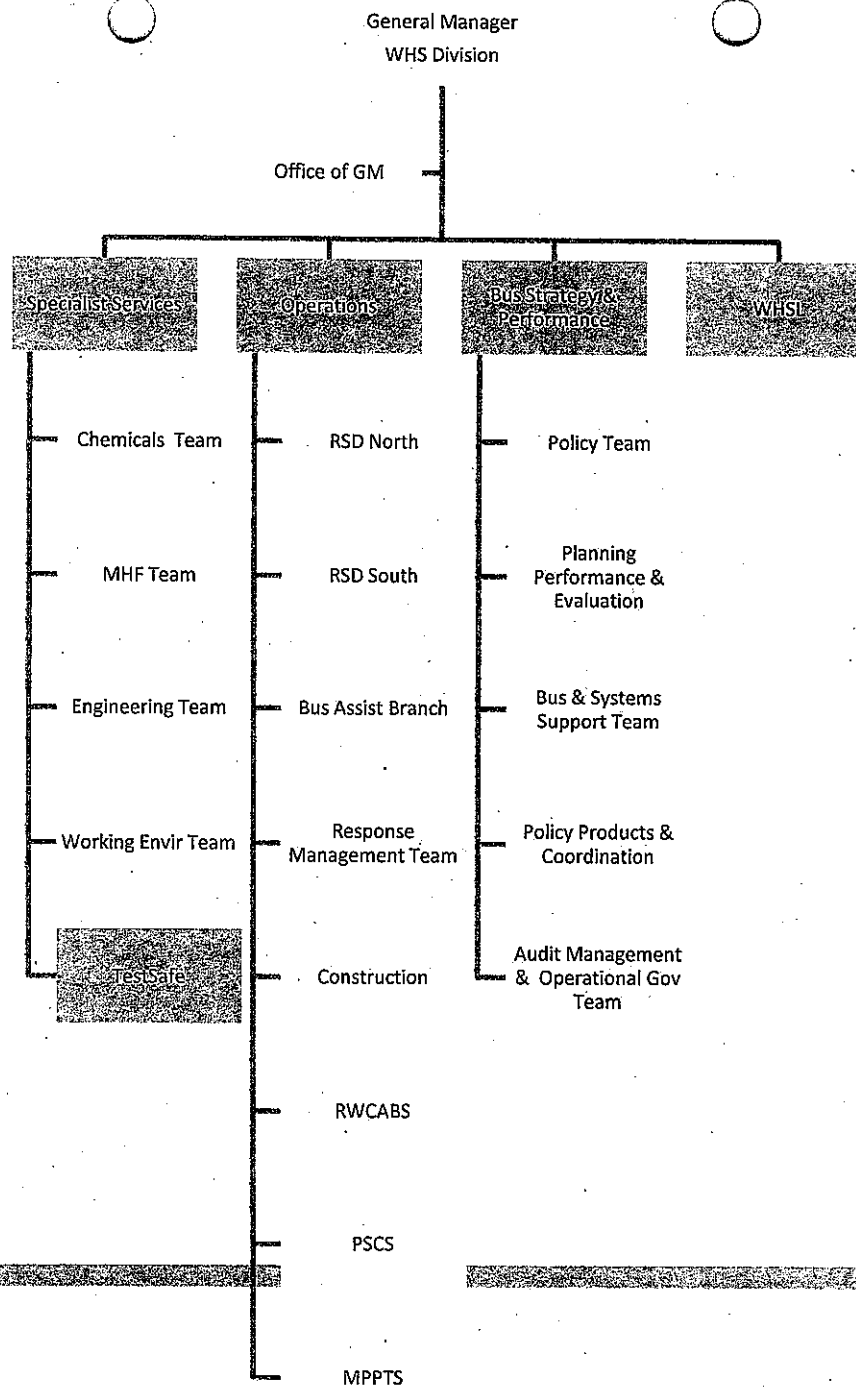
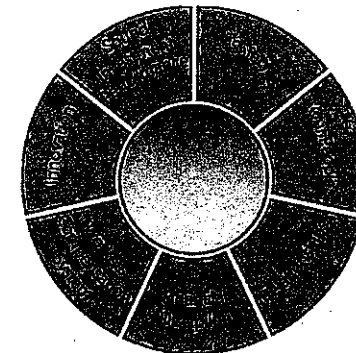
1. Refer to relevant sections of the OHS Regulation when assessing workplace hazardous chemicals risk assessments.
2. Refer to relevant Codes of Practice when assessing workplace hazardous chemicals risk assessments.
3. Recognise basic concerns with content for relatively simple risk assessments.
4. Outline how and when to seek SSSG assistance in assessing workplace hazardous chemicals risk assessments.

Actions to enhance WorkCover Inspectors (first responder) capabilities:

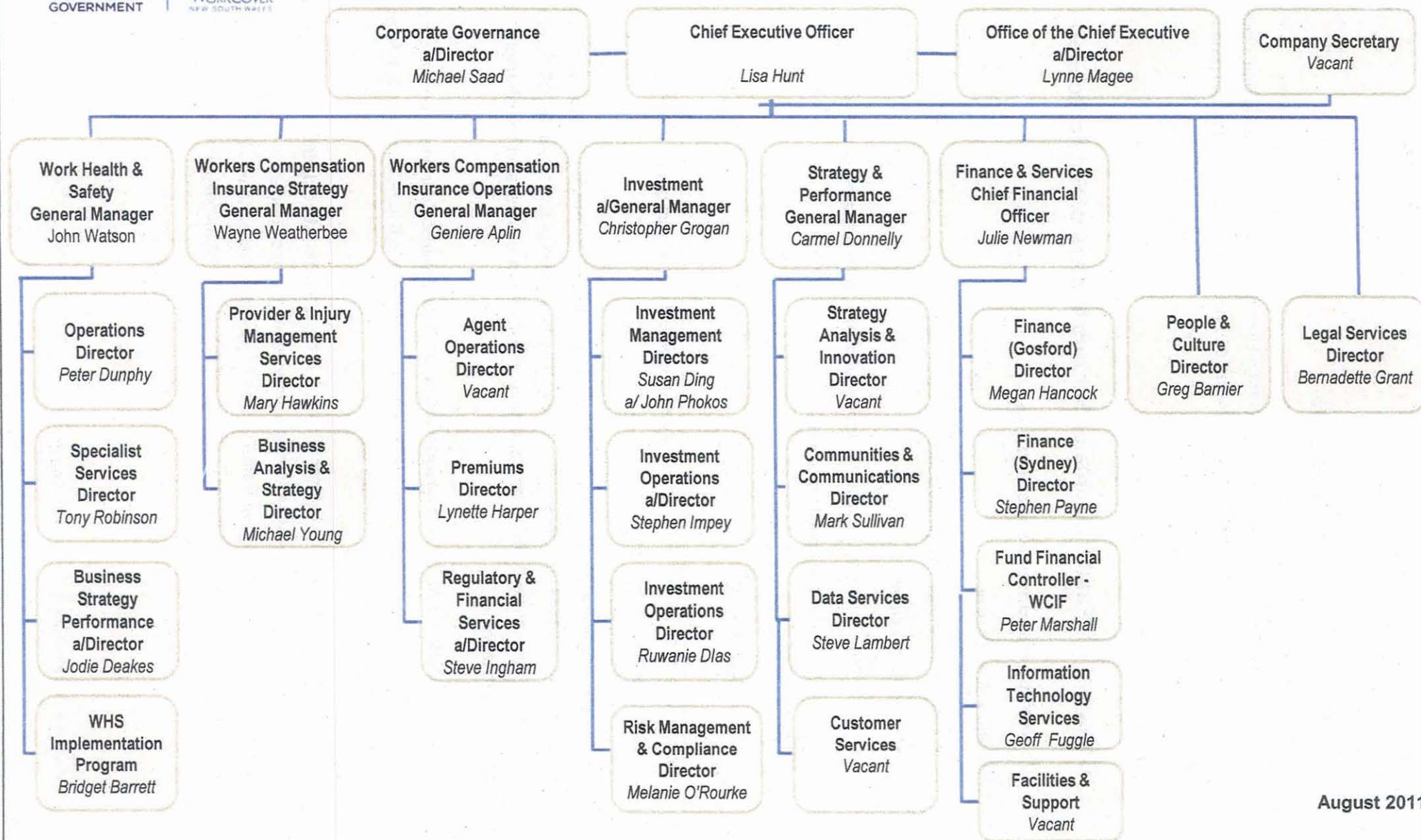
Further work is progressing to increase the effectiveness of Inspectors in responding to emergencies and critical incidents. The following action plan identifies .

| Action | Purpose | Due Date | Status |
|---|--|----------------------------|---------------|
| Establish an internal disaster recovery working group (internal) Terms of reference and protocol. | To develop and review policies, procedures and tools in relation to disaster recovery management using subject matter experts | 30 th September | Commenced |
| Establish a management committee (internal) to coordinate WorkCover's response to disasters. Terms of reference and protocol. | Conduct regular debriefs following an incident notification to discuss and review action plan | 30 th September | Commenced |
| WorkCover to approach District Emergency Management Coordinators and request inclusion on all committees that have WorkCover listed in their sub plans. | To ensure most effective use of resources and expertise and to ensure role clarity and coordination. | 30 th September | Proposed |
| WorkCover to approach the Ministry for Police and Emergency Services (MPES) to conduct a training needs analysis for WorkCover staff involved in Emergency Management Coordination. | To ensure consistent with training. Training is provided through District Emergency Management Officers (DEMOS) | 30 th September | Proposed |
| WorkCover to engage with NSW Fire Brigades to consider opportunities for the HAZMAT Unit to provide briefings to WorkCover Inspectors. | To improve cross agency communications at operational level and understanding of incident site primary response and clean up operations. | 31 st October | Proposed |

7A68



Organisational Structure: *Executives & Directors*



Categories of Investigations

In general, the manager/coordinator/review committee is responsible for seeing that incidents are categorised appropriately for investigations (see sub-heading 'Who Makes the Decision to Investigate?').

The three categories are set out below:

Category A: Fatal Incidents or Serious Matters of Public Concern

(1) Serious Matters of Public Concern

Category A matters are:

- high potential for fatal incidents
- serious injuries
- serious matters which place a number of people at immediate risk
- matters of serious public concern
- Fast Track Prosecutions
- repeat offences.

The purpose of an IM 008 Form is to notify management of the facts of an incident and steps taken to secure the site.

The investigating inspector is responsible for obtaining details that are relevant to completing an IM 008 Form. It is the Inspector's role to ensure that as soon as practical, an IM 008 Form is completed. This can be done by the inspector or the inspector can pass on the information to a relevant team member.

The completed IM 008 Form is to be reviewed by the Team/District Coordinator prior to distribution. The Team/District Coordinator needs to distribute the IM 008 Form to #Critical Incident Report link, relevant IPG Team Manager and Duty Officer.

Category A matters receive the highest priority. It is the manager's/coordinator's responsibility (at times in consultation with the Team Manager) to ensure that these matters receive an immediate response. It is the inspector's responsibility to make sure that these matters are completed within the required time frame (see Chapter 4: Effective OHS, WC & IM Investigations). All Category A matters are allocated an individual file number.

(II) Fatality Matters

Fatality matters receive the highest priority. It is the manager's/coordinator's responsibility (at times in consultation with the Team Manager) to ensure that these matters receive an immediate response. It is the inspector's responsibility to make sure that these matters are completed within the required time frame (see Chapter 4: Effective OHS Investigations). All fatality matters are allocated an individual file number.

In the event of a notification of a death being received by WorkCover, the Team Manager should be notified immediately. An Inspector is immediately allocated to the case and within 2 days a preliminary report of the incident is prepared (IM 008 Form) and sent to all of the Senior Managers on email list #Critical Incident Report.

The Manager, Litigation or the Assistant Manager Fatalities Unit will allocate a solicitor to the matter generally within 24 hours of the IM 008 Form being issued on the email list, #Critical Incident Report.

Within 24 hours of being allocated the matter, the dedicated solicitor will contact the inspector to discuss the evidence to be obtained. The solicitor and the inspector will also discuss a suitable date for a case conference. Within 5 working days from the date of the incident, the inspector will send all relevant material and documents obtained to the dedicated solicitor.

Upon receipt of that material, the dedicated solicitor will contact the inspector and organise a case conference on the earliest available date suitable to both inspector and solicitor. At this case conference the evidence will be evaluated. The inspector and the solicitor will discuss whether any further evidence is necessary. At the end of the case conference a date will be set, no later than 2 weeks, for a further case conference.

The case conference process between the dedicated solicitor and the inspector will continue every 2 weeks. During this process, the inspector must ensure that copies of any evidence and documents obtained during the investigation process are forwarded promptly to the dedicated solicitor.

Within 2 months or when all the evidence becomes available, a determination must be made as to whether a prosecution is commenced. The issue as to whether a coronial inquest is to take place is also monitored. The Director, IPG approves the forwarding to Legal Group of all coronial files.

(III) Section 32A

Reckless Conduct Causing Death at Workplace by Person with OHS Duties

Reckless conduct

'Recklessness' has been defined as:

Heedless or careless conduct where the person can foresee some probable or possible harmful consequence but nevertheless decides to continue with those actions with an indifference to, or disregard of, the consequences [R v Nuri [1990] VR 641].

See Chapter 18: Proofs and Elements of an Offence to locate the 10 proofs (elements) of an offence under section 32A.

Investigation Protocol between Police, Office of the Director of Public Prosecutions, Coroner and WorkCover NSW

Co-operation between agencies for Investigations of deaths and serious injuries has been addressed in the attached protocol. [Click to view the protocol](#). Hyperlink to D06/080165

Category B: Breaches of Legislation

Category B matters are all those that appear to be serious breaches of legislation. It is the manager's/coordinator's responsibility to see that these matters are assigned to an appropriate inspector. It is the inspector's responsibility to complete the investigation within the required time frame. See Chapter 4: Effective OHS, WC & IM Investigations for time frames. All Category B matters are allocated an individual file number.

Category C: Compliance Investigations

Compliance Investigations are those matters that receive a preliminary assessment in order to:

- identify the cause of the incident
- issue Notices to address the hazard that caused the incident
- determine whether there has been a breach of legislation
- determine what further action may be needed.

It is the manager/coordinator's responsibility to ensure that these matters are assigned to an appropriate inspector. It is the Inspector's responsibility to complete the investigation within the required time frame. See Chapter 4: Effective OHS, WC & IM Investigations for time frames.

If there has been a breach of legislation that will involve a recommendation to prosecute, then the matter becomes a Category B matter. If the matter requires no further investigation, the inspector completes a WSMS Inspector's Incident Investigation Report (IM 002).

Other Categories

There are other matters, which, after consideration, will not be subject to investigation. These are classed as 'No Further Action' (NFA) or 'Not Under Statute' (NUS).

No Further Action (NFA)

If from the information available, it is decided that a matter does not warrant an investigation, the matter is classified as 'No Further Action' (NFA).

Where the decision is 'No Further Action' and the matter has been reviewed, the manager/coordinator or review committee member completes the Incident Selection Criteria Form (IM 001) and attaches it to the Incident Report Form.

It is the responsibility of the manager/coordinator or review committee to make sure that the Incident Report Form is allocated a folio number for the month it was received. The original form is filed in the monthly file for the month the incident notification was received.

Not Under Statute (NUS)

Matters that do not come under WorkCover's jurisdiction are classified 'Not Under Statute' (NUS). These matters include, for example, incidents occurring during journeys to and from work (although note workers compensation may be payable for these incidents even though they do not occur at a place of work). If the manager/coordinator or review committee member decides that a matter does not come within the jurisdiction of WorkCover, then they sign their name and enter the date.

A Not Under Statute (NUS) file for the year is established. All the NUS Incident Report Forms are placed in this file.



Operating Protocol

INCIDENT NOTIFICATION IN OHSD - RECEIPT AND RESPONSE PROTOCOL

Date of effect:

11 August 2008

SUMMARY: Clarification of the roles and responsibilities of OHSD staff in the receipt and response to notified OHS incidents.

**Ref: RMT
01/08**

ISSUE

The Strategic Assessment Centre (SAC) within the Response Management Team (RMT) is designed to enhance the responsiveness of the Occupational Health and Safety Division (OHSD) to incidents at a place of work.

SCOPE

This protocol covers notification of incidents occurring at, or in relation to, a place of work involving injury or illness to workers and non-workers. It also covers incidents that present a risk to health and safety at a workplace.

Serious Incidents are defined as a fatality (see section 87 of the *Occupational Health and Safety Act 2000* (OHS Act 2000)) or an injury or circumstance as listed in clause 344 of the *Occupational Health and Safety Regulation 2001* (OHS Regulation 2001) and are required to be immediately notified (by the occupier) to WorkCover and are also to be treated as a **non-disturbance** situation (see section 87 of the OHS Act 2000).

Notifiable Incidents are any incident that presents a risk to health and safety but is not immediately life threatening as listed in clause 341 of the OHS Regulation 2001 and are to be notified to WorkCover within 7 days of occurring.

Other Incidents are those captured by sections 42 and 44 of the *Workplace Injury Management and Workers Compensation Act 1998* where the requirement is to notify the Scheme Agent.

Not Under Statute (NUS) matters are not under the jurisdiction of WorkCover and as such should be entered into WSMS as an incident and categorised as NUS.

BACKGROUND

WorkCover receives notification of **Serious** and **Notifiable Incidents** at a place of work through the following mechanisms:

1. Emergency Response Telephone Service,
2. Information Centre,
3. OHSD Incident Notification Mailbox via the WCA website,
4. After Hours Response Manager,
5. Direct report to an OHSD officer in any office or Team

Other Incidents are generally reported to insurers however some are reported direct to WorkCover through the same mechanisms.

PROTOCOL

NB: Notification of fatalities will be received as per these protocols and generate an immediate response as per protocol 03/08 Work Related Fatalities – OHSD first response.

Information Centre

- Divert all reports of **Serious Incidents** to the Emergency Response Telephone Service.
- Divert all **Notifiable Incidents, Other Incidents** and **NUS** matters to the SAC inquiries service.

SAC

- Receive, record and allocate through WSMS all **Serious Incidents** notified through the Emergency Response Telephone Service and the OHSD Incident Notification Mailbox. The SAC will immediately follow-up with a phone call notifying the relevant Team.
- **Notifiable Incidents and Other Incidents** received through the Emergency Response Telephone Service and the OHSD Incident Notification Mailbox will be received, recorded and allocated on WSMS to the relevant Team.
- **NUS incidents** will generally be managed by the SAC and if considered of strategic value will be forwarded to the relevant Team for their information.
- Contact the After Hours Response Manager to collect the details of all reported incidents and actions as applicable. The SAC will enter the details on WSMS and allocate to the relevant Team.
- All WSMS allocations will be accompanied by a WSMS To Do to the relevant Team contact.

OHSD Teams

- All **Incidents** will continue to be received, recorded by all Teams in line with existing practice.
- When a **Serious Incident** (including fatality) is notified direct to an OHSD Team an IM006 (Verbal Notification of Serious Incident Form) should be completed to ensure that all relevant information is obtained and the matter is to be immediately reported to the SAC via the Emergency Response Telephone Service on ext 5222. SAC will manage the handling of the incident in accord with the process outlined above.
- When a **Notifiable or Other Incident** is reported to an OHSD Team the incident should be recorded on WSMS and referred to the relevant team.
- These protocols do not prevent the immediate response to incidents by the relevant Team. In these cases a clear notation to that effect is to be included in the narrative eg "Response has been initiated by Inspector Brown of the RWCBS Team" prior to referral to the SAC.

After Hours Emergency Response Manager

- Activate an immediate response to reported **Serious Incidents** as required.
- Ensure that all **Incidents** reported to the After Hours Response Service are communicated to the SAC on the following business day.

ISSUE RESOLUTION

Service issues or allocation disagreements should be raised with the SAC Team Coordinator.

All service issues or allocation disagreements that are not able to be resolved are to be referred at Team Manager level to the Team Manager, RMT in the first instance and if the matter is still not able to be resolved then the Director, Strategic Specialist Services Group (3SG).

IMPORTANT CONTACTS

SAC inquiries – 4321 4809

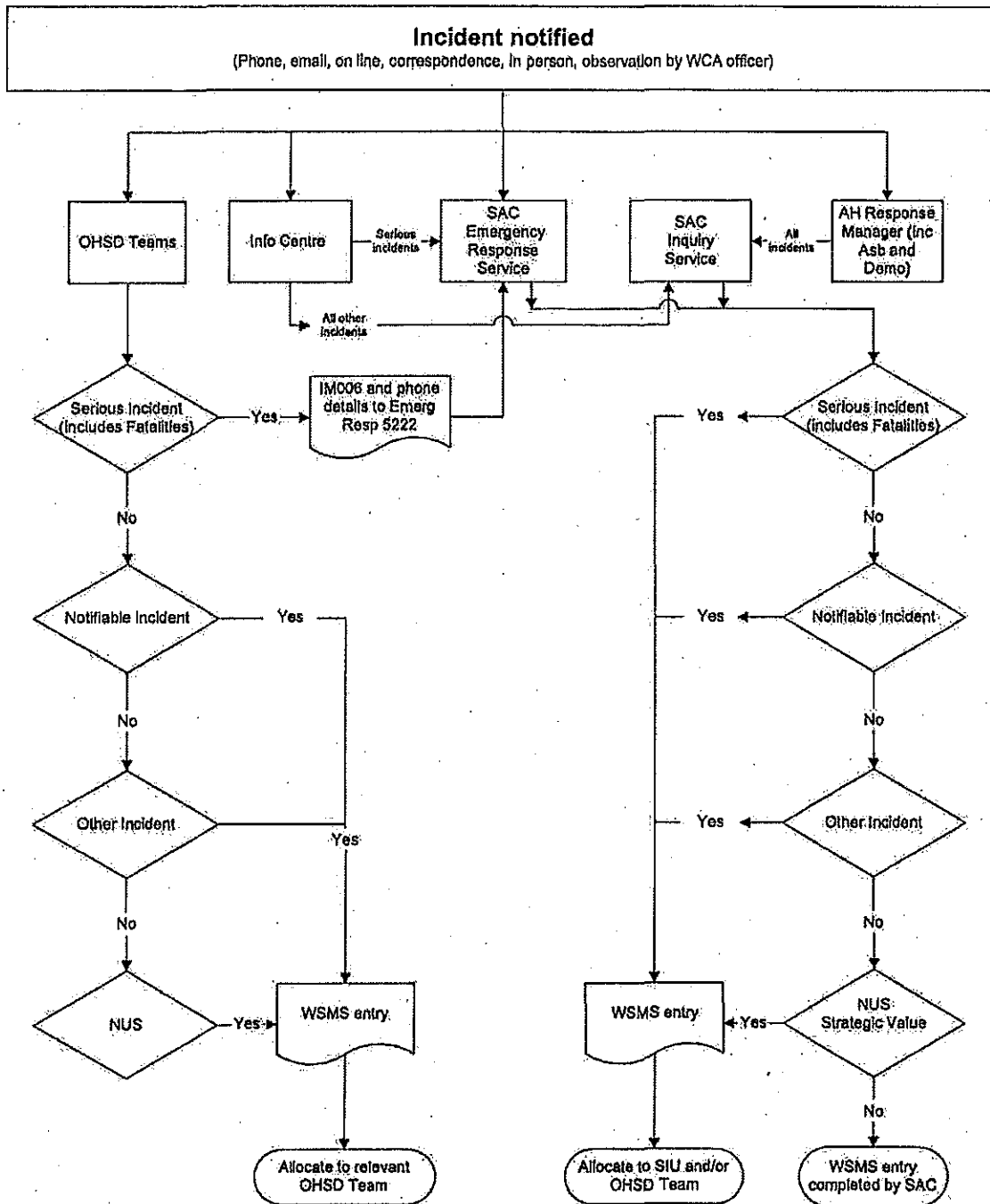
Information Centre – 131050

Emergency Response Telephone Service – 4321 5222 for the notification of Serious Incidents only

After Hours Response Manager – 0411 266 320 4.30pm – 8.30am only

See also flowchart as follows

Response Management Team operating protocol 01/08 - Incident notification receipt and response



NB: Non fatal incidents will generally be responded to by OHSD Teams. The SIU will generally respond, whether through attendance at the scene or by investigation management, to all work related fatalities

CHAPTER 1

Incident Handling/Taking Incident Details

The Purpose:

This Chapter outlines what serious incidents and notifiable incidents are.

It also summarises the following:

- The SAC Complaint Duty Officer's role in relation to a notifiable incident;
- The SAC Emergency Duty Officer's role in relation to a serious incident;
- The SAC Duty Inspector's role in regards to a serious incidents;

A copy of the IM6 (Verbal Notification of Serious Incident Form) attached

DOCUMENT CHANGE CONTROL

Please note significant document changes with a version increment of 1.0. Minor administrative changes, where the meaning or intention of the document is not altered should increase by an increment of 0.1.

| VERSION | DATE | AUTHORS | SUMMARY OF CHANGES | CHANGES APPROVED BY (Position, Branch, Division) |
|---------|----------|------------------------------|--------------------|--|
| 1.0 | 1/1/2010 | Pam Estreich Karina Altez | (INSERT) | (INSERT) |
| | | | | |
| | | | | |

RELATED POLICIES, PROCEDURES AND FORMS

A number of policies and procedures are related to and influenced by this procedure. This includes but is not limited to the following:

- Complaints handling manual, relating to OHS and associated legislation.
- OHSD investigation reference manual
 - Chapter 2 – OHS investigation protocol
 - Chapter 5 – processing incident notifications
 - Chapter 6 – methods of note-taking and recording information
 - Chapter 15 – investigating major incidents
 - Form IM001 – incident selection criteria
 - Form IM006 - verbal notification of serious incident
 - Form IM008 – serious incident
 - IM040W – referrals from OHSD to CB (Workers Compensation Division)
- Compliance policy and prosecution guidelines
- Workplace improvement and compliance assessment manual
- Workplace improvement framework
- WorkCover recordkeeping policy
- Workplace safety management system (WSMS)
- WorkCover position papers specifically relating to industry team-specific issues such as:
 - Public safety
 - Matters involving cross-jurisdiction
 - Matters not under statute
 - Interagency relationships & memorandums of understanding (MOU's)
- WorkCover customer service charter
- WorkCover quality service standard (available on internal telephone directory)
- Strategic Assessment Operational Incident Procedures, refer to following links
 - [..\Chapter One Incident Handling. Taking Incident Details Jan 2010\Chapter One Incident Handling.Taking Incident Details Jan 2010.doc](#)
 - [..\Chapter Two Log on. off Emergency Queue Jan 2010\Chapter Two Log on.off Emergency Queue Instructions Jan 2010.doc](#)
 - [..\Chapter Three Registering OHSD Mailbox Incident Notifications Jan 2010\Chapter Three Registering OHSD Mailbox Incident Notifications Jan 2010.doc](#)
 - [..\Chapter Four Registering Incident on WSMS Jan 2010\Chapter Four Registering Incident on WSMS Jan 2010.doc](#)
 - [..\Chapter Five Notifiable Incidents allocation Jan 2010\Chapter Five notifiable incidents allocation Jan 2010.doc](#)
 - [..\Chapter Six Serious Allocation SAC Duty Inspector Instructions Jan 2010\Chapter Six Serious Allocation SAC Duty Inspector Instructions Jan 2010.doc](#)
 - [..\Chapter Seven Searching Incidents on WSMS Jan 2010\Chapter Seven Searching Incidents on WSMS Jan 2010.doc](#)
 - [..\Chapter Eight OMS & BIU ANZSIC Code Instructions Jan 2010\Chapter Eight OMS & BIU ANZSIC Code Instructions Jan 2010.doc](#)

Overview

Work related injury or illness

A work related injury or illness is usually as a result of an incident that has occurred from a work related activity or exposure to a hazardous substance.

Fatalities and serious incidents defined under clause 344 of the OHS Regulation 2001 must be reported to WorkCover IMMEDIATELY on 13 10 50.

Serious Incidents:

- an incident that has resulted in a person being killed
- an injury to a person that result in amputation of a limb
- the placing of a person on a life support system
- any incident listed below that presents an **immediate threat to life**
 - the loss of consciousness of a person caused by impact of physical force, exposure to hazardous substances, electric shock or lack of oxygen
 - major damage to any plant, equipment, building or structure
 - an uncontrolled explosion or fire
 - an uncontrolled escape of gas, dangerous goods or steam
 - imminent risk of explosion or fire
 - imminent risk of an escape of gas, dangerous goods or steam
 - a spill or incident resulting in exposure or potential exposure of a person to a notifiable or prohibited carcinogenic substance (as defined in Part 6.3 of the *Occupational Health and Safety Regulation 2001*)
 - entrapment of a person in a confined space
 - collapse of an excavation
 - entrapment of a person in machinery
 - serious burns to a person.
- in relation to a major hazard facility as defined in Chapter 6B see below–

From Chapter 6B (clause 175A(1))

major accident means an incident (including an emission, loss of containment, fire, explosion or release of energy or projectiles, but not including the long term, low volume release of material) involving a Schedule 8 material occurring in the course of the operation, commissioning, shutdown or maintenance of a major hazard facility that poses a risk of serious danger or harm (whether immediate or delayed) to any person (including member of the public).

Major Hazard Facilities (MHFs) are locations such as oil refineries, chemical plants and large fuel and chemical storage sites where large quantities of hazardous materials are stored, handled or processed..

On receipt of an incident notification consider whether the incident relates to a MHF by searching the organisation name using the registered MHF spreadsheet, refer below:

From Chapter 6B (clause 175A(1))

major accident means an incident (including an emission, loss of containment, fire, explosion or release of energy or projectiles, but not including the long term, low volume release of material) involving a Schedule 8 material occurring in the course of the operation, commissioning, shutdown or maintenance of a major hazard facility that poses a risk of serious danger or harm (whether immediate or delayed) to any person (including member of the public).

near miss means any incident that, but for mitigating effects, actions or systems, could have escalated into a major accident.

List of MHF'S

The MHF Team will email the current list of MHF's to the OHSD Incident Notification mailbox at the end of each calendar month and the SAC Duty Officer (currently assigned to Karina Altez) will save the pdf document to the S:drive as follows: S:\OHSD\SSSG\RMT\SAC\SAC Operational Procedures - Incident Notification\ List of MHFs.

The list will include the name of the facility, the site location, and Facility Reference number. The list is confidential and must not be released outside WorkCover, nor should it be widely circulated within WorkCover.

Example shown below:

| WorkCover NSW | | Provisionally Registered Major Hazard Facilities | | As at 3 March 2010 | | CONFIDENTIAL - NOT FOR PUBLIC DISCLOSURE | | RESTRICTED DISTRIBUTION WITHIN WORKCOVER | |
|---------------------------|-------------------|--|-----------|--------------------|--------|--|-------------------|--|-----------|
| Facility Reference Number | Facility Name | Ref No | State Ref | Facility Name | Ref No | State Ref | Facility Name | Ref No | State Ref |
| 10001 | Adelaide Refinery | 10001 | SA | Adelaide Refinery | 10001 | SA | Adelaide Refinery | 10001 | SA |
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| 10081 | Adelaide Refinery | 10081 | SA | Adelaide Refinery | 10081 | SA | Adelaide Refinery | 10081 | SA |
| 10082 | Adelaide Refinery | 10082 | SA | Adelaide Refinery | 10082 | SA | Adelaide Refinery | 10082 | SA |
| 10083 | Adelaide Refinery | 10083 | SA | Adelaide Refinery | 10083 | SA | Adelaide Refinery | 10083 | SA |
| 10084 | Adelaide Refinery | 10084 | SA | Adelaide Refinery | 10084 | SA | Adelaide Refinery | 10084 | SA |
| 10085 | Adelaide Refinery | 10085 | SA | Adelaide Refinery | 10085 | SA | Adelaide Refinery | 10085 | SA |
| 10086 | Adelaide Refinery | 10086 | SA | Adelaide Refinery | 10086 | SA | Adelaide Refinery | 10086 | SA |
| 10087 | Adelaide Refinery | 10087 | SA | Adelaide Refinery | 10087 | SA | Adelaide Refinery | 10087 | SA |
| 10088 | Adelaide Refinery | 10088 | SA | Adelaide Refinery | 10088 | SA | Adelaide Refinery | 10088 | SA |
| 10089 | Adelaide Refinery | 10089 | SA | Adelaide Refinery | 10089 | SA | Adelaide Refinery | 10089 | SA |
| 10090 | Adelaide Refinery | 10090 | SA | Adelaide Refinery | 10090 | SA | Adelaide Refinery | 10090 | SA |
| 10091 | Adelaide Refinery | 10091 | SA | Adelaide Refinery | 10091 | SA | Adelaide Refinery | 10091 | SA |
| 10092 | Adelaide Refinery | 10092 | SA | Adelaide Refinery | 10092 | SA | Adelaide Refinery | 10092 | SA |
| 10093 | Adelaide Refinery | 10093 | SA | Adelaide Refinery | 10093 | SA | Adelaide Refinery | 10093 | SA |
| 10094 | Adelaide Refinery | 10094 | SA | Adelaide Refinery | 10094 | SA | Adelaide Refinery | 10094 | SA |
| 10095 | Adelaide Refinery | 10095 | SA | Adelaide Refinery | 10095 | SA | Adelaide Refinery | 10095 | SA |
| 10096 | Adelaide Refinery | 10096 | SA | Adelaide Refinery | 10096 | SA | Adelaide Refinery | 10096 | SA |
| 10097 | Adelaide Refinery | 10097 | SA | Adelaide Refinery | 10097 | SA | Adelaide Refinery | 10097 | SA |
| 10098 | Adelaide Refinery | 10098 | SA | Adelaide Refinery | 10098 | SA | Adelaide Refinery | 10098 | SA |
| 10099 | Adelaide Refinery | 10099 | SA | Adelaide Refinery | 10099 | SA | Adelaide Refinery | 10099 | SA |
| 10100 | Adelaide Refinery | 10100 | SA | Adelaide Refinery | 10100 | SA | Adelaide Refinery | 10100 | SA |

High Profile Incidents:

Incidents with a significant media or political profile or incidents of interest to a particular team which the SAC Team have been informed of will be allocated in accordance with the Managing Units allocation procedures.

There are high profile issues that warrant a particular allocation procedure, for example:

- Truck fatalities - Usual procedure applies except incident is allocated to MPPTS regardless of where in NSW the incident occurred.
- Incidents involving MHFs, refer to following link for further details: (..\Chapter Nine MHF Notifications Mar 2010\Chapter Nine MHF notifications March 2010.doc)
- Incidents regarding roof insulation - These are receipted and allocated in the same manner as a 'serious incident' and additionally for non-metro incidents a WSMS to-do is sent to TC Construction Response Unit.
- Train Incidents received in the OHSD mailbox. Where a member of the public is fatally injured due to being struck by a train is allocated to MPPTS Team Coordinator, regardless of where in the state they occur, and send a "To do" to Transport & Storage TC.

RMT has established a monthly communication link with teams so advice can be regularly provided to the Strategic Assessment Centre duty officers and inspectors on the type of high profile issue that requires a predetermined allocation procedure i.e. either the same as that given to a serious incident or a modified allocation procedure.

As high profile issues tend to change over time teams will be emailed a spreadsheet on a monthly basis, which will be used to record the types of high profile issues whether they are complaints or incidents. The spreadsheet will need to be updated monthly either by adding or deleting the high profile issue or by modifying the allocation procedure or by stating no change. The spreadsheet will be maintained on the S drive as follows OHSD\SSSG\RMT\SAC\High Profile Issues.

Notifiable Incidents

In accordance with section 86 (1)(b) of the Act, any incident listed below occurring at or in relation to a place of work is, if it is an incident that presents a risk to health or safety and is not immediately threatening to life, declared to be an incident that is required to be notified to WorkCover:

- a. an injury to a person (supported by a medical certificate) that results in the person being unfit, for a continuous period of at least 7 days, to attend the person's usual place of work, to perform his or her usual duties at his or her place of work or, in the case of a non-employee, to carry out his or her usual activities,
- b. an illness of a person (supported by a medical certificate) that is related to work processes and results in the person being unfit, for a continuous period of at least 7 days, to attend the person's usual place of work or to perform his or her usual duties at that place of work,
- c. damage to any plant, equipment, building or structure or other thing that impedes safe operation,
- d. an uncontrolled explosion or fire,
- e. an uncontrolled escape of gas, dangerous goods or steam,
- f. a spill or incident resulting in exposure or potential exposure of a person to a notifiable or prohibited carcinogenic substance (as defined in Part 6.3),
- g. removal of workers from lead risk work (as defined in Part 7.6) due to excessive blood lead levels,
- h. exposure to bodily fluids that present a risk of transmission of blood-borne diseases,
- i. the use or threatened use of a weapon that involves a risk of serious injury to, or illness of, a person
- i1. a robbery that involves a risk of serious injury to, or illness of, a person,
- i2. electric shock that involves a risk of serious injury to a person,
- j. any other incident that involves a risk of:
 - i. explosion or fire, or
 - ii. escape of gas, dangerous goods or steam, or
 - iii. serious injury to, or illness of, a person, or
 - iv. substantial property damage.
- k. in relation to a major hazard facility as defined in Chapter 6B, see below:

From Chapter 6B (clause 175A(1))

near miss means any incident that, but for mitigating effects, actions or systems, could have escalated into a major accident.

Does an incident involving a non-worker need to be notified?

Yes, incidents to non-workers (or others as they are known) are notified to WorkCover. Non-workers may include: visitor, customer, volunteer, student or contractor who may be at the workplace.

For serious incidents involving a fatality or serious injury/illness under clause 344 of the OHS Regulation 2001 to a non-worker there is the requirement to contact WorkCover:

- **IMMEDIATELY** on **13 10 50** as an urgent investigation may be needed, **PLUS**
- notify WorkCover within 7 days with **full notification details** using the online form or phone **13 10 50**.

Other incidents involving a non-worker where the injury or illness results in the person being unable to perform their normal activities for 7 or more days under clause 341 of the OHS Regulation 2001 must notify WorkCover within **7 days** using the online form or phone **13 10 50**.

What to do when taking an incident phone call?**TAKE TIME TO OBTAIN ALL THE DETAILS**

When speaking with a person who is reporting an incident be aware they may be upset and not thinking in a logical manner. The IM006 (Verbal Notification of Serious Incident – see *form below*) is to be used to obtain all the relevant information for all incidents. At times, you may not be able to obtain sufficient information to complete the form, where this occurs state "not known". Take down what you can and obtain the name and contact details of the notifier so they may be contacted later.

Form: IM6

WORKCOVER NSW

Verbal Notification of Serious Incident

(COPY & PASTE COMPLETED FORM ONTO WSMS)

IN AN EMERGENCY SITUATION OBTAIN AS MUCH INFORMATION AS POSSIBLE

Notified to (Centre/Office/Team):

SAC

Date Notified:

Time Notified:

Details of Person Notifying Accident/Incident:

Name:

Position:

Organisation:

Home Contact Number:

Injured Person/Incident Details:

Date of Accident/Incident

Time of
Accident/Incident:

Name of Injured Person:

Address

Phone
No:

Gender:

M

☐

F

☐

DOB/Age:

MUST BE COMPLETED:Was injured person taken
by ambulance to
hospital?

Yes

☐

No

☐

Occupation

Work or Non-
Worker/Visitor

Nature of Injuries

How did the Accident/Incident Occur?

Where is the injured person now?

If an incident, what is the current hazard situation at the site?

Employer Details:

Name:

ABN/Industry Type:

| | | |
|---|----------------------|------------------------|
| Address where Accident/ Incident Occurred: _____ | | |
| Location at Workplace: _____ | | |
| Phone Contact Number: _____ | | |
| Employer's Contact Person: _____ | | |
| Occupier of Site _____ | | |
| Other Agency Involvement: | | |
| Name: _____ | Agency: _____ | Phone No: _____ |
| Name: _____ | Agency: _____ | Phone No: _____ |
| Details of Person Taking Notification: | | |
| Name (please print clearly): _____ | | |
| Position: _____ | | |
| Phone No (Work): _____ | | |
| (Mobile): _____ | | |
| Was caller advised of need to notify their insurer? <input type="checkbox"/> Yes <input type="checkbox"/> No | | |
| Action: | | |
| 1. Action Plan (if required) _____ | | |
| 2. WSMS No _____ | | |

Not all calls you receive on the emergency phone will involve a defined serious incident however use the IM006 form to record the details and state in the narrative notifiable. If in doubt as to whether the incident is serious or notifiable always seek advice from the SAC Duty Inspector or SAC Team Coordinator.

Allocation Process:

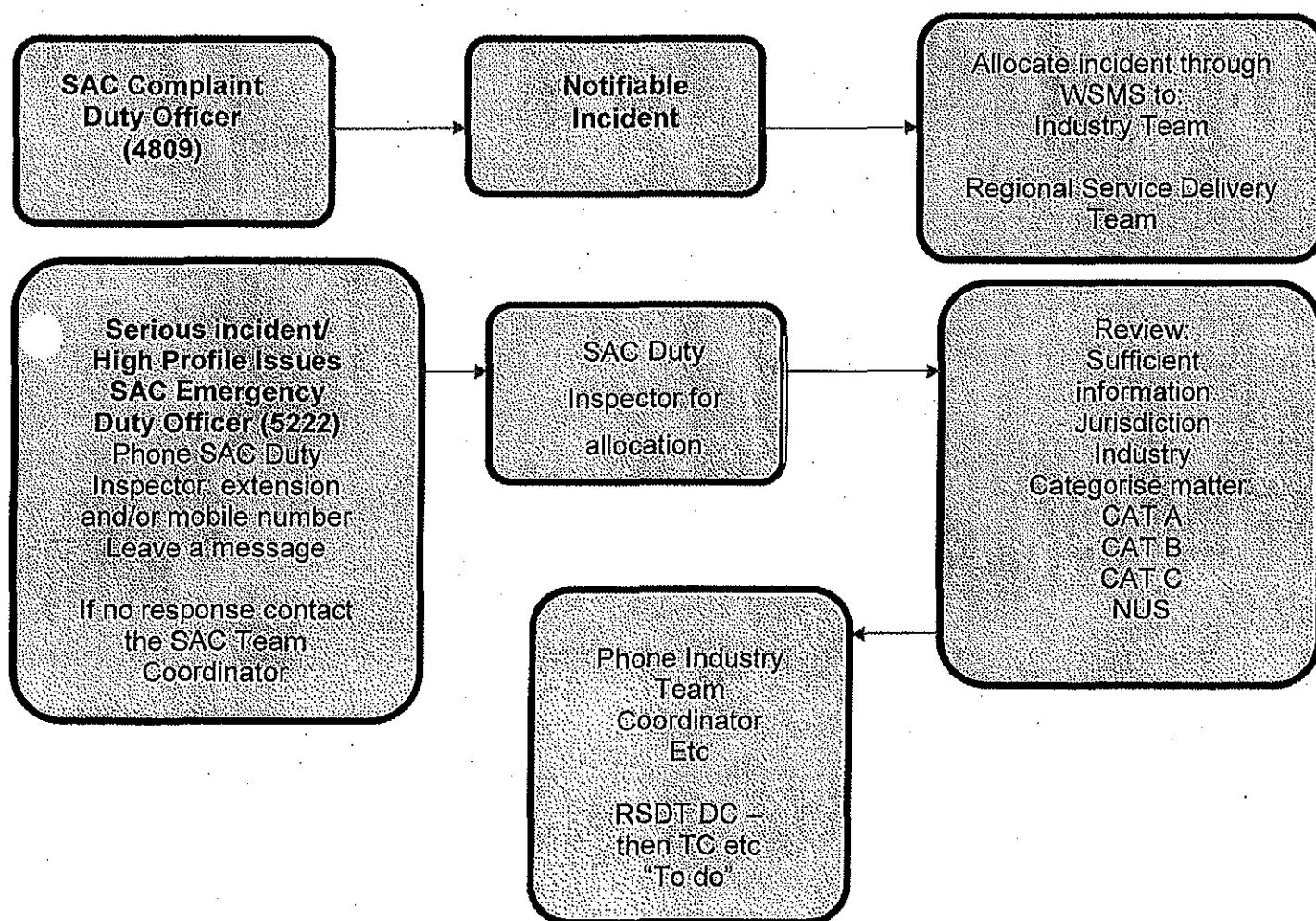
Serious incident – SAC Emergency Duty Officer is to:

- Phone the SAC Duty Inspector on desk phone or their mobile and give the WSMS number – if not available leave a message.
- If you haven't heard a response from the SAC Duty Inspector within 10 minutes
- Contact the SAC Team Co-coordinator on their desk phone or mobile.

It is important that a serious incident is allocated immediately

Notifiable Incidents - SAC Complaint Duty Officer to process through WSMS as per Chapter 5:

..Chapter Five Notifiable Incidents allocation Jan 2010\Chapter Five notifiable incidents allocation Jan 2010.doc



CHAPTER 5

Notifiable incidents

Allocation - SAC Complaint Duty Officer

The allocation of Notifiable incidents

Purpose: SAC is responsible for the receipt and allocation of incidents. The SAC utilises WSMS to record and allocate these incidents. The SAC Complaints Duty Officer is responsible for the allocation of notifiable incidents.

DOCUMENT CHANGE CONTROL

Please note significant document changes with a version increment of 1.0. Minor administrative changes, where the meaning or intention of the document is not altered should increase by an increment of 0.1.

| VERSION | DATE | AUTHORS | SUMMARY OF CHANGES | CHANGES APPROVED BY (Position, Branch, Division) |
|---------|-----------|------------------------------|--|---|
| 1.0 | 1/1/2010 | Pam Estreich Karina Altez | {INSERT} | {INSERT} |
| 2.0 | 10/6/2010 | Janet Attwood | Inclusion of procedures for when serious incidents become fatalities | Rob Stobo |

RELATED POLICIES, PROCEDURES AND FORMS

A number of policies and procedures are related to and influenced by this policy. This includes but is not limited to the following:

- Complaints handling manual, relating to OHS and associated legislation.
- OHSD investigation reference manual
 - Chapter 2 – OHS investigation protocol
 - Chapter 5 – processing incident notifications
 - Chapter 6 – methods of note-taking and recording information
 - Chapter 15 – investigating major incidents
 - Form IM001 – incident selection criteria
 - Form IM006 - verbal notification of serious incident
 - Form IM008 – serious incident
 - IM040W – referrals from OHSD to CB (Workers Compensation Division)
- Compliance policy and prosecution guidelines
- Workplace improvement and compliance assessment manual
- Workplace improvement framework
- WorkCover recordkeeping policy
- Workplace safety management system (WSMS)
- WorkCover position papers specifically relating to industry team-specific issues such as:
 - Public safety
 - Matters involving cross-jurisdiction
 - Matters not under statute
 - Interagency relationships & memorandums of understanding (MOU's)
- WorkCover customer service charter
- WorkCover quality service standard (available on internal telephone directory)
- Strategic Assessment Operational Incident Procedures, refer to the following links:
 - [..\Chapter One Incident Handling, Taking Incident Details Jan 2010\Chapter One Incident Handling.Taking Incident Details Jan 2010.doc](#)
 - [..\Chapter Two Log on, off Emergency Queue Jan 2010\Chapter Two Log on.off Emergency Queue Instructions Jan 2010.doc](#)
 - [..\Chapter Three Registering OHSD Mailbox Incident Notifications Jan 2010\Chapter Three Registering OHSD Mailbox Incident Notifications Jan 2010.doc](#)
 - [..\Chapter Four Registering Incident on WSMS Jan 2010\Chapter Four Registering Incident on WSMS Jan 2010.doc](#)
 - [..\Chapter Five Notifiable Incidents allocation Jan 2010\Chapter Five notifiable incidents allocation Jan 2010.doc](#)
 - [..\Chapter Six Serious Allocation SAC Duty Inspector Instructions Jan 2010\Chapter Six Serious Allocation SAC Duty Inspector Instructions Jan 2010.doc](#)
 - [..\Chapter Seven Searching Incidents on WSMS Jan 2010\Chapter Seven Searching Incidents on WSMS Jan 2010.doc](#)
 - [..\Chapter Eight OMS & BIU ANZSIC Code Instructions Jan 2010\Chapter Eight OMS & BIU ANZSIC Code Instructions Jan 2010.doc](#)

What is a Notifiable incident under clause 341 of the OHS Regulation 2001?

In accordance with section 86 (1)(b) of the Act, any incident listed below occurring at or in relation to a place of work is, if it is an incident that presents a risk to health or safety and is **not immediately threatening to life**, declared to be an incident that is required to be notified to WorkCover.

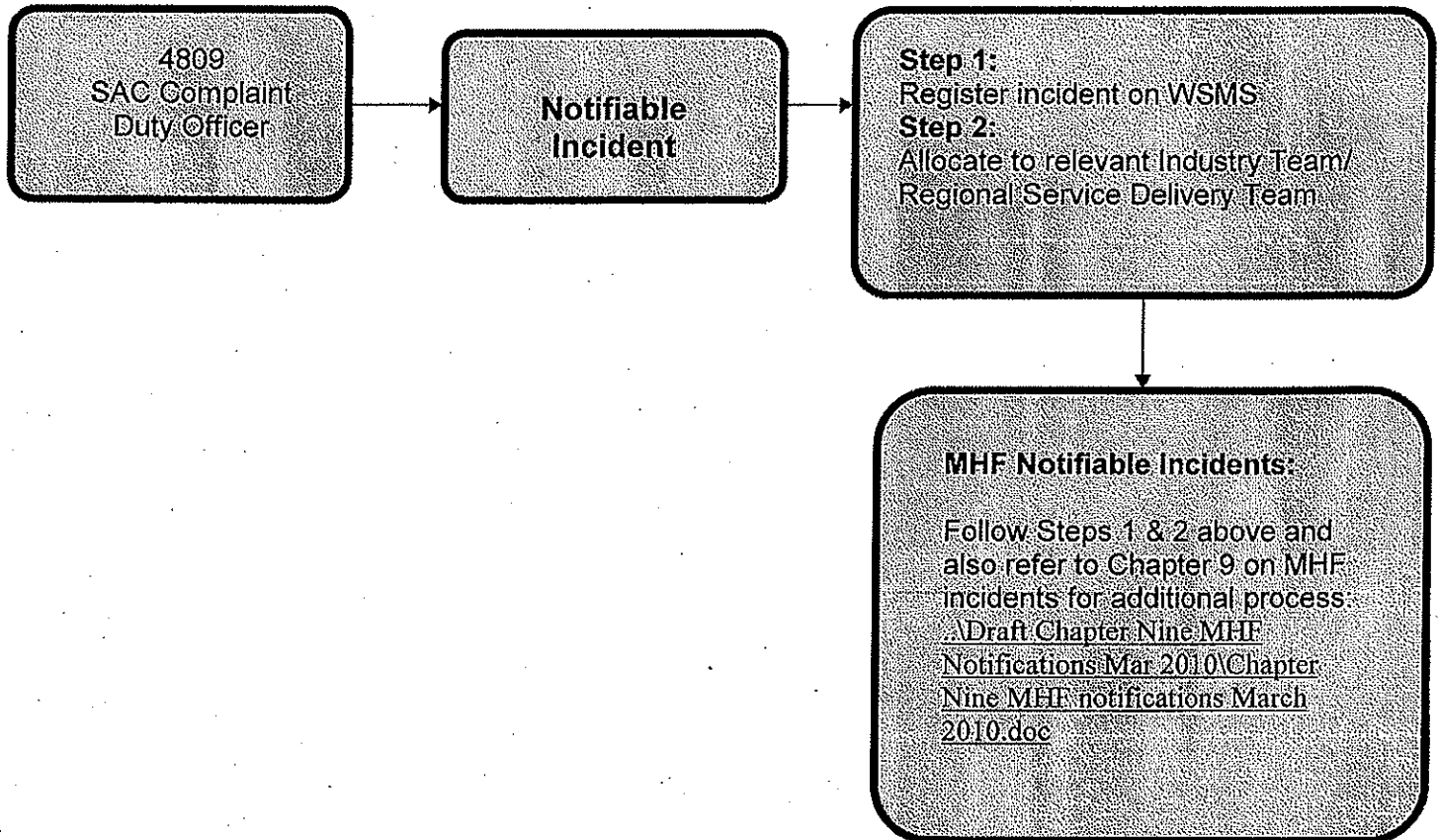
- a. an injury to a person (supported by a medical certificate) that results in the person being unfit, for a continuous period of at least 7 days, to attend the person's usual place of work, to perform his or her usual duties at his or her place of work or, in the case of a non-employee, to carry out his or her usual activities,
- b. an illness of a person (supported by a medical certificate) that is related to work processes and results in the person being unfit, for a continuous period of at least 7 days, to attend the person's usual place of work or to perform his or her usual duties at that place of work,
- c. damage to any plant, equipment, building or structure or other thing that impedes safe operation,
- d. an uncontrolled explosion or fire,
- e. an uncontrolled escape of gas, dangerous goods or steam,
- f. a spill or incident resulting in exposure or potential exposure of a person to a notifiable or prohibited carcinogenic substance (as defined in Part 6.3),
- g. removal of workers from lead risk work (as defined in Part 7.6) due to excessive blood lead levels,
- h. exposure to bodily fluids that present a risk of transmission of blood-borne diseases,
- i. the use or threatened use of a weapon that involves a risk of serious injury to, or illness of, a person
- i1. a robbery that involves a risk of serious injury to, or illness of, a person,
- i2. electric shock that involves a risk of serious injury to a person,
any other incident that involves a risk of:
 - i. explosion or fire, or
 - ii. escape of gas, dangerous goods or steam, or
 - iii. serious injury to, or illness of, a person, or
 - iv. substantial property damage.
- k. in relation to a major hazard facility (as defined in Chapter 6B) – if not already covered by another paragraph of this clause, a major accident or near miss (as defined in that Chapter).

Other incidents involving a non-worker where the injury or illness results in the person being unable to perform their normal activities for 7 or more days under clause 341 of the OHS Regulation 2001 must notify WorkCover within **7 days** using the online form or phone **13 10 50**.



If you are unsure after taking an Emergency call whether it is a serious incident or a Notifiable Incident please seek advice from the SAC Allocation Inspector. See Roster under S:\OHSD\SSSG\RMTPublished Roster

Process:



ON WSMS

Managing Unit

1. Change the Managing Unit from "RMT – Strategic Assessment Centre" to the relevant Industry Team by clicking on the down arrow. See below for further details.

1. The Incident is allocated to the relevant Industry Team based on the type of industry that the Employer &/or Controller of the premises undertakes.
 - (a) If you don't know the industry type you can either go to OMS if you have the name of the employer and conduct a search on the employer's worker's compensation policy. See below link for OMS ANZSIC Code Instructions:
[\Chapter Eight OMS & BIU ANZSIC Code Instructions Jan 2010\Chapter Eight OMS & BIU ANZSIC Code Instructions Jan 2010.doc](#)
 - (b) If you cannot locate a policy you can go to the same link above and look under BIU Code Finder Instructions or
 - (c) Refer to the All Team ANZSIC spreadsheet [\Chapter Eight OMS & BIU ANZSIC Code Instructions Jan 2010\ANZSIC codes ALL teams 0608.xls](#)
 - (d) There is also a quick Industry Team Reference Guide below for your information.
 - (e) In the case that you still cannot locate the relevant ANZSIC code and you are unsure please contact the SAC Allocation Officer rostered on that day.
 - (f) **However** if the incident location is in a regional area you need to allocate it to the nearest WorkCover regional office. Please find below the link to the regional suburbs and WorkCover's corresponding regional branches:
[Consolidated Postcodes Listing March 2010.xls](#)

Industry Teams Reference Guide**Construction & Utilities**

| | |
|----------------|---|
| Building | Excavation |
| Diving | Roadworks |
| Airfields | Power Lines |
| Earthmoving | Track work of railways |
| Pipes & Cables | Land clearing |
| Explosives | Electricity/Gas supplies |
| | Air conditioning – maint & installation |

- Does not cover mines

Eg. Incident – (has occurred)

Response – danger/unsafe, no injury

Public Sector & Community Services (PSCS)

| Public Sector | Community Services |
|-----------------------|-----------------------------|
| NSW Gov't Dept | All Hospitals |
| Dept Education | Nursing Homes |
| Emergency Services | Specialists (Medical) |
| Gov't Admin | Pathology |
| Local Govt | Ambulance Service |
| Private Schools | Physiotherapy |
| | GP Services |
| Eg. Schools, Councils | Vets |
| | Dental |
| | Optometrists |
| | Community Health |
| | Chiropractic |
| | Child Care |
| | Juvenile Justice Operations |

Manufacturing, Primary Production, Transport & Storage (MPPTS)**Manufacturing**

| | |
|--------------------|---------------------|
| Industrial | Consumer |
| Wood & paper | Food |
| Petrol manufacture | Beverages |
| Metal | Tobacco |
| Machinery | Textiles/clothing |
| Equipment | Footwear |
| Forestry & Logging | Printing/publishing |

Eg. Coco Cola all issues

All BP issues - MPPTS**Primary Production**

| | |
|-------------------------|----------------------|
| Grain | Transport |
| horticulture | Road, Rail |
| Shearing | Water, Air & Space |
| Agriculture | Other transport |
| Commercial Fishing | Transport Services & |
| Fruit Growing & picking | Petrol Tankers |

Eg. Farms, tractors

Storage

Grain storage

Retail Wholesale Consumer Business Services (RWCBS)**Retail**

Food Retailing
Personal & household
Mechanics
Machinery & M/Vehicle
Car Detailing
Consumer
Accommodation
Pubs, Bars
Restaurants
Radio/TV
Sport
Amusement Devices
Gambling
Recreation
Gardening
Waste & Recycling
Waste disposal
Security (cash in transit)

Wholesale

Basic materials
Machinery & Motor

Personal & Household

Business
Communications
Finance
Cleaning
Plant & Labour Hire
Religion
Insurance
Property
Legal, accounting

Eg. catering, brothels, dive shops. Large fast food, casinos, small security (bouncers etc), phone lines.

Sending a "To Do" Procedures

Incident Notification - INTEGRAL ENERGY AUSTRALIA - Lee, Trevor - 17/09/2007 - 2-77892 - QUAKERS HILL

| | |
|---|--|
| Added Party Add/Edit Name: Lee, Trevor Sex: Male Date Of Birth: 18/03/1957 Type: Employee 49 B Chittaway Road CHITTAWAY BAY NSW 2257 Phone: +61 (02) 43604416 | Reference Details File #: 2007/030466 Document #: 007/093421 Location: Sherras Rodney - Active Reference #: 2-77892 Entered by: Brown HSK/GH Date Received: 17/09/2007 Status: Active Managing Unit: Construction & Utilities Team - Response - Incidents Allocated Officer: Sherras Rodney - Active |
| Party Against Add/Edit Entity: INTEGRAL ENERGY AUSTRALIA Trading As: INTEGRAL ENERGY 51 HUNTINGWOOD DR HUNTINGWOOD NSW 2140 Phone: +61 (040) 3120950 | Workplace Address Category: Acknowledgement Workers Compensation Address Line 1: cnr Chaplin & Mallee Sts Address Line 2: Address Line 3: Suburb: QUAKERS HILL State: NSW Postal: 2763 |
| Narrative Interested Parties Actions Safety Committee Associated Incidents Inspector's Report Outcomes Notes/Advice Prosecutions | |
| Corner Chaplin St & Mallee St Quakers Hill NSW Integral Energy substation 2 Trevor Lee, a Joiner, received electrical burns to his face and hands when a de-energized cable contacted a live cable. Ambulance and police attended. Injured party was taken to hospital. | |

View Summary | Acknowledgement | New Activity | E-Sign | Print | Delete | Cancel | Log | << | >>

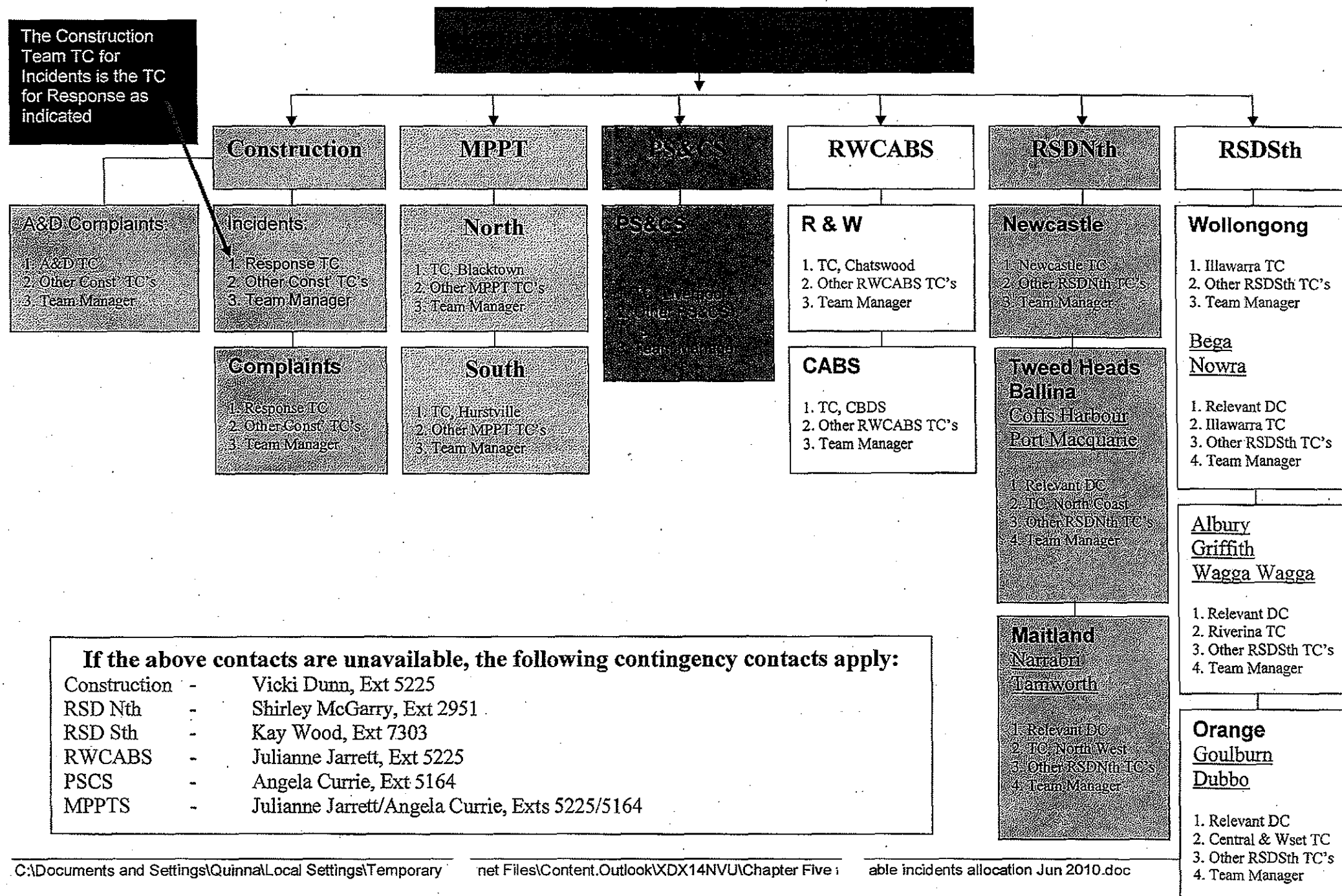
Once you have completed entering all the required information and allocated it to the relevant Industry Team, you need to send a "To Do" to the relevant Industry Team's Team Coordinator or Regional North or South TC/DC if the incident isn't in the metropolitan area.

In the example above the incident falls under the Construction & Utilities Team and is in the Metropolitan area so you will need to send a "To Do" the Team Coordinator for Construction that handles incidents, see chart below for details.

MHF Notifiable Incidents:

Follow above procedures and also refer to Chapter 9 on MHF incidents for additional process:

..\Draft Chapter Nine MHF Notifications Mar 2010\Chapter Nine MHF notifications March 2010.doc



To obtain the name of the Construction TC for the Response Unit you need to look up WorkCover's Telephone Directory as shown below

WCA Directory - Created 19 Aug 2009

File Edit Document Options Help

Contents Index Back Exit

Construction and Utilities Team

Personal Fax (02) 9287 plus ext (GOSFORD & CBDS ONLY) Level 9, 92-100 Donlinson Street GOSFORD NSW 2250
Fax (02) 4325 4758

| | | | |
|------------------|--------------------|------|---|
| Inspector | WALL, Jason | 3B-3 | 02 4321 5272 Mobile 0402 986 972 Fax 02 9287 5272 |
| Inspector | WALSH, Edward | PAR4 | 02 9041 0507 Mobile 0448 938 703 Fax 02 9271 6187 |
| Senior Inspector | YEUNG, Thomas | CBD8 | 02 6260 5815 Mobile 0411 036 012 Fax 02 9287 5815 |
| | HOWARD, Dennis | HUR8 | 02 9598 3339 Mobile 0411 266 051 Fax 02 9287 4189 |
| | NIKOLOVSKI, Stoven | HUR8 | 9598 3311 Mobile 0411 266 061 Fax 02 9287 4171 |
| | MCGOWAN, Natalie | HUR8 | 02 9598 3309 Mobile 0400 368 042 Fax 02 9287 4169 |

The Construction Team TC for Response is Jim Moore as indicated

Response Unit - Parramatta (Construction)

Level 4, 128 Marsden Street PARRAMATTA NSW 2150

| | | | |
|---|-----------------------|------|---|
| Team Coordinator | MOORE, Jim | PAR4 | 02 9041 0544 Mobile 0412 252 778 Fax 02 9271 6130 |
| Admin Facilities Coordinator - (Thurs & Fri) | CLARKE-WOOD, Gayle | PAR4 | 02 9841 8580 Fax 9271 6180 |
| Admin Facilities Coordinator - (on secondment to MPPTS) | KHOURY-GEAGEA, Joseph | PAR4 | TBA |
| Admin Facilities Coordinator - (Mon, Tues, Wed) | SALEM, Geord | PAR4 | 02 9841 8430 Mobile 0421 618 634 |
| Industry Advisory Officer | SHARMA, Renu | PAR4 | 02 9041 0413 Fax 02 9271 6013 |

Sending a "To Do"

Incident Notification - INTEGRAL ENERGY AUSTRALIA - Lee, Trevor - 17/09/2007 - 2-77832 - QUAKERS HILL

Unsaved Part

ADD/EDIT

Lee, Trevor
Sex: Male
Date of Birth: 18/03/1957
Type: Employee
49 B Chiffway Road
CHIFFWAY BAY NSW 2250
Phone: +61 (02) 43984416

Party Against

ADD/EDIT

Entity: INTEGRAL ENERGY AUSTRALIA
Trading As: INTEGRAL ENERGY
57 HUNTINGWOOD DR
HUNTINGWOOD NSW 2140
Phone: +61 (0401) 9120950

Reference Details

File #: 2007/030465 IR Document #: D07/093421
Location: Sherras Rodney - Active

Reference #: 2-77832 Entered By: Bronwen Halcott
Date Received: 17/09/2007 Status: Active
Managing Unit: Construction & Utilities Team - Response - Incidents
Allocated Officer: Sherras Rodney - Active

Workplace Address

Category: Acknowledgement Workers Compensation
Address Line 1: cnr Chaplin & Mallee Sts
Address Line 2:
Address Line 3:
Suburb: QUAKERS HILL
State: NSW Postal: 2763

Narrative: Interested Parties: Actions: Safety Committee: Associated Incidents: Inspector's Report: Outcomes: Notices/Advice: Prosecutions

Corner Chaplin St & Mallee St
Quakers Hill
NSW

Integral Energy substation 2

Trevor Lee, a joiner, received electrical burns to his face and hands when a fault occurred. Ambulance and police attended. Injured party was taken to hospital.

Click on "New Activity"

View Summary Acknowledge Comment New Activity Save Print Delete Cancel Log << >>

The following dialogue box appears:

Accident Notification - INTEGRAL ENERGY AUSTRALIA - Le

To-do - Add

Type: To-Do
Priority: Medium
Access: Private
Details: Link

Description: Todo - INTEGRAL ENERGY AUSTRALIA - Le

Assigned To: Altez Karina - Active

Assigned By: [Empty]

Contact: [Empty]

Employee: Altez Karina - Active

Date/Time: Scheduled: 21/08/09

Completed: [Empty]

Address: [Empty]

Suburb: QUAKERS HILL

State: NSW Postal: 2763

Inspector's Report: Outcomes: Notices/Advice: Prosecutions: 1

Corner Chaplin St & Nelloe St
Quakers Hill
NSW

Integral Energy substation 2

Trevor Lee, a joiner, received electrical burns to his face and hands when a de-energized cable contacted a live cable. Ambulance and police attended. Injured party was taken to hospital.

Buttons: New Activity, Notify and Save, Cancel

Accident Notification - INTEGRAL ENERGY AUSTRALIA - Le

To-do - Add

Type: To-Do
Priority: Medium
Access: Private
Details: Link

Description: Todo - INTEGRAL ENERGY AUSTRALIA - Le

Assigned To: moore

Assigned By: [Empty]

Contact: [Empty]

Employee: Altez Karina - Active

Date/Time: Scheduled: 21/08/09

Completed: [Empty]

Address: [Empty]

Suburb: QUAKERS HILL

State: NSW Postal: 2763

Inspector's Report: Outcomes: Notices/Advice: Prosecutions: 1

Corner Chaplin St & Nelloe St
Quakers Hill
NSW

Integral Energy substation 2

Trevor Lee, a joiner, received electrical burns to his face and hands when a de-energized cable contacted a live cable. Ambulance and police attended. Injured party was taken to hospital.

Buttons: New Activity, Notify and Save, Cancel

To-do - Add

Date: [] Type: [To Do] Access: [Private] [Public]

Priority: [Medium]

Description: [To-do - INTEGRAL ENERGY AUSTRALIA - Le...]

Assigned To: [Adele Eng - Active]

Assigned By: []

Context: []

Date Recd: [21/08/09] [Completed] [21/08/2009]

Please find attached Incident Notification received on the Emergency Phone re worker sustained electrical burns to face & hands.

New Activity [] Notify and Save [] OK []

Success

An Email has been sent to the Person this Activity was Assigned To.

OK []

View Summary [] Acknowledge [] New Activity [] Save [] Print [] Delete [] Cancel [] Log []

ATTACHMENT B – Allocating Fatalities & Serious Incidents (Extract from Chapter 6)

SAC Emergency Duty Role

SAC Emergency Duty Officer
Registers incident on WSMS then contacts the SAC Duty Inspector and provides:

- Incident detail
- WSMS No

If Duty Inspector not available on either desk or mobile phone then leave a message to contact you. Make a note of the time you rang.

If you have not heard from the Duty Inspector within 10 minutes then you are to contact:

1. SAC Team Coordinator
2. SIU Team Coordinator
3. RMT Team Manager

SAC Duty Inspector Role:

Review

- Review the information on WSMS
- Determine if sufficient – if not contact the person who notified the incident
- Determine Jurisdiction
- Determine if incident is a serious (Clause 344 of the OHS Regulation) or a non-serious incident
- Determine Industry/ANZSIC Code if possible

SAC Duty Inspector - NUS

- Review the information in WSMS
- Determine if sufficient – if not contact the person who notified the incident
- Determine Jurisdiction – If not within WorkCover jurisdiction then contact the relevant agency of the details. Complete the Inspectors report with your actions
- Determine if NUS using the following principles: non employee, employee away from workplace, work is not a contributing factor, out of State etc
- If NUS send a 'to do' to the SAC Incident Inbox and change the Managing Unit

Another Jurisdiction – If not within WorkCover jurisdiction then contact the relevant agency of the details. Complete the Inspectors report with your actions and tick for review.

Notifiable Allocation

If the matter has been determined to be a notifiable incident then the SAC Duty Inspector will allocate the incident

SAC Duty Inspector Role:

"Fatalities"

Action the following:

1. Contact SIU Team Coordinator (TC)
2. Send 'to do' to the SIU TC
3. Categorise the incident: Cat A
4. Place in narrative who you spoke with and details obtained
5. Change Managing Unit to SIU Managing Unit

NB: For Truck fatalities regardless of location allocate it to the TC, Transport & Storage in the MPPTS Team.

Serious Incidents Allocation

Action the following:

1. Contact Industry/RSD Team TC
2. If appropriate TC unavailable, follow the immediate and emergency contact list to ensure the team is notified
3. Send 'to do' to the Industry/RSD Team TC (or person notified in their absence)
4. Categorise the incident: UNASSESSED
5. Place in narrative who you spoke with and details obtained
6. Change Managing Unit to the relevant Industry/RSD Team
7. If it is a Major Accident in a Major Hazard Facility follow the above procedures and also refer to Chapter Nine MHF Notification for additional process

Chapter Nine MHF Notifications Mar 2010\Chapter Nine MHF notifications March 2010.doc

Serious Incidents, which become Fatalities

In the event that the SAC receives notification that a previously notified serious incident has become a fatality, the following procedures apply.

SAC Emergency duty officer

1. Take down the additional information provided about the incident, including contact details of the notifier, and enter it (as per the attached template) into the WSMS incident notification at the TOP of the narrative.
2. Contact the SAC Duty Inspector and advise them of the update. Should the SAC Duty Inspector be uncontactable – in the first instance contact the remaining SAC Inspectors, and then the SAC Team Coordinator if none of the SAC Inspectors are available.

Template for WSMS – serious incidents that have become fatalities

___/___/___ THIS MATTER IS NOW A FATALITY

Note: further information provided by _____ from _____ on ___/___/___ is as follows:

[Continue with further information obtained]

([Name] SAC Emergency Duty Officer

Serious Incidents, which become Fatalities

In the event that the SAC receives notification that a previously notified serious incident has become a fatality, the following procedures apply.

SAC Emergency duty officer

1. Take down the additional information provided about the incident, including contact details of the notifier, and enter it (as per the attached template) into the WSMS incident notification at the TOP of the narrative.
2. Contact the SAC Duty Inspector and advise them of the update. Should the SAC Duty Inspector be uncontactable – in the first instance contact the remaining SAC Inspectors, and then the SAC Team Coordinator if none of the SAC Inspectors are available.

Template for WSMS – serious incidents that have become fatalities

___/___/___ THIS MATTER IS NOW A FATALITY

Note: further information provided by _____ from _____ on ___/___/___ is as follows:
[Continue with further information obtained]
([Name] SAC Emergency Duty Officer

CHAPTER Nine

Major Hazard Facilities (MHF) Incident Notifications

The Purpose

In addition to notifying the relevant Industry Team of a Major Hazard Facility incident the SAC Team also need to notify the Major Hazards Facilities Team of all notifiable incidents at a MHF site, and other incidents that occur at MHFs where these involve chemical, fire or explosions.

DOCUMENT CHANGE CONTROL

Please note significant document changes with a version increment of 1.0. Minor administrative changes, where the meaning or intention of the document is not altered should increase by an increment of 0.1.

| VERSION | DATE | AUTHORS | SUMMARY OF CHANGES | CHANGES APPROVED BY (Position, Branch, Division) |
|---------|----------|--------------------------------|--|---|
| 1.0 | 1/3/2010 | Nigel Mainland Karina Altez | INSERT | INSERT |
| 2.0 | 9/4/10 | Nigel Mainland Karina Altez | Updated process procedures on notifying MHF Team | |
| | | | | |

RELATED POLICIES, PROCEDURES AND FORMS

A number of policies and procedures are related to and influenced by this policy. This includes but is not limited to the following;

- Complaints handling manual, relating to OHS and associated legislation.
- OHSD investigation reference manual
 - Chapter 2 – OHS investigation protocol
 - Chapter 5 – processing incident notifications
 - Chapter 6 – methods of note-taking and recording information
 - Chapter 15 – investigating major incidents
 - Form IM001 – incident selection criteria
 - Form IM006 - verbal notification of serious incident
 - Form IM008 – serious incident
 - IM040W – referrals from OHSD to CB (Workers Compensation Division)
- Compliance policy and prosecution guidelines
- Workplace improvement and compliance assessment manual
- Workplace improvement framework
- WorkCover recordkeeping policy
- Workplace safety management system (WSMS)
- WorkCover position papers specifically relating to industry team-specific issues such as:
 - Public safety
 - Matters involving cross-jurisdiction
 - Matters not under statute
 - Interagency relationships & memorandums of understanding (MOU's)
- WorkCover customer service charter
- WorkCover quality service standard (available on internal telephone directory)
- Strategic Assessment Operational Incident Procedures, refer to the following links:
 - [..\Chapter One Incident Handling. Taking Incident Details Jan 2010\Chapter One Incident Handling.Taking Incident Details Jan 2010.doc](#)
 - [..\Chapter Two Log on. off Emergency Queue Jan 2010\Chapter Two Log on.off Emergency Queue Instructions Jan 2010.doc](#)
 - [..\Chapter Three Registering OHSD Mailbox Incident Notifications Jan 2010\Chapter Three Registering OHSD Mailbox Incident Notifications Jan 2010.doc](#)
 - [..\Chapter Four Registering Incident on WSMS Jan 2010\Chapter Four Registering Incident on WSMS Jan 2010.doc](#)
 - [..\Chapter Five Notifiable Incidents allocation Jan 2010\Chapter Five notifiable incidents allocation Jan 2010.doc](#)
 - [..\Chapter Six Serious Allocation SAC Duty Inspector Instructions Jan 2010\Chapter Six Serious Allocation SAC Duty Inspector Instructions Jan 2010.doc](#)
 - [..\Chapter Seven Searching Incidents on WSMS Jan 2010\Chapter Seven Searching Incidents on WSMS Jan 2010.doc](#)
 - [..\Chapter Eight OMS & BIU ANZSIC Code Instructions Jan 2010\Chapter Eight OMS & BIU ANZSIC Code Instructions Jan 2010.doc](#)

CHAPTER Nine

Major Hazard Facilities (MHF)

Incident Notifications

The Purpose

In addition to notifying the relevant Industry Team of a Major Hazard Facility incident the SAC Team also need to notify the Major Hazards Facilities Team of all notifiable incidents at a MHF site, and other incidents that occur at MHFs where these involve chemical, fire or explosions.

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| 1.0 | 1/3/2010 | Nigel Mainland Karina Altez | INSERT | INSERT |
| 2.0 | 9/4/10 | Nigel Mainland Karina Altez | Updated process procedures on notifying MHF Team | |
| | | | | |

MAJOR HAZARD FACILITIES

MHF Incidents involving Near Misses, Chemicals, Fires & Explosions

SAC Complaints Duty Officer

- Step 1:** Register MHF incident on WSMS.
Step 2: Allocate incident to the relevant Managing Unit and send a "To Do" to the TC.

Refer to the following link for procedures on receipting & allocating notifiable incidents:

..\\Chapter Five Notifiable Incidents allocation Jan 2010\\Chapter Five notifiable incidents allocation Jan 2010.doc

- Step 3:** Copy & paste WSMS narrative into an email & forward it to the MHF Manager, currently Jan Douglas & the MHF mailbox as shown below. In the subject line of email note:
 "MHF Incident Notification" & WSMS No.
mhf@workcover.nsw.gov.au & Jan.Douglas@workcover.nsw.gov.au

NB: If the MHF notification is received in the OHSD mailbox follows Steps 1 to 3 as above and refer to Chapter 2 for procedures on receipting mailbox incidents as follows: ..\\Chapter Two Registering OHSD Mailbox Incident Notifications Jan 2010\\Chapter Two Registering OHSD Mailbox Incident Notifications Jan 2010.doc

Major Accidents

SAC Emergency Duty Officer

- Step 1:** Register MHF incident on WSMS
 Refer to the following link for procedures on receipting & allocating notifiable incidents:

..\\Chapter Six Receipting & Allocation of Serious Incidents Jan 2010\\Chapter Six Receipting & Allocation of Serious Incidents Jan 2010.doc

SAC Duty Inspector

- Step 1:** Allocate MHF incident on WSMS to the relevant Managing Unit and phone TC.

Refer to the following link for procedures on allocating serious incidents as follows:

..\\Chapter Six Serious Allocation SAC Duty Inspector Instructions Jan 2010\\Chapter Six Serious Allocation SAC Duty Inspector Instructions Jan 2010.doc

- Step 3:** Copy & paste WSMS narrative into an email & forward it to the MHF Manager, currently Jan Douglas & the MHF mailbox as shown below. In the subject line of email note:
 "MHF Incident Notification" & WSMS No.
mhf@workcover.nsw.gov.au & Jan.Douglas@workcover.nsw.gov.au



[WorkCover Intranet](#) > [About Us](#) > [OHS](#) > [Specialist Services Group](#) > [Response Management Team](#)

After Hours Emergency Response Manual Section 9 -



- 9.1 [Overarching Memorandum of Understanding between WorkCover and the NSW Police](#)
- 9.2 [Protocol between WorkCover, NSW Police and ODPP for the investigation and provision of advice in relation to workplace deaths and incidents of serious injury and prosecutions arising therefrom](#)
- 9.3 [Interagency Guidelines between WorkCover, NSW Police, RTA and DEC for the prevention and investigation of long haul heavy vehicle trucking incidents](#)
- 9.4 [Memorandum of Understanding between WorkCover and the DPI in relation to facilitating a coordinated and seamless approach to the administration of occupational health, safety and welfare legislation within NSW](#)
- 9.5 [Interagency Operational Protocol 2 between WorkCover and the DPI in relation to jurisdictional coverage of the Occupational Health and Safety Act 2000 \(signed June 2008\)](#)
- 9.6 [Interagency Operational Protocol 3 between WorkCover and the DPI in relation to cooperation and consistency of compliance action \(signed June 2008\)](#)
- 9.7 [Memorandum of Understanding between WorkCover and the Australian Maritime Safety Authority](#)
- 9.8 [Interagency Guidelines between WorkCover and NSW Maritime for the prevention and investigation of commercial vessel incidents](#)
- 9.9 [Interagency Guidelines between WorkCover, DECC and ITSRR for the provision of safety and security in the transport of dangerous goods and explosives by road and rail](#)
- 9.10 [Interagency Guidelines between WorkCover, ITSRR and Comcare on regulatory responses to rail safety incidents \(executed 5 November 2010\)](#)
- 9.11 [Communication Protocol between WorkCover and the RTA setting out the cooperative arrangements for the management of communication and information exchange](#)

TAB 20

Dunphy, Peter

From: Sullivan Greg [Greg.Sullivan@environment.nsw.gov.au]
Sent: Saturday, 13 August 2011 9:05 PM
To: Dunphy, Peter
Subject: RE: Contact Details

Thanks Peter.

Sent from my Windows Phone

From: Dunphy, Peter
Sent: Saturday, 13 August 2011 20:32
To: Sullivan Greg
Subject: Re: Contact Details

Thanks Greg - just sent you through email- copy of text below.

Greg

Thanks for the call. Below is the current status of our actions at the site.

WorkCover inspectors have attended the site on Thursday 11 August and Friday 12 August to investigate the chemical incident and worker safety issues. WorkCover has also been in liaison with Orica's Compliance Manager and the local OEH manager today. A full investigation has commenced to determine any breaches of Occupational Health and Safety legislation. WorkCover is obtaining documents from the plant operator relating to the plant operation at the time of the incident and a full list of all workers and persons present in the affected areas of the plant.

WorkCover is awaiting the worker health surveillance results from Orica which is expected early next week and will be reviewing these results and the para-occupational samples to determine level of risk to workers following the incident. WorkCover is currently determining the required corrective actions and system changes required to be carried out before the plant recommences operations.

Police/Emergency Personal attending the site

Personal should not enter contaminated areas that are undergoing cleanup, unless in emergency situations where they should follow the advice of NSW Fire and Rescue HAZMAT unit in regard to personal protective equipment and decontamination procedures.

Regards
Peter Dunphy

Sent From Blackberry

From: Sullivan Greg [<mailto:Greg.Sullivan@environment.nsw.gov.au>]
Sent: Saturday, August 13, 2011 07:53 PM
To: Dunphy, Peter
Subject: Contact Details

Peter

Kerry Chant's mobile number is 0411 047 165

Cheers
Greg

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PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS EMAIL

TAB 21

Dunphy, Peter

From:
Sent: Saturday, 13 August 2011 11:11 PM
To: Sullivan Greg; Dunphy, Peter; rmanning@ambulance.nsw.gov.au;
kecha@doh.health.nsw.gov.au
Subject: Fwd:
Attachments: Orica_plant_chromium_(VI)_release_IAP_12_8_11[1][1][2].docx

Dear Greg and Peter

Could you please endorse (or otherwise amend) the attached incident action plan.

Please reply to all

If you both endorse I will ask Ron Manning to forward to the SECON

regards

Kerry Chant

----- Forwarded message

From: **Kerry Rhall**
Date: Sat, Aug 13, 2011 at 11:03 PM
Subject:
To: Kerry Chant <kecha@doh.health.nsw.gov.au>

PUBLIC HEALTH INCIDENT ACTION PLAN

| | | |
|--|--------------------|--|
| Response: Chromium (VI) release in Stockton, Hunter region | IAP #: 3 | Date: 13 August 2011 Time 2100 hrs |
|--|--------------------|--|

1.0 SITUATION

(Provide a summary of the current hazard/response and predicted changes in a specific future period)

CURRENT

- An incident occurred at the Orica plant at Kooragang Island at approximately 6pm on Monday 8th August. This resulted in the release from the plant of a catalyst that contains hexavalent chromium.
- Investigations show that some of the catalyst was deposited off-site in the neighboring town of Stockton. Sections of the Orica Plant were the most highly impacted.
- There have been no reports of acute health effects associated with this incident
- Approximately 20 workers were onsite when the incident occurred.
- Orica assessed that the health risk to the population living in the area affected by the plume was low.
- NSW Health has received a written report from Orica that describes the basis of their risk assessment. NSW Health has had this report reviewed by an expert toxicologist and epidemiologist who felt that the methods used in the assessment were appropriate.
- The Office of Environment and Heritage (OEH), in liaison with NSW Health, has undertaken extensive environmental sampling and testing to assist in further assessment of any risk and verify the findings of the Orica assessment in relation to off-site emissions.
- The public in the affected area were provided with written advice about how to reduce their exposure to chromium (VI) as a precaution.
- The Stockton community environmental test results indicate no threat to health
- OEH has issued two prevention notices and a clean up notice. This action prevents the restarting of the Orica plant until approval is given by OEH. The clean up notice requires Orica to clean up off site impacts within defined zones.
- WorkCover inspectors have attended the site on Thursday 11 August and Friday 12 August to investigate the chemical incident and worker safety issues. WorkCover has also been in liaison with Orica's Compliance Manager and the local OEH manager today. A full investigation has commenced to determine any breaches of Occupational Health and Safety legislation. WorkCover is obtaining documents from the plant operator relating to the plant operation at the time of the incident and a full list of all workers and persons present in the affected areas of the plant. WorkCover is awaiting the worker health surveillance results from Orica which is expected early next week and will be reviewing these results and the para-occupational samples to determine level of risk to workers

| | |
|---|--|
| | <p>following the incident. WorkCover is currently determining the required corrective actions and system changes required to be carried out before the plant recommences</p> <ul style="list-style-type: none"> Personnel should not enter contaminated areas that are undergoing cleanup, unless in emergency situations where they should follow the advice of NSW Fire and Rescue HAZMAT unit in regard to personal protective equipment and decontamination procedures. The Workcover emergency hours duty officer is 0411266320 Environmental contractors utilising PPE are currently undertaking a clean up of the Orica site. |
| PREDICTED [indicate timeframe] | <ul style="list-style-type: none"> For the Stockton Community given the results of the environmental testing the focus of NSW Health will be on supporting the community with accurate information and reassurance in relation to health issues and assisting transition to normal functioning. Workcover will be focusing on ensuring compliance with the worker health surveillance program and progressing their investigation into potential breaches of workplace safety laws. OEH will be progressing its investigation of the cause of the incident and the potential breach of environmental licenses and legislation. |
| 2.0 OBJECTIVES (or MISSION) (What is the response trying to achieve?) | |
| CURRENT | <ul style="list-style-type: none"> To fully assess the risk to human health from this incident (this now applies principally to worker impacts) To provide clear, appropriate and timely public communication To investigate the circumstances of the release and response from a regulatory perspective(OEH and Workcover) |
| 3.0 EXECUTION [how the mission will be achieved] | |
| RESPONSE STRATEGIES AND TACTICS (disease control, environmental health response, surveillance activity etc) | <ul style="list-style-type: none"> At 11.30 pm on 12/8/11 an expert panel met to review the field test results reported by OEH laboratories on this day. These tests results showed levels at no risk to public health however the results of additional field test samples were awaited. At 17:30hrs on 13th August a teleconference was convened to consider tests reported on this day. The community testing results indicate there is no threat to health. Public Health staff were present in the Stockton Community to provide information on 13th August. The Public Health telephone line was also in place to answer community calls. A follow-up teleconference of agencies will held on Monday 15th August |
| PUBLIC INFORMATION / ADVICE TO PARTNER AGENCIES (new resources etc) | <ul style="list-style-type: none"> The child care centre has been contacted and arrangements made for Public Health Unit staff to be present on Monday 15 August to address any parent concerns. The child care centre manager has been advised of the test results today. The child care centre manager was provided with some health advice including test results to incorporate into an email communication to parents. |

| | |
|---|---|
| <p>PREPARING FOR A SURGE ON AGENCY SERVICES</p> | <ul style="list-style-type: none"> Contingency plans in plan to support response- the major focus of which is communicating effectively the results of the risk assessment and testing The OEH laboratory have been provided extended hours services and this will be maintained until 15th August and then reviewed. |
| <p>MAINTAINING CORE PUBLIC HEALTH SERVICES</p> | <ul style="list-style-type: none"> Core public health services at the Hunter New England Public Health Unit are being maintained. |
| <p>4.0 ADMINISTRATION AND LOGISTICS [support provided to the response] (relevant sections to be completed)</p> | |
| <p>EQUIPMENT (maintenance, technical support, deployments, public health cache, State Medical Stockpile, procurement)</p> | |
| <p>SERVICES (catering, transport, accommodation arrangements etc)</p> | <ul style="list-style-type: none"> No extra services are required at this time. |
| <p>PERSONNEL (recruitment, rostering, orientation etc)</p> | <ul style="list-style-type: none"> Hunter New England Public Health Unit is operating within existing staffing levels. Hunter New England Public Health Unit operated on extended hours 11 August to support public outreach and manage enquiries. Advisors from the State Environmental Health Branch were available to assist with media interviews and public enquiries after hours. |
| <p>SAFETY (list concerns, changes to OH&S procedures etc)</p> | <ul style="list-style-type: none"> Public Health Unit staff undertaking factsheet mailbox drops after hours on 11 August operated in pairs. All staff have been briefed on the risk profile of the response. |
| <p>5.0 CONTROL, COORDINATION & COMMUNICATION (relevant sections to be completed)</p> | |
| <p>GOVERNANCE ARRANGEMENTS (reporting structure, ICS teams, key committees etc)</p> | <ul style="list-style-type: none"> The Chief Health Officer, as State Public Health Controller, is providing reports to the State Health Services Functional Area Coordinator. An ICS structure has not been activated, nor has the public health emergency operations centre been activated. |
| | |

| | |
|--|--|
| REPORTING (situation reports, verbal briefings etc) | |
| LINKS WITH PARTNER AGENCIES | <ul style="list-style-type: none"> • Regular discussion is occurring between NSW Health public health services and the Office of Environment and Heritage and Workcover. • Workcover will now attend future teleconferences • Communications with Local Government and local Fire Brigade Area Commander have been ongoing. |
| COMMUNICATIONS (equipment, key contact points, after-hours arrangements etc) | <ul style="list-style-type: none"> • Further media is planned for Sunday 14th August to advise of the results of the community environmental samples. |
| 6.0 Attachments (list any attachments eg maps, charts, organisational charts) | |

| | | |
|---|---|--|
| <p>Author: Peter Dunphy Director of Operations Workcover (contributed Workcover advice) 0412051359</p> <p>Greg Sullivan(DCE Environment Protection and Regulation) 0407119 235</p> <p>Dr Kerry Chant (Chief Health Officer) 0411047165</p> | <p>Approved by: Authors</p> | <p>Contact officer and details: Dr Kerry Chant 0411047165</p> |
|---|---|--|

Dunphy, Peter

From: Dunphy, Peter
Sent: Sunday, 14 August 2011 7:30 PM
To: Kerry Rhall
Cc: rmanning; Sullivan Greg
Subject: Re: Incident action plan

Thanks Kerry
endorsed
Peter Dunphy

Sent from my iPad

On Aug 14, 2011, at 7:21 PM, "Kerry Rhall" > wrote:

> Dear Peter and Greg, can you please review and endorse/amend the attached incident action plan. Please press reply to all so that Ron can forward the endorsed version to the SECON.

Regards,
> Kerry
> <Orica_plant_chromium_(VI)_release_IAP_5 14th august.docx>

Dunphy, Peter

From: Dunphy, Peter
Sent: Sunday, 14 August 2011 8:01 PM
To: 'rmanning@ambulance.nsw.gov.au'
Subject: Re: Incident action plan

Ron
We are expecting this week.
Peter Dunphy
Sent From Blackberry

From: MANNING, Ronald [mailto:rmanning@ambulance.nsw.gov.au]
Sent: Sunday, August 14, 2011 08:00 PM
To: Dunphy, Peter
Subject: Re: Incident action plan

Peter

The IAP says that the report from Orica on the health monitoring of the workers is expected next week. Is it actually this week (given that it is Sunday) or next week (ie week commencing august 21) ?

Thanks

Ron Manning

----- Original Message -----

From: Dunphy, Peter <Peter.Dunphy@workcover.nsw.gov.au>
To: Kerry Rhall
Cc: MANNING, Ronald; Sullivan Greg <greg.sullivan@environment.nsw.gov.au>
Sent: Sun Aug 14 19:30:05 2011
Subject: Re: Incident action plan

Thanks Kerry
endorsed
Peter Dunphy

at from my iPad

On Aug 14, 2011, at 7:21 PM, "Kerry Rhall" <____> wrote:

> Dear Peter and Greg, can you please review and endorse/amend the attached incident action plan. Please press reply to all so that Ron can forward the endorsed version to the SECON.

>

> Regards,

> Kerry

> <Orica_plant_chromium_(VI)_release_IAP_5 14th.august.docx>

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Dunphy, Peter

From: Sullivan Greg [Greg.Sullivan@environment.nsw.gov.au]
Sent: Monday, 15 August 2011 9:32 PM
To: Dunphy, Peter; MCANULTY, Jeremy
Cc: CHANT, Kerry
Subject: Updated Incident Report
Attachments: Orica_plant_chromium_(VI)_release_IAP_6_15th_august.rtf

Peter/Jeremy

I would be grateful if you could indicate your endorsement or any changes you wish made.

Thanks

G

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INCIDENT ACTION PLAN

Incident:
**Chromium (VI) release in Stockton,
Hunter region**

IAP#: 6
Date: 15 August 2011
Time: 2030 hrs

1.0 SITUATION

BACKGROUND

- A release of catalyst containing hexavalent chromium occurred at the ammonia plant at Orica, Kooragang Island at approximately 6pm on Monday 8th August
- Some of the catalyst was deposited off-site in Stockton but sections of the Orica Plant were the most highly impacted.
- There were no reports of acute health effects associated with this incident
- Approximately 20 workers were on-site when the incident occurred.

CURRENT

- The Office of Environment and Heritage (OEH), in liaison with NSW Health, has undertaken extensive environmental sampling and testing. All samples collected in the Stockton area have been analysed. A total of 71 samples were analysed, including swabs from outside surfaces such as windows, soil and sand, vegetation and water in tanks and pools
- No chromium was detected in 60 samples. In 11 samples low levels of chromium were detected. All results have been reviewed by an expert panel that concluded that levels of hexavalent chromium in Stockton are very low and the results confirm that there is no health risk to the residents of Stockton from the release last monday.
- A final communique on the result is being prepared by OEH and NSW Health and will be delivered to letterboxes either 16 or 17 August.
- Health officers attended the childcare centre on the morning of 15/8 to provide advice to parents.
- Health also provided additional information to local GPs indicating that no testing of residents is warranted following the health risk assessment.
- OEH has issued two prevention notices, a clean up notice and a notice requiring Orica to provide all reasonable assistance to authorised officers. Orica cannot restart the plant until approval is given by OEH and must clean up off site impacts within defined zones.
- On-site cleanup is substantially complete and further sampling will occur to assess the adequacy of the cleanup.
- Orica have indicated they may hold a public meeting on Wednesday 17 August in Stockton. Health, OEH and WorkCover have declined to participate.
- WorkCover met today with the OEH Newcastle office to discuss liaison and coordination on investigations.
- WorkCover received the list of potentially exposed workers on site including 8 Orica workers and 19 contractors. Urine samples are expected on Wednesday 17 August. There have been no reports of staff health issues to date. As the site is closed, only clean up staff have access to the clean up areas.
- WorkCover focus tomorrow will be on verifying the clean up activities. The clean up work is substantially complete pending clearance checks and sample results.
- WorkCover is continuing its investigation into the loss of containment and potential to expose workers to occupational health and safety risks.

2.0 OBJECTIVES (or MISSION)

- To support the community resume usual activities and address health concerns
- Ascertain if impacts on worker health and ensure a safe working environment
- To provide clear, appropriate and timely public communication
- To investigate the circumstances of the release and response from a regulatory perspective(OEH and WorkCover)

3.0 EXECUTION

| | |
|--|--|
| RESPONSE STRATEGIES AND TACTICS | <ul style="list-style-type: none"> As of COB today (15/8), OEH will assume the lead role in coordinating the clean-up and recovery. WorkCover focus tomorrow will be on verifying the clean up activities. The clean up work is substantially complete pending clearance checks and sample results. WorkCover is continuing it's investigation into the loss of containment and potential to expose workers to occupational health and safety risks. OEH will be progressing its investigation of the cause of the incident and the potential breach of environmental licenses and legislation. FRNSW may be requested to provide resources to collect samples from inside the ammonia plant at Orica. This is likely to occur on Wednesday (17/8). |
| PUBLIC INFORMATION / ADVICE TO PARTNER AGENCIES | <ul style="list-style-type: none"> OEH and Health are to develop a map, table and a covering letter explaining sampling results and their interpretation. The covering letter will also include a hyperlink to the complete, 'de-identified' results. The letter-drop will be carried out either tomorrow or Wednesday by OEH and public health unit staff. |
| RESOURCES | <ul style="list-style-type: none"> Local OEH and Health personnel are managing the on-ground response with support from their respective head offices. |
| MAINTAINING CORE SERVICES | <ul style="list-style-type: none"> Response, recovery and investigative efforts are not having significant impacts on core agency responsibilities. |

4.0 ADMINISTRATION AND LOGISTICS [support provided to the response]

| | |
|------------------|--|
| PERSONNEL | <ul style="list-style-type: none"> OEH, WorkCover and NSW Health are ensuring appropriate rostering. Surge capacity exists but is not expected to be required given the phase of the operation. |
| SAFETY | <ul style="list-style-type: none"> No specific safety concerns. Staff in the field have been well received by residents. |

5.0 CONTROL, COORDINATION & COMMUNICATION

| | |
|------------------------------------|--|
| GOVERNANCE ARRANGEMENTS | <ul style="list-style-type: none"> The State Environmental Services Functional Area Coordinator is coordinating the recovery. |
| REPORTING | <ul style="list-style-type: none"> OEH will provide necessary updates to the SEOC via e-mail At this stage, there is no need for another teleconference unless issues arise. Future Incident Action Plans and teleconferences to be convened/prepared by OEH as required. |
| LINKS WITH PARTNER AGENCIES | <ul style="list-style-type: none"> Regular discussion is occurring between the Office of Environment and Heritage, Health and WorkCover. Communications with Local Government and local Fire Brigade Area Commander have been ongoing via OEH. There is a plan for an interagency debrief (tentatively for the week commencing 29 August) |
| COMMUNICATIONS | <ul style="list-style-type: none"> No specific media is planned for Tuesday. |

| | | |
|---|---|--|
| Authors: Greg Thomas Manager Hazmat OEH Ph: 0412 135 164 Peter Dunphy, Director of Operations, Workcover Ph: 0412 051 359 Dr Kerry Chant, Chief Health Officer NSW Health | Approved by: Greg Sullivan DCE EPR OEH (State Environmental Services Functional Area Coordinator) Ph: 0407119 235 | Contact officer and details: Craig Lamberton Director Specialised Regulation OEH Ph: 0408 477 186 |
|---|---|--|

| | | |
|------------------|--|--|
| Ph: 0411 047 165 | | |
|------------------|--|--|



New South Wales State Emergency Operations Centre

Ms Lisa Hunt
Chief Executive Officer
WorkCover Authority NSW
Locked Bag 2906
LISAROW NSW 2252

15 August 2011

Dear Ms Hunt,

I write in regard to the release of Chromium 6 from the Orica Plant at Kooragang Island on Monday 08 August 2011. This incident has since attracted community, government and significant media attention.

New South Wales has well versed and robust emergency management arrangements which ensure a coordinated and timely response of all agencies during emergencies.

These arrangements, in conjunction with various State legislation, assign a number of responsibilities to particular agencies. Of note, Fire and Rescue NSW have responsibility for the response to any Hazardous Materials incident within the State.

Unfortunately, aspects of this event operated outside of these arrangements.

The NSW Police Force and Fire & Rescue NSW became aware of this incident a considerable time after the release and have since participated in a number of teleconferences involving the Department of Health and the Office for Environment & Heritage.

It is most concerning that no formal notification was forthcoming to NSW Police Force or Fire & Rescue NSW and that formal involvement only occurred through enquiries some three days later. There is a community perception that emergency service organisations will be advised, respond to and assist during such incidents.

In a situation where there is significant external consequences, interest and activity, I consider it insufficient to close a site without providing advice to the relevant emergency services.

In addition to the safety of onsite employees, consideration must also be given to emergency service workers who may be required to respond on to the site.

It is appreciated that this situation was compounded by the failure of a timely communications process between the operator and other Government agencies. This failure is, in part, being addressed directly with the Department of Health and Office of Environment and Heritage.

Given that WorkCover Authority is not typically involved in the established emergency management arrangements, it is nonetheless essential that notification should be provided by WorkCover Authority to the emergency service organisations in events such as these.

I seek your urgent advice as to the current situation at the Orica site, details of the closure order and any conditions imposed upon Orica as the plant operator. Furthermore, could you provide advice as to the future intentions of WorkCover Authority in relation to this incident.

I understand the Minister for the Environment and Heritage announced an independent review of this incident will be undertaken. In parallel, I will be arranging for a multi agency debrief to be conducted in coming weeks to discuss the notification, initial response and ongoing recovery.

I seek your support to ensure WorkCover Authority NSW is appropriately represented at this debrief.

Should you require further information, please contact Senior Sergeant Ben Millington on telephone 02 9265 4905 during business hours.

I thank you for your anticipated assistance and cooperation.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M J Murdoch', written over a horizontal line.

M J MURDOCH APM
ASSISTANT COMMISSIONER
DEPUTY STATE EMERGENCY OPERATIONS CONTROLLER



Ref: WC01387/11

Mr M J Murdoch APM
Assistant Commissioner
Deputy State Emergency Operations Controller
Level 4, Sydney Police Centre
151-241 Goulburn Street
SURRY HILLS NSW 2010

Dear Mr Murdoch

I write in response to your correspondence regarding emergency management arrangements following the release of chromium VI from the Orica Ammonia Plant at Kooragang Island on Monday 8 August 2011.

I wish to clarify WorkCover's involvement in this matter in relation to the issues you have raised.

As you point out, Fire and Rescue NSW has responsibility for the response to any hazardous materials incident within the State. Under usual operational practice, WorkCover would be notified of this type of incident by the NSW Fire Brigades, NSW Police or the employer at the site as part of the response to the emergency. When the site of the hazmat incident is made safe and any exclusion zone arrangements allow for Fire and Rescue NSW to permit WorkCover to enter the site, WorkCover's role as investigator can commence, if appropriate. WorkCover understands that Orica may not have elected not to call the NSW Fire Brigades as part of its response to managing this incident.

WorkCover commenced a formal investigation on Thursday 11 August 2011 when the true nature of the event on the Orica worksite became clear, following a confirmation from the Office of Environment and Heritage that they had issued a notice requiring the Ammonia Plant to shut down.

The focus of the WorkCover investigation is on the root causes leading to the loss of the required containment of a hazardous chemical, the potential for serious injury and risks to the health of workers, and whether the information provided to WorkCover by Orica fulfilled the disclosure requirements of NSW occupational health and safety legislation.

I can confirm that NSW occupational health and safety legislation places notification and reporting obligations on the employer. However, as compliance with the legislative requirements is now subject to investigation by WorkCover, it is not appropriate for me to comment further.



Under the *Hazardous Materials/Chemical, Biological, Radiological Emergency Sub-Plan* (HAZMAT-CBR Plan), WorkCover has a role in assisting the Multi Agency Incident Management Team with monitoring and predicting the occupational risks associated with the emergency, providing advice on the properties and characteristics of the hazardous materials and providing appropriate personnel as requested. WorkCover has fully assisted the Multi Agency Incident Management Team in relation to this incident.

Under the HAZMAT-CBR Plan, the Fire and Rescue NSW Commissioner is to confirm and advise of the level of personal protective equipment required within the Combat Site. This is the area defined by the Fire and Rescue NSW Commissioner in combating the hazardous materials emergency.

In relation to the current situation at the Orica site, WorkCover has been providing regular updates to the Public Health Incident Action Plan on the status of our compliance and investigation actions.

As on-site cleanup is substantially complete, WorkCover can further assess the adequacy of the cleanup. On 15 August 2011, WorkCover met with the Office of Environment and Heritage's Newcastle office to discuss liaison and coordination on investigations and arrangements for the issuing of WorkCover notices under our legislation prior to the lifting of any notices by the Office of Environment and Heritage.

WorkCover is awaiting provision of health surveillance results from any potentially exposed workers on site. No reports of staff health issues have been received to date. As the site is closed, only clean up staff have access to the clean up areas.

WorkCover welcomes your invitation to be part of the Multi Agency debrief. The representatives from WorkCover will be:

1. John Watson, General Manager, Work Health and Safety Division
2. Carmel Donnelly, General Manager, Strategy and Performance
3. Peter Dunphy, Director - Operations, Work Health and Safety Division

WorkCover is not typically involved in the established emergency management arrangements. However, we recognise the importance of effective cross-agency coordination and cooperation to achieve an outcome which is in the interest of work health and safety.

I have forwarded a copy of my letter to Deputy Commissioner, NSW Police Catherine Burn, as WorkCover has an important working relationship with the Deputy Commissioner in regard to any work health and safety initiatives or issues.

Yours Sincerely



LISA HUNT
CHIEF EXECUTIVE OFFICER

cc Deputy Commissioner, NSW Police Catherine Burn



D/2011/151146

New South Wales State Emergency Operations Centre

Ms Lisa Hunt
Chief Executive Officer
WorkCover Authority NSW
Locked Bag 2906
LISAROW NSW 2252

31 August 2011

Dear Ms Hunt,

I refer to my correspondence dated 15 August 2011 in which I outlined my intention to facilitate a multi agency debrief to discuss aspects of the Orica Kooragang Island response.

In light of the independent inquiry announced by the Premier on the 17 August 2011 and the subsequent Legislative Council inquiry established on the 25 August 2011, the State Emergency Operations Controller and I have taken the decision not to conduct the multi agency debrief at this time.

Should you require further information, please contact Senior Sergeant Ben Millington on telephone 02 9265 4905 during business hours.

I thank you for your assistance and cooperation.

Yours sincerely,

M J MURDOCH APM
ASSISTANT COMMISSIONER
DEPUTY STATE EMERGENCY OPERATIONS CONTROLLER

Dunphy, Peter

From: Thomas Greg [Greg.Thomas@environment.nsw.gov.au]
Sent: Wednesday, 17 August 2011 8:10 AM
To: Dunphy, Peter; kecha@doh.health.nsw.gov.au
Subject: Orica - Information for updated SEOC Sitrep
Attachments: Orica_plant_chromium_(VI)_release_IAP_6_15th_august[1].pdf

Kerry/Peter -- Hi,

We're updating the sitrep on the SEOC website this morning and Greg Sullivan asked me to contact both of you to see if you want anything added to the previous version (sent Monday night & attached).

The changes we're including are very minor and include notification of yesterday's letterbox drop and a statement that our investigation is continuing.

Can you please let me know ASAP as we want to post it by mid-morning.

Thanks,

Greg Thomas
Manager Hazmat
Office of Environment & Heritage
Department of Premier and Cabinet
Phone: 0412 135 164

This email is intended for the addressee(s) named and may contain confidential and/or privileged information.

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INCIDENT ACTION PLAN

| | |
|--|--|
| Incident: Chromium (VI) release in Stockton, Hunter region | IAP#: 6 Date: 16 August 2011 Time: 05.00 hrs |
|--|--|

1.0 SITUATION

| | |
|------------|---|
| BACKGROUND | <ul style="list-style-type: none">• A release of catalyst containing hexavalent chromium occurred at the ammonia plant at Orica, Kooragang Island at approximately 6pm on Monday 8th August• Some of the catalyst was deposited off-site in Stockton but sections of the Orica Plant were the most highly impacted.• There were no reports of acute health effects associated with this incident• Approximately 20 workers were on-site when the incident occurred. |
| CURRENT | <ul style="list-style-type: none">• The Office of Environment and Heritage (OEH), in liaison with NSW Health, has undertaken extensive environmental sampling and testing. All samples collected in the Stockton area have been analysed. A total of 71 samples were analysed, including swabs from outside surfaces such as windows, soil and sand, vegetation and water in tanks and pools• No chromium was detected in 60 samples. In 11 samples low levels of chromium were detected. All results have been reviewed by an expert panel that concluded that levels of hexavalent chromium in Stockton are very low and the results confirm that there is no health risk to the residents of Stockton from the release last monday.• A final communique on the result is being prepared by OEH and NSW Health and will be delivered to letterboxes either 16 or 17 August.• Health officers attended the childcare centre on the morning of 15/8 to provide advice to parents.• Health also provided additional information to local GPs indicating that no testing of residents is warranted following the health risk assessment.• OEH has issued two prevention notices, a clean up notice and a notice requiring Orica to provide all reasonable assistance to authorised officers. Orica cannot restart the plant until approval is given by OEH and must clean up off site impacts within defined zones.• On-site cleanup is substantially complete and further sampling will occur to assess the adequacy of the cleanup.• Orica have indicated they may hold a public meeting on Wednesday 17 August in Stockton. Health, OEH and WorkCover have declined to participate.• WorkCover met today with the OEH Newcastle office to discuss liaison and coordination on investigations.• WorkCover received the list of potentially exposed workers on site including 8 Orica workers and 19 contractors. Urine samples are expected on Wednesday 17 August. There have been no reports of staff health issues to date. As the site is closed, only clean up staff have access to the clean up areas.• WorkCover focus tomorrow will be on verifying the clean up activities. The clean up work is substantially complete pending clearance checks and sample results.• WorkCover is continuing its investigation into the loss of containment and potential to expose workers to occupational health and safety risks. |

2.0 OBJECTIVES (or MISSION)

| | |
|--|--|
| | <ul style="list-style-type: none">• To support the community resume usual activities and address health concerns• Ascertain if impacts on worker health and ensure a safe working environment• To provide clear, appropriate and timely public communication• To investigate the circumstances of the release and response from a regulatory perspective(OEH and WorkCover) |
|--|--|

3.0 EXECUTION

| | |
|--|--|
| RESPONSE STRATEGIES AND TACTICS | <ul style="list-style-type: none"> As of COB today (15/8), OEH will assume the lead role in coordinating the clean-up and recovery. WorkCover focus tomorrow will be on verifying the clean up activities. The clean up work is substantially complete pending clearance checks and sample results. WorkCover is continuing it's investigation into the loss of containment and potential to expose workers to occupational health and safety risks. OEH will be progressing its investigation of the cause of the incident and the potential breach of environmental licenses and legislation. FRNSW may be requested to provide resources to collect samples from inside the ammonia plant at Orica. This is likely to occur on Wednesday (17/8). |
| PUBLIC INFORMATION / ADVICE TO PARTNER AGENCIES | <ul style="list-style-type: none"> OEH and Health are to develop a map, table and a covering letter explaining sampling results and their interpretation. The covering letter will also include a hyperlink to the complete, 'de-identified' results. The letter-drop will be carried out either tomorrow or Wednesday by OEH and public health unit staff. |
| RESOURCES | <ul style="list-style-type: none"> Local OEH and Health personnel are managing the on-ground response with support from their respective head offices. |
| MAINTAINING CORE SERVICES | <ul style="list-style-type: none"> Response, recovery and investigative efforts are not having significant impacts on core agency responsibilities. |
| 4.0 ADMINISTRATION AND LOGISTICS [support provided to the response] | |
| PERSONNEL | <ul style="list-style-type: none"> OEH, WorkCover and NSW Health are ensuring appropriate rostering. Surge capacity exists but is not expected to be required given the phase of the operation. |
| SAFETY | <ul style="list-style-type: none"> No specific safety concerns. Staff in the field have been well received by residents. |
| 5.0 CONTROL, COORDINATION & COMMUNICATION | |
| GOVERNANCE ARRANGEMENTS | <ul style="list-style-type: none"> The State Environmental Services Functional Area Coordinator is coordinating the recovery. |
| REPORTING | <ul style="list-style-type: none"> OEH will provide necessary updates to the SEOC via e-mail At this stage, there is no need for another teleconference unless issues arise. Future Incident Action Plans and teleconferences to be convened/prepared by OEH as required. |
| LINKS WITH PARTNER AGENCIES | <ul style="list-style-type: none"> Regular discussion is occurring between the Office of Environment and Heritage, Health and WorkCover. Communications with Local Government and local Fire Brigade Area Commander have been ongoing via OEH. There is a plan for an interagency debrief (tentatively for the week commencing 29 August OEH/Workcover will advise all other agencies prior to any decision to lift current statutory notices in place over the site that would enable the plant to re-start.. |
| COMMUNICATIONS | <ul style="list-style-type: none"> No specific media is planned for Tuesday. |

| Authors: | Approved by: | Contact officer and details: |
|--|---|---|
| <p>Greg Thomas Manager Hazmat OEH Ph: 0412 135 164</p> <p>Peter Dunphy, Director of Operations, Workcover Ph: 0412 051 359</p> <p>Dr Kerry Chant, Chief Health Officer NSW Health Ph: 0411 047 165</p> | <p>Greg Sullivan DCE EPR OEH (State Environmental Services Functional Area Coordinator) Ph: 0407119 235</p> | <p>Craig Lamberton Director Specialised Regulation OEH Ph: 0408 477 186</p> |

Dunphy, Peter

From: Dunphy, Peter
Sent: Wednesday, 17 August 2011 8:18 AM
To: 'Greg.Thomas@environment.nsw.gov.au'; 'kecha@doh.health.nsw.gov.au'
Subject: Re: Orica - Information for updated SEOC Sitrep

Greg
We don't have any new developments to add.
Peter Dunphy
Sent From Blackberry

From: Thomas Greg [<mailto:Greg.Thomas@environment.nsw.gov.au>]
Sent: Wednesday, August 17, 2011 08:10 AM
To: Dunphy, Peter; kecha@doh.health.nsw.gov.au <kecha@doh.health.nsw.gov.au>
Subject: Orica - Information for updated SEOC Sitrep

Kerry/Peter – Hi,

We're updating the sitrep on the SEOC website this morning and Greg Sullivan asked me to contact both of you to see if you want anything added to the previous version (sent Monday night & attached).

The changes we're including are very minor and include notification of yesterday's letterbox drop and a statement that our investigation is continuing.

Can you please let me know ASAP as we want to post it by mid-morning.

Thanks,

Greg Thomas
Manager Hazmat
Office of Environment & Heritage
Department of Premier and Cabinet
Phone: 0412 135 164

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Dunphy, Peter

From: Thomas Greg [Greg.Thomas@environment.nsw.gov.au]
Sent: Thursday, 18 August 2011 11:19 AM
To: 'kecha@doh.health.nsw.gov.au'; Dunphy, Peter; rmanning@ambulance.nsw.gov.au; wsmil@doh.health.nsw.gov.au; jmcan@doh.health.au
Cc: Sullivan Greg; Burt Christopher
Subject: Updated SEOC sitrep re Orica (18/8)
Attachments: Orica_plant_chromium_(VI)_release_IAP_8_18th_august.rtf, Final for Stockton residents letterbox drop.pdf

All - Hi,

Attached is a draft of this morning's SEOC sitrep. There are few significant changes from yesterday's document. If you have any additions or comments, can you please let me know ASAP. We'll be sending it to SEOC within the hour.

Thanks,

Greg

This email is intended for the addressee(s) named and may contain confidential and/or privileged information.

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INCIDENT ACTION PLAN

| | |
|--|---|
| Incident: Chromium (VI) release in Stockton, Hunter region | IAP#: 8 Date: 18 August 2011 Time: 1100 hrs |
| 1.0 SITUATION | |
| BACKGROUND | <ul style="list-style-type: none"> • A release of catalyst containing hexavalent chromium occurred at the ammonia plant at Orica, Kooragang Island at approximately 6pm on Monday 8th August • Some of the catalyst was deposited off-site in Stockton but sections of the Orica Plant were the most highly impacted. • There were no reports of acute health effects associated with this incident • Approximately 20 workers were on-site when the incident occurred. |
| CURRENT | <ul style="list-style-type: none"> • From COB 15 August, OEH assumed the lead in the recovery process. • The Office of Environment and Heritage (OEH), in liaison with NSW Health, has undertaken extensive environmental sampling and testing. All samples collected in the Stockton area have been analysed. A total of 71 samples were analysed, including swabs from outside surfaces such as windows, soil and sand, vegetation and water in tanks and pools • No chromium was detected in 60 samples. In 11 samples low levels of chromium were detected. All results have been reviewed by an expert panel that concluded that levels of hexavalent chromium in Stockton are very low and the results confirm that there is no health risk to the residents of Stockton from the release last Monday. • Health officers attended the local childcare centre in Stockton on a number of mornings to provide advice to parents. • Health has provided additional information to local GPs indicating that no testing of residents is warranted following the health risk assessment. • OEH has issued two prevention notices, a clean up notice and a notice requiring Orica to provide all reasonable assistance to authorised officers. Orica cannot restart the plant until approval is given by OEH and must clean up off site impacts within defined zones. • Additional notices are being drafted and served by OEH as necessary to get Orica to provide further information relating to investigations. • On-site cleanup is substantially complete and further sampling will occur to assess the adequacy of the cleanup. • Orica are progressing the Stockton cleanup. Advice from Orica on 18/8 is that they have attended and cleaned approximately 200 homes. • Orica have indicated they are holding a public meeting on Thursday 18 August in Stockton. Health, OEH and WorkCover have declined to participate (details below). • WorkCover and OEH are in contact regarding their ongoing investigations. • WorkCover received the list of potentially exposed workers on site including 8 Orica workers and 19 contractors. Urine samples are expected on Wednesday 17 August. There have been no reports of staff health issues to date. As the site is closed, only clean up staff have access to the clean up areas. • WorkCover focus will be on verifying the clean up activities on the site. The clean up work is substantially complete pending clearance checks and sample results. • WorkCover is continuing its investigation into the loss of containment and potential to expose workers to occupational health and safety risks. • Approximately 1700 information packages were delivered to letterboxes by public health staff, council and OEH staff on 17/8. Health reported that there were a modest number of calls to their information line and that most residents/callers seemed satisfied with the situation and the information provided. A copy of the package is attached. |

2.0 OBJECTIVES (or MISSION)

- To support the community resume usual activities and address health concerns
- Ascertain if impacts on worker health and ensure a safe working environment
- To provide clear, appropriate and timely public communication
- To investigate the circumstances of the release and response from a regulatory perspective(OEH and WorkCover)

3.0 EXECUTION

RESPONSE STRATEGIES AND TACTICS

- WorkCover focus will be on verifying the clean up activities on the site. The clean up work is substantially complete pending clearance checks and sample results.
- WorkCover is continuing it's investigation into the loss of containment and potential to expose workers to occupational health and safety risks.
- OEH will be progressing its investigation of the cause of the incident and the potential breach of environmental licenses and legislation.
- FRNSW have been approached to provide resources to collect samples from inside the ammonia plant at Orica. A formal request will follow on the afternoon of 18/8. It was initially planned for yesterday but this is now likely to occur today (18/8).
- Newcastle Councillors have requested a briefing on the incident. OEH is liaising with the General Manager to schedule a time for the briefing. It is anticipated that the briefing will be conducted by OEH and Health officers. Agencies will be updated once details are known.

PUBLIC INFORMATION / ADVICE TO PARTNER AGENCIES

- OEH and Health are continuing to manage media inquiries as they arise.
- Orica is to hold a public meeting at Dalby Oval, Mitchell Street, Stockton at 1930 tonight (18/8). They are planning for 200 residents and media to attend. Supt. Gralton (Newcastle City LAC) is in contact with Orica regarding the policing response.

RESOURCES

- Local OEH and Health personnel are managing the on-ground response with support from their respective head offices.

MAINTAINING CORE SERVICES

- Response, recovery and investigative efforts are not having significant impacts on core agency responsibilities.

4.0 ADMINISTRATION AND LOGISTICS [support provided to the response]

PERSONNEL

- OEH, WorkCover and NSW Health are ensuring appropriate rostering. Surge capacity exists but is not expected to be required given the phase of the operation.

SAFETY

- No specific safety concerns. Staff in the field have been well received by residents.

5.0 CONTROL, COORDINATION & COMMUNICATION

GOVERNANCE ARRANGEMENTS

- The State Environmental Services Functional Area Coordinator is managing the recovery.

REPORTING

- OEH will provide necessary updates to the SEOC via e-mail
- At this stage, there is no need for another teleconference unless issues arise.
- Future Incident Action Plans and teleconferences to be convened/prepared by OEH as required.

LINKS WITH PARTNER AGENCIES

- Regular discussion is occurring between the Office of Environment and Heritage, Health and WorkCover.
- There is a plan for an interagency debrief (tentatively for the week commencing 29 August.
- OEH/Workcover will advise all other agencies prior to any decision to lift current statutory notices in place over the site that would enable the plant to re-start.

COMMUNICATIONS

- No specific media is planned for Thursday/Friday (18-19/8).

| Authors: | Approved by: | Contact officer and details: |
|--|---|---|
| <p>Greg Thomas Manager Hazmat OEH Ph: 0412 135 164</p> <p>Peter Dunphy, Director of Operations, Workcover Ph: 0412 051 359</p> <p>Dr Kerry Chant, Chief Health Officer NSW Health Ph: 0411 047 165</p> | <p>Greg Sullivan DCE EPR OEH (State Environmental Services Functional Area Coordinator) Ph: 0407119 235</p> | <p>Craig Lamberton Director Specialised Regulation OEH Ph: 0408 477 186</p> |

Stockton chromium results confirm no health risk to residents

16 August 2011

This factsheet provides details of the samples collected in the Stockton community between 9 and 12 August 2011 to test for the presence of hexavalent chromium (chromium VI) following an incident at the Orica plant on Kooragang Island on 8 August. A total of 71 samples were analysed. Chromium VI could not be detected in 60 samples and low levels of chromium VI were detected in 11 samples.

Key messages

1. Chromium VI was not detectable in the vast majority of samples. No chromium was detected in the 5 samples from the child care centre in Barrie Crescent.
2. When detected, chromium VI was at low levels that do not represent a risk to the health of Stockton residents.
3. Chromium VI was only detected in the area identified as most likely to be exposed when the initial risk to residents was assessed considering the prevailing wind.
4. The concentrations of chromium VI detected are consistent with expectations based on the amount of chromium VI estimated to have been released outside the plant.
5. Chromium VI converts to a much safer, naturally occurring form of chromium (III) within 10 days of contact with the environment.
6. Residents of Stockton within the area bounded by Fullerton Street, Griffith Avenue, Barrie Crescent and Flint Street (six block area) should follow the simple precautionary measures previously advised until Friday 19 August. No precautionary measures are required after this date.
7. The Office of Environment and Heritage has defined an outer area larger than the confirmed affected area in the Clean Up Notice issued to Orica. This is a precautionary approach to not limit Orica's area of responsibility in relation to any cleanup activities that may be required.

Detailed sample results

Seventy-one samples were analysed; 35 surface swabs, 16 soil samples, 12 vegetation samples, 1 bird sample and 7 water samples. The levels of chromium VI for the 11 samples with chromium detected are summarised below:

| Type of sample | Sample details | Chromium VI concentration |
|----------------|---|---|
| Surface swab | 7 samples from external surfaces: sign, mailbox, boat, fence, window, door, switchboard | 0.003 µg/cm ² , 0.007 µg/cm ² , 0.019 µg/cm ² , 0.028 µg/cm ² , 0.35 µg/cm ² , 0.58 µg/cm ² , 1.1 µg/cm ² |
| Vegetation | 2 samples of tree leaves | 0.6 mg/kg, 0.8 mg/kg |
| Water | 1 rainwater tank sample 1 bird bath sample | 0.012 mg/L (total chromium 0.013 mg/L) 0.049 mg/L (total chromium 0.059 mg/L) |

The chromium concentration is expressed in different units for each type of sample. The Australian Drinking Water Guidelines set the acceptable level of chromium VI in drinking water at 0.05 mg/L. Both water samples were below this guideline level and neither water sample was

from a source intended for human consumption. Skin contact with chromium at these concentrations does not pose a risk to health.

The two water samples with chromium detected were collected immediately south of the six-block area. Multiple other tests of soil, vegetation and surface swabs outside the six block area detected no chromium. Residents in these areas do not need to take any additional precautionary measures. Tap drinking water from Hunter Water is unaffected. Extensive sampling has not detected chromium in any other areas of Stockton.

Results are available at the Office of Environment and Heritage website:
<http://www.environment.nsw.gov.au/>

Sample locations

This map shows the location for each sample collected.

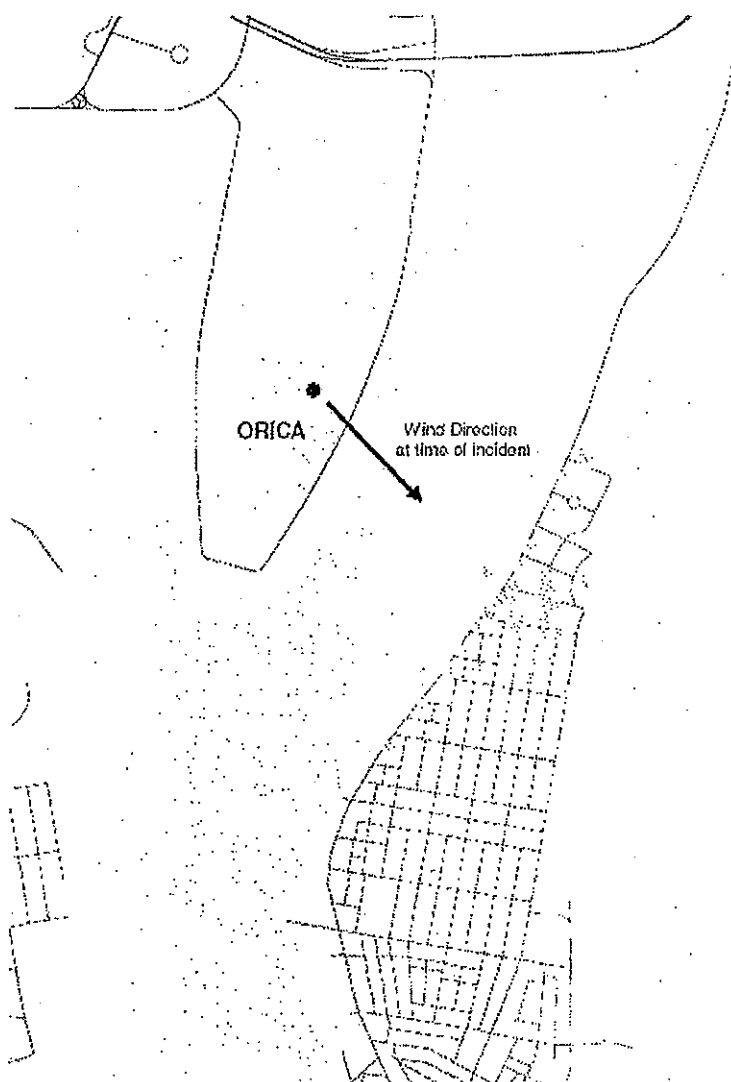
Samples with no chromium detected are marked with green dots.

Samples with chromium detected are marked with other colours:

Surface swabs with pink dots; water samples with blue dots and vegetation samples with orange dots.

Legend - Sampling Points

- Detected - Swab
- Detected - Vegetation
- Detected - Water
- Not detected



Conclusion

The testing results have been considered in detail by an expert panel which included Professor Alison Jones, an independent expert clinical toxicologist. Professor Jones has advised that the levels of chromium VI in these samples from Stockton are very low and that these results confirm that there is no health risk to the residents of Stockton from the release of chromium VI on Monday 8 August.

For more information see: <http://www.health.nsw.gov.au/whatsnew/orica.asp>

For further information please contact:

Health Issues: Hunter New England Population Health on 4924 6477 Option 9
Regulatory Support: Office of Environment and Heritage on 131555

Dunphy, Peter

From: Dunphy, Peter
Sent: Thursday, 18 August 2011 11:32 AM
To: Thomas Greg
Cc: kecha@doh.health.nsw.gov.au; rmanning@ambulance.nsw.gov.au; wsmi@doh.health.nsw.gov.au; jmcan@doh.health.au; Sullivan Greg; Burt Christopher
Subject: Re: Updated SEOC sitrep re Orica (18/8)

Greg

The only change from worker is that

Health surveillance results are now expected today, WorkCover is drafting notices to obtain further information in relation to plant operations at the time of the incident and notices in relation to the review of on-site emergency procedures and provision of risk assessment advice on the adequacy of the onsite clean up. These notices are expected to be served on the operator today.

Sent from my iPad

. Aug 18, 2011, at 11:19 AM, "Thomas Greg" <Greg.Thomas@environment.nsw.gov.au> wrote:

> All - Hi,

>

> Attached is a draft of this morning's SEOC sitrep. There are few significant changes from yesterday's document. If you have any additions or comments, can you please let me know ASAP. We'll be sending it to SEOC within the hour.

>

> Thanks,

>

> Greg

>

>

> ----- This email is intended for the addressee(s)

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>

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> <Orica_plant_chromium_(VI)_release_IAP_8_18th_august.rtf>

> <Final for Stockton residents letterbox drop.pdf>

Dunphy, Peter

From: MANNING, Ronald [rmanning@ambulance.nsw.gov.au]
Sent: Thursday, 18 August 2011 6:06 PM
To: Dunphy, Peter
Subject: RE: Updated SEOC sitrep re Orica (18/8) 180811

Attachment image001.jpg has been removed from this message as it is a picture file that may contain inappropriate content.

You may release the original message (please wait 15 mins) via the Quarantine Web Interface at <http://EmailQuarantine>

<http://EmailQuarantine:28080>

Please Contact Workcover IT Service Desk on 02 4321 5490 for further information.

anks Peter

Ron

Dr. Ron Manning

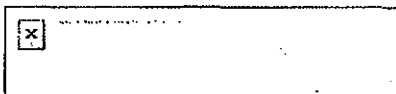
Director | Statewide Services, Ambulance Service of New South Wales

Level 2, Sydney Ambulance Centre, Garden Street Eveleigh

PO Box 530 Alexandria NSW 1435

Tel. 02 9553 2212 | Fax. 02 9553 2266 | Mob. 0419 414 880 | rmanning@ambulance.nsw.gov.au

www.ambulance.nsw.gov.au



From: Dunphy, Peter [mailto:Peter.Dunphy@workcover.nsw.gov.au]

Sent: Thursday, 18 August 2011 5:56 PM

To: Thomas Greg; 'kecha@doh.health.nsw.gov.au'; MANNING, Ronald; wsmit@doh.health.nsw.gov.au; jnican@doh.health.au

Cc: Sullivan Greg; Burt Christopher

Subject: RE: Updated SEOC sitrep re Orica (18/8) 180811

Hi all just to update you and let you know the following WorkCover notices were issued today (see attached)

The current status of our investigations and onsite inspections :

1. Health surveillance follow up

The section 62 notice issued today requires the production of health surveillance records. Our investigating Inspector has been informed that 130 out of approx 144 who were on site at the time of the incident have been contacted and been offered medical examination. 14 persons have not yet been contacted despite repeated efforts. A number of people have declined the opportunity. We have been advised that over 100 tests have been done and all have returned a result within the normal population exposure range – we are awaiting written confirmation of the results. All other staff who work at the Orica plant but who were not present are to be offered medical examination. All medical examination is being undertaken in consultation with their Doctor and toxicologist

2. Clean up status

All plant in the contaminated area has now undergone 1st stage of the clean up by being hosed down. Work has now started on cleaning surfaces around the Plant and this will continue as they work their way into the

affected area. All stormwater and effluent is being captured and treated on site. Air monitoring continues to be undertaken and to date no positive samples have been found.

3. Post incident analysis (Investigation)

Section 62 issued today with compliance date next Monday. We have contacted all contractors identified as being on site at time of incident to verify that information provided by Orica about persons on site at time of incident is correct.

Regards

Peter Dunphy

Director | Operations | Work Health and Safety

WorkCover NSW

92-100 Donnison Street, Gosford NSW 2250

Ph: 02 4321 5280

Fax: 02 9287 5280

Email: peter.dunphy@workcover.nsw.gov.au

WORK SAFE ► HOME SAFE

From: Thomas Greg [mailto:Greg.Thomas@environment.nsw.gov.au]
Sent: Thursday, 18 August 2011 11:19 AM
To: 'kecha@doh.health.nsw.gov.au'; Dunphy, Peter; rmanning@ambulance.nsw.gov.au; wsmitt@doh.health.nsw.gov.au; jmcan@doh.health.nsw.gov.au
Cc: Sullivan Greg; Burt Christopher
Subject: Updated SEOC sitrep re Orica (18/8)

All - Hi,

Attached is a draft of this morning's SEOC sitrep. There are few significant changes from yesterday's document. If you have any additions or comments, can you please let me know ASAP. We'll be sending it to SEOC within the hour.

Thanks,

Greg

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Please Note:

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Dunphy, Peter

From: Dunphy, Peter
Sent: Tuesday, 23 August 2011 8:48 AM
To: Thomas Greg; Kerry CHANT (kecha@doh.health.nsw.gov.au)
Subject: Orica_plant_chromium_(VI)_release_IAP_10_20th_august.rtf
Attachments: Orica_plant_chromium_(VI)_release_IAP_10_20th_august.rtf

Greg

Attached are my changes in tracked changes.



INCIDENT ACTION PLAN

| | |
|---|--|
| Incident: Chromium (VI) release in Stockton, Hunter region | IAP#: 10 Date: 20 August 2011 Time: 1500 hrs |
| 1.0 SITUATION | |
| BACKGROUND | <ul style="list-style-type: none">• A release of catalyst containing hexavalent chromium occurred at the ammonia plant at Orica, Kooragang Island at approximately 6pm on Monday 8th August• Some of the catalyst was deposited off-site in Stockton but sections of the Orica Plant were the most highly impacted.• There were no reports of acute health effects associated with this incident• Approximately <u>14420 workers</u> were on-site when the incident occurred <u>with approximately 27 workers in the immediate area.</u> |
| CURRENT | <ul style="list-style-type: none">• From COB 15 August, OEH assumed the lead in the recovery process.• The Office of Environment and Heritage (OEH), in liaison with NSW Health, has undertaken extensive environmental sampling and testing. All samples collected in the Stockton area have been analysed. A total of 71 samples were analysed, including swabs from outside surfaces such as windows, soil and sand, vegetation and water in tanks and pools• No chromium was detected in 60 samples. In 11 samples low levels of chromium were detected. All results have been reviewed by an expert panel that concluded that levels of hexavalent chromium in Stockton are very low and the results confirm that there is no health risk to the residents of Stockton from the release on Monday 8 August.• Health officers attended the local childcare centre in Stockton on a number of mornings to provide advice to parents.• Health has provided additional information to local GPs indicating that no testing of residents is warranted following the health risk assessment.• OEH has issued two prevention notices, a clean up notice and a notice requiring Orica to provide all reasonable assistance to authorised officers. Orica cannot restart the plant until approval is given by OEH and must clean up off site impacts within defined zones.• Orica have submitted a request via their lawyers to re-start a set of compressors which they say are at risk of permanent damage if they are not run. The compressors can be operated without creating any emissions apart from steam. OEH are seeking further information from Orica and will advise other agencies before any action is taken regarding the request.• Additional notices are being drafted and served by OEH as necessary to get Orica to provide further information relating to investigations.• <u>As of 19/8, all plant in the contaminated area had undergone first stage clean-up (they were hosed down).</u> On-site cleanup is substantially complete and further sampling will occur to assess the adequacy of the cleanup.• Orica are progressing the Stockton cleanup. Advice from Orica on 18/8 is that they have attended and cleaned approximately 200 homes.• WorkCover and OEH are in contact regarding their ongoing investigations.• WorkCover received the list of potentially exposed workers on site including 8 Orica workers and 19 contractors. Urine samples are expected on Wednesday 17 August. There have been no reports of staff health issues to date. As the site is closed, <u>only clean up work and essential maintenance work is being carried out in the clean up areas. staff have access to the clean up areas.</u>• As of 19/8, all plant in the contaminated area had undergone first stage clean-up (they were hosed down).• WorkCover is continuing its investigation into the loss of containment and potential to expose workers to occupational health and safety risks.•• Approximately 1700 information packages were delivered to letterboxes by public health staff, council and OEH staff on 17/8. Health reported that there were a modest number of calls to their information line and that most residents/callers seemed satisfied with the situation and the information provided. |

| | |
|--|--|
| | <ul style="list-style-type: none"> • Orica held a public meeting at Dalby Oval, Mitchell Street, Stockton on 18/8. Around 400 residents and media attended. There was reportedly some criticism that no government agency representatives were in attendance. Some residence expressed dissatisfaction with the standard of clean-up by Orica. These people will be identified through the postcards to be delivered to the cleaned premises. • There are reports that the Stockton residents are organising their own public meeting for an (as yet unconfirmed) date in the week commencing 22/8. As more information becomes available it will be included in future sitreps. • On 19/8 at approximately 15.00hrs Orica notified OEH of an exceedance of the licence limit for the level of arsenic in water released from an effluent pond. The licence limit states a limit of 0.05 milligrams of arsenic per litre and Orica advised that approximately 1.2ML of water was released around 12.00hrs on 19/8 with a concentration of 0.067 milligrams of arsenic per litre. In a relative sense this is a minor breach and is not expected to have any impact on the Hunter River or use of the river. OEH are investigating and have required Orica to provide a report about the incident. A media release has been issued and DPI Fisheries and Health advised. |
| 2.0 OBJECTIVES (or MISSION) | |
| | <ul style="list-style-type: none"> • To support the community resume usual activities and address health concerns • Ascertain if impacts on worker health and ensure a safe working environment • To provide clear, appropriate and timely public communication • To investigate the circumstances of the release and response from a regulatory perspective(OEH and WorkCover) |
| 3.0 EXECUTION | |
| RESPONSE STRATEGIES AND TACTICS | <ul style="list-style-type: none"> • WorkCover is continuing it's investigation into the loss of containment and potential to expose workers to occupational health and safety risks. • Work has started on cleaning surfaces around the plant and the cleaners will work their way into the contaminated area. • Air samples continue to be taken on site and reviewed by WorkCover. No positive results have been received. • WorkCover has issued notices to obtain further information in relation to plant operations at the time of the incident. The compliance date for the notices is next Monday (22/8). • Notices are also being drafted in relation to the review of on-site emergency procedures and provision of risk assessment advice on the adequacy of the onsite clean-up <u>WorkCover has issued improvement notices for review of onsite emergency response plans and a risk assessment to determine the adequacy of the onsite cleanup program. A section 62 notice requiring the provision of information and documentation relating to the operating procedures and health surveillance records. Compliance with the 62 notices is required by 5pm 23 August 2011.</u> • WorkCover advises that as at 19/8 130 of 144 people on site have been contacted and offered medical assessments. While a number of people have declined the tests, over 100 have been done. All health surveillance results are required to be provided to WorkCover by 5pm 23 August 2011. No health issues have been identified at this stage, however further assessment of all results is still required. • OEH continues to progress its investigation into the cause of the incident and the potential breach of environmental licenses and legislation. • FRNSW were requested to provide assistance regarding the taking of samples in the contaminated area. However, due to constraints around OH&S issues and specialist skills required, they were unable to assist with the request. OEH are examining other options to obtain the necessary evidentiary samples. • Newcastle Councillors have requested a briefing on the incident. OEH is liaising with the General Manager to schedule a time for the briefing. |
| PUBLIC INFORMATION / ADVICE TO PARTNER AGENCIES | <ul style="list-style-type: none"> • OEH and Health are continuing to manage media inquiries as they arise. |

| | |
|---------------------------|---|
| RESOURCES | <ul style="list-style-type: none"> Local OEH and Health personnel are managing the on-ground response with support from their respective head offices. |
| MAINTAINING CORE SERVICES | <ul style="list-style-type: none"> Response, recovery and investigative efforts are not having significant impacts on core agency responsibilities. |

4.0 ADMINISTRATION AND LOGISTICS [support provided to the response]

| | |
|-----------|--|
| PERSONNEL | <ul style="list-style-type: none"> OEH, WorkCover and NSW Health are ensuring appropriate rostering. Surge capacity exists but is not expected to be required given the phase of the operation. |
| SAFETY | <ul style="list-style-type: none"> No specific safety concerns. Staff in the field have been well received by residents. |

5.0 CONTROL, COORDINATION & COMMUNICATION

| | |
|-----------------------------|---|
| GOVERNANCE ARRANGEMENTS | <ul style="list-style-type: none"> The State Environmental Services Functional Area Coordinator is managing the recovery. |
| REPORTING | <ul style="list-style-type: none"> OEH will provide necessary updates to the SEOC via e-mail At this stage, there is no need for another teleconference unless issues arise. Future Incident Action Plans and teleconferences to be convened/prepared by OEH as required. |
| LINKS WITH PARTNER AGENCIES | <ul style="list-style-type: none"> Regular discussion is occurring between the Office of Environment and Heritage, Health and WorkCover. There is a plan for an interagency debrief (tentatively for the week commencing 29 August. OEH/Workcover will advise all other agencies prior to any decision to lift current statutory notices in place over the site that would enable the plant to re-start. |
| COMMUNICATIONS | <ul style="list-style-type: none"> No specific media is planned for Friday (18-19/8). |

| | | |
|---|---|--|
| Authors: Greg Thomas Manager Hazmat OEH Ph: 0412 135 164 Peter Dunphy, Director of Operations, Workcover Ph: 0412 051 359 Dr Kerry Chant, Chief Health Officer NSW Health Ph: 0411 047 165 | Approved by: Greg Sullivan DCE EPR OEH (State Environmental Services Functional Area Coordinator) Ph: 0407119 235 | Contact officer and details: Craig Lamberton Director Specialised Regulation OEH Ph: 0408 477 186 |
|---|---|--|

Dunphy, Peter

From: Dunphy, Peter
Sent: Thursday, 25 August 2011 9:00 AM
To: 'Thomas Greg'
Subject: RE: Orica_plant_chromium_(VI)_release_IAP_12_24th_august

That's fine Greg – nothing to add.

Regards

Peter Dunphy
Director | Operations | Work Health and Safety
WorkCover NSW
92-100 Donnison Street, Gosford NSW 2250
Ph: 02 4321 5280
Fax: 02 9287 5280
Email: peter.dunphy@workcover.nsw.gov.au
WORK SAFE ► HOME SAFE

From: Thomas Greg [<mailto:Greg.Thomas@environment.nsw.gov.au>]
Sent: Wednesday, 24 August 2011 4:43 PM
To: BROOME, Richard; Dunphy, Peter
Cc: kecha@doh.health.nsw.gov.au; wsmit@doh.health.nsw.gov.au; Sullivan Greg
Subject: Orica_plant_chromium_(VI)_release_IAP_12_24th_august

All,

Here is the latest draft sitrep for review. I added points from this afternoon's discussion between Health and OEH. All changes from the last version are highlighted.

Let me know of any changes/additions/deletions please.

^^ flagged; it is envisaged that this will be the last one unless something unforeseen occurs.

Thanks,

Greg Thomas
Manager Hazmat
OFFICE OF ENVIRONMENT AND HERITAGE
NSW DEPARTMENT OF PREMIER AND CABINET
Phone: 0412 135 164 or (02)9995 5965
<mailto:greg.thomas@environment.nsw.gov.au>

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TAB 31

Dunphy, Peter

From: McEwan, Max
Sent: Thursday, 25 August 2011 4:46 PM
To: wsmit@doh.health.nsw.gov.au; Dunphy, Peter
Cc: Chamings, Dave; St George, Usha
Subject: Biol Monitoring and Health Surveillance Results Kooragang Island -WorkCover
Attachments: ORICA HEALTH SURV--Ordered by URINE CHR no names.doc

Prof Wayne Smith
Director
Envir Health Branch
NSW Health

Please see attached a word document table of chromium results for 83 Kooragang Island workers which are mainly urine chromium (Nmol/mmol Creatinine) from 95% Orica workers and contractors. Orica sourced results (79) have post exposure spirometry and some exposure and reported health impact commentary from Orica medical staff. A few Orica workers were not spirometry tested but Orica expects to test them at some future time. 4 workers have blood results but no spirometry or exposure commentary. These are other contractors whose data was sent outside the Orica jurisdiction. These results are in blue.

Workers were sampled from 11-18 August. I have not included that information. The results are sorted by decreasing urinary chromium levels.

Let me know if further information may be helpful.

Regards

Max McEwan PhD
Professional Officer 4
Chemical Hygiene & Toxicology,
WorkCover NSW

PO BOX 1476
Strawberry Hills 2012
Level 10 300 Elizabeth St
Surry Hills NSW
Ph: 02 8260 5785 Fax 02 9287 5785
Email: max.mcewan@workcover.nsw.gov.au

| Urine Cr Creatinine Corrected nmol/mmol Cr | Spirometry (Fev1/FVC%) In red pre-exposure | Symptoms (Nil unless stated) |
|--|--|---|
| 3.3 | 75% | Exp to yellow rain NIL symptoms |
| 2.4 | 79% | |
| 1.6 | 87% | |
| 1.3 | 77%--(86) | Exp -walking at plant at time of incident, Nil skin reaction , 6/7 resp concern-saw doctor-prn ventolin |
| 1.3 | | Blood level 14 nmol/L Exp Unknown |
| 1.2 | 81% | |
| 1.2 | 77% | |
| 1 | 93% | |
| 1 | 87% | |
| 1 | 78% | Exp, irrit on hands, Nil other symptoms |
| 0.8 | 82% | |
| 0.8 | 87% | Exp? Rash rt hand, sore left external ear |
| 0.8 | 83% | |
| 0.8 | | Blood level 11 nmol/L Exp Unknown |
| 0.8 | 71%--(83) | |
| 0.7 | 74%--(71) | |
| 0.7 | 74%--(79) | |
| 0.7 | Not tested--(83) | Exp -funny taste in air, NIL symptoms |
| 0.7 | 76% | |
| 0.7 | 87% | |
| 0.7 | 77% | |
| 0.7 | 83% | |
| 0.6 | 82% | |
| 0.6 | 91%F | |
| 0.6 | 84% | |
| 0.6 | 63%--(76) | |
| 0.6 | 77% | Exp-direct on skin -Nil symptoms |
| 0.6 | 73% | |
| 0.6 | 79%--(74) | |
| 0.6 | | Blood level 10 nmol/L Exp Unknown |
| 0.6 | 79% | |
| 0.5 | 67%--(74) | |
| 0.5 | | Blood level 11 nmol/L Exp Unknown |
| 0.5 | 79%--(85) | |
| 0.5 | 74% | Skin Contact, No rash-Nil symptoms |
| 0.5 | 67% | Exp, skin irit, burning sensation, 2/7 later breathing difficulty, chest tightness, mucous |

| Urine Cr Creatinine Corrected nmol/mmol Cr _t | Spirometry (Fev1/FVC%) In red pre-exposure | Symptoms (Nil unless stated) |
|---|--|--|
| 0.5 | 79% | Exp Burning on hands, eye irrit, wheeze on night of incident, Nil symptoms Now |
| 0.5 | 79% | |
| 0.5 | 76%--(82) | |
| 0.5 | 78% | |
| 0.5 | 76% | Exp? -next morning after incident- Nil symptoms- later URTI symptoms |
| 0.5 | 69% | |
| 0.4 | 83%--(89) | |
| 0.4 | 79% | Exp, outside on incident night, Nil symptoms |
| 0.4 | 76% | |
| 0.4 | 100% | |
| 0.4 | 79%% | |
| 0.4 | 69% | |
| 0.4 | 81% | |
| 0.4 | 65%--(83) | |
| 0.4 | 75% | Exp to piping 9/8/11 NIL symptoms |
| 0.4 | Not tested | |
| 0.3 | 85% | |
| 0.3 | 90% | Exp -Nil symptoms |
| 0.3 | 78% | |
| 0.3 | 75% | |
| 0.3 | 75% | Exp to yellow rain-Nil symptoms |
| 0.3 | Not Tested | Exp?-No direct contact or rash, irritating cough |
| 0.3 | 87%--(78) | Exp direct contact -Nil symptoms |
| 0.3 | 75% | |
| 0.3 | 76% | Exp-outside at time incident Nil symptoms |
| 0.3 | 94% | |
| 0.3 | 90% | Exp skin irrit forearms |
| 0.3 | 83% | Exp-face rash & sore throat-Now Nil symptoms |
| 0.2 | 77%--(88) | |
| 0.2 | 84% | |
| 0.2 | 80% | |
| 0.2 | 77% | |
| 0.2 | 86% | |
| 0.2 | 87% | |
| 0.2 | 91%--(87) | |
| 0.2 | 87% | Exp to 'dust', Nil symptoms |

| Urine Cr Creatinine Corrected nmol/mmol Cr | Spirometry (Fev1/FVC%) In red pre-exposure | Symptoms (Nil unless stated) |
|--|--|--|
| 0.2 | 87%--(83) | |
| 0.2 | 86%--(82) | |
| 0.2 | 94% | |
| 0.2 | 69% | |
| 0.2 | 84% | Exp to yellow rain on hands, rash wrist, Nil further |
| 0.2 | 83%--(82) | |
| 0.2 | 78%--(74) | |
| 0.2 | 75% | |
| 0.2 | 74% | |
| 0.2 | 81% | |
| 0.1 | 71% | Exp to yellow rain to hands&face, Metallic taste, skin irrit, Nil further |

Dunphy, Peter

From: Thomas Greg [Greg.Thomas@environment.nsw.gov.au]
Sent: Wednesday, 24 August 2011 4:43 PM
To: BROOME, Richard; Dunphy, Peter
Cc: kecha@doh.health.nsw.gov.au; wsmit@doh.health.nsw.gov.au; Sullivan Greg
Subject: Orica_plant_chromium_(VI)_release_IAP_12_24th_august
Attachments: Orica_plant_chromium_(VI)_release_IAP_12_24th_august.rtf

All,

Here is the latest draft sitrep for review. I added points from this afternoon's discussion between Health and OEH. All changes from the last version are highlighted.

Let me know of any changes/additions/deletions please.

As flagged, it is envisaged that this will be the last one unless something unforeseen occurs.

Thanks,

eg Thomas
Manager Hazmat
OFFICE OF ENVIRONMENT AND HERITAGE
NSW DEPARTMENT OF PREMIER AND CABINET
Phone: 0412 135 164 or (02)9995 5965
<mailto:greg.thomas@environment.nsw.gov.au>

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INCIDENT ACTION PLAN

| | |
|--|---|
| Incident: Chromium (VI) release in Stockton, Hunter region | IAP#: 12 (FINAL) Date: 24 August 2011 Time: 18:00 hrs |
| 1.0 SITUATION | |
| BACKGROUND | <ul style="list-style-type: none"> • A release of catalyst containing hexavalent chromium occurred at the ammonia plant at Orica, Kooragang Island at approximately 6pm on Monday 8th August • Some of the catalyst was deposited off-site in Stockton but sections of the Orica Plant were the most highly impacted. • There were no reports of acute health effects associated with this incident • Approximately 144 workers were on-site when the incident occurred with approximately 27 workers in the immediate area. |
| CURRENT | <ul style="list-style-type: none"> • From COB 15 August, OEH assumed the lead in the recovery process. • The Office of Environment and Heritage (OEH), in liaison with NSW Health, has undertaken extensive environmental sampling and testing. All samples collected in the Stockton area have been analysed. A total of 71 samples were analysed, including swabs from outside surfaces such as windows, soil and sand, vegetation and water in tanks and pools • No chromium was detected in 60 samples. In 11 samples low levels of chromium were detected. All results have been reviewed by an expert panel that concluded that levels of hexavalent chromium in Stockton are very low and the results confirm that there is no health risk to the residents of Stockton from the release on Monday 8 August. • Results from bore water sampling have been received. The results are well below acceptable levels specified in the Australian Drinking Water Guidelines (ChromiumVI acceptable level = 0.05 mg/L). The levels found in the two samples were 0.00135 mg/L and 0.00085 mg/L. • No further environmental sampling to assess health risks is considered necessary. • Health officers attended the local childcare centre in Stockton on a number of mornings to provide advice to parents. • Health has provided additional information to local GPs indicating that no testing of residents is warranted following the health risk assessment. • OEH has issued two prevention notices, a clean up notice and a notice requiring Orica to provide all reasonable assistance to authorised officers. Orica cannot restart the plant until approval is given by OEH and must clean up off site impacts within defined zones. • Orica have submitted a request via their lawyers to re-start a set of compressors which they say are at risk of permanent damage if they are not run. The compressors can be operated without creating any emissions apart from steam. Orica advise that pumping oil through the compressors is a routine maintenance process when a plant is in shutdown mode. Orica's lawyers have indicated to OEH that this maintenance activity is not covered by the prevention notice because it does not involve starting up the plant. OEH lawyers have reviewed the advice and agree this is the case. The maintenance activity does not involve energising the plant. Orica propose that the activity occur on Wednesday 24 August and OEH will have officers in place to observe. OEH are developing a communications strategy in relation to the maintenance activity and will advise other agencies. • Additional notices are being drafted and served by OEH as necessary to get Orica to provide further information relating to investigations. • As of 19/8, all plant in the contaminated area had undergone first stage clean-up (they were hosed down). On-site cleanup is substantially complete and further sampling will occur to assess the adequacy of the cleanup. • Orica are progressing the Stockton cleanup. Advice from Orica on 18/8 is that they have attended and cleaned approximately 200 homes. • WorkCover and OEH are in contact regarding their ongoing investigations. • WorkCover received the list of potentially exposed workers on site including 8 Orica workers and 19 contractors. Urine samples are expected on Wednesday 17 August. There have been no reports of staff health issues to date. As the site is closed, only |

| | |
|--|---|
| | <p>clean up work and essential maintenance work is being carried out in the clean up areas.</p> <ul style="list-style-type: none"> • WorkCover is continuing its investigation into the loss of containment and potential to expose workers to occupational health and safety risks. • Approximately 1700 information packages were delivered to letterboxes by public health staff, council and OEH staff on 17/8. • NSW Health is currently reviewing the draft health risk assessment prepared by Orica's toxicologists and the assumptions in it to ensure it is taking a conservative approach. • There were no calls to Health's information line over the weekend. Four calls were received on 22 August and a total of 89 calls have been received since 12 August. • Orica held a public meeting at Dalby Oval, Mitchell Street, Stockton on 18/8. Around 400 residents and media attended. There was reportedly some criticism that no government agency representatives were in attendance. Some residence expressed dissatisfaction with the standard of clean-up by Orica. These people will be identified through the postcards to be delivered to the cleaned premises. • There are reports that the Stockton residents are organising their own public meeting for an (as yet unconfirmed) date in the week commencing 22/8. As more information becomes available it will be included in future sitreps. • On 19/8 at approximately 15.00hrs Orica notified OEH of an exceedance of the licence limit for the level of arsenic in water released from an effluent pond. The licence limit states a limit of 0.05 milligrams of arsenic per litre and Orica advised that approximately 1.2ML of water was released around 12.00hrs on 19/8 with a concentration of 0.067 milligrams of arsenic per litre. In a relative sense this is a minor breach and is not expected to have any impact on the Hunter River or use of the river. OEH are investigating and have required Orica to provide a report about the incident. A media release has been issued and DPI Fisheries and Health advised. • The local community held a public information meeting for on 23/8 at Stockton RSL. The State Environmental Services Functional Area Coordinator and representatives from Health attended to answer questions. • NSW Health is attempting to identify any additional documents that can be put onto the NSW Health website to help the community's perception of transparency. WorkCover has sent NSW Health the 'de-identified' results from worker testing. NSW Health intends to post these results on their website with an explanation to aid interpretation. • Health has received some requests for a register of exposed individuals to identify and track the development of any chronic disease. It has been agreed that this action is not necessary and would be counter-productive. An agreement to maintain any such register might give the impression that a significant risk exists when this is not the case. |
|--|---|

2.0 OBJECTIVES (or MISSION)

| | |
|--|---|
| | <ul style="list-style-type: none"> • To support the community resume usual activities and address health concerns • Ascertain if impacts on worker health and ensure a safe working environment • To provide clear, appropriate and timely public communication • To investigate the circumstances of the release and response from a regulatory perspective(OEH and WorkCover) |
|--|---|

3.0 EXECUTION

| | |
|---------------------------------|--|
| RESPONSE STRATEGIES AND TACTICS | <ul style="list-style-type: none"> • WorkCover is continuing it's investigation into the loss of containment and potential to expose workers to occupational health and safety risks. • Work has started on cleaning surfaces around the plant and the cleaners will work their way into the contaminated area. • Air samples continue to be taken on site and reviewed by WorkCover. No positive results have been received. • WorkCover has issued improvement notices for review of onsite emergency response plans and a risk assessment to determine the adequacy of the onsite cleanup program. A section 62 notice requiring the provision of information and documentation relating to the operating procedures and health surveillance records. Compliance with the 62 notices is required by 5pm 23 August 2011. • WorkCover advises that as at 19/8 130 of 144 people on site have been contacted and offered medical assessments. While a number of people have declined the tests, over 100 have been done. All health surveillance results are required to be |
|---------------------------------|--|

| | |
|---|--|
| | <p>provided to WorkCover by 5pm 23 August 2011. No health issues have been identified at this stage, however further assessment of all results is still required.</p> <ul style="list-style-type: none"> • OEH continues to progress its investigation into the cause of the incident and the potential breach of environmental licenses and legislation. • FRNSW were requested to provide assistance regarding the taking of samples in the contaminated area. However, due to constraints around OH&S issues and specialist skills required, they were unable to assist with the request. OEH are examining other options to obtain the necessary evidentiary samples. • Newcastle Councillors have requested a briefing on the incident. OEH is liaising with the General Manager to schedule a time for the briefing. • The letterbox drop of postcards to assess the community satisfaction with Orica's cleanup activities is currently underway. Any cases of dissatisfaction will be communicated to Orica and followed up. |
| PUBLIC INFORMATION / ADVICE TO PARTNER AGENCIES | <ul style="list-style-type: none"> • OEH and Health are continuing to manage media inquiries as they arise. • |
| RESOURCES | <ul style="list-style-type: none"> • Local OEH and Health personnel are managing the on-ground response with support from their respective head offices. |
| MAINTAINING CORE SERVICES | <ul style="list-style-type: none"> • Response, recovery and investigative efforts are not having significant impacts on core agency responsibilities. |

4.0 ADMINISTRATION AND LOGISTICS [support provided to the response]

| | |
|-----------|--|
| PERSONNEL | <ul style="list-style-type: none"> • OEH, WorkCover and NSW Health are ensuring appropriate rostering. Surge capacity exists but is not expected to be required given the phase of the operation. |
| SAFETY | <ul style="list-style-type: none"> • No specific safety concerns. Staff in the field have been well received by residents. |

5.0 CONTROL, COORDINATION & COMMUNICATION

| | |
|-----------------------------|---|
| GOVERNANCE ARRANGEMENTS | <ul style="list-style-type: none"> • The State Environmental Services Functional Area Coordinator is managing the recovery. |
| REPORTING | <ul style="list-style-type: none"> • OEH will provide necessary updates to the SEOC via e-mail • At this stage, there is no need for another teleconference unless issues arise. • Future Incident Action Plans and teleconferences to be convened/prepared by OEH as required. |
| LINKS WITH PARTNER AGENCIES | <ul style="list-style-type: none"> • Regular discussion is occurring between the Office of Environment and Heritage, Health and WorkCover. • There is a plan for an interagency debrief (tentatively for the week commencing 29 August. • OEH/Workcover will advise all other agencies prior to any decision to lift current statutory notices in place over the site that would enable the plant to re-start. |
| COMMUNICATIONS | <ul style="list-style-type: none"> • No specific media is planned for Friday (18-19/8). |
| FUTURE SITREPS | <ul style="list-style-type: none"> • It is envisaged that no further sitreps will need to be issued or posted on the website. However, if a need for further updates are required, they will be posted. |

Dunphy, Peter

From: David Durrheim [David.Durrheim@hnehealth.nsw.gov.au]
 Sent: Monday, 29 August 2011 12:39 PM
 To: Dunphy, Peter
 Cc: Richey, Laurence
 Subject: FW: Lab values
 Attachments: ORICA plus 4contractors HEALTH SURV -Biol mon1.doc

Dear Peter

David kindly provided the attached from Max which is very helpful

Warm regards

Dave

From: Chamings, Dave [mailto:Dave.Chamings@workcover.nsw.gov.au]
 Sent: Monday, 29 August 2011 11:44 AM
 To: David Durrheim
 Subject: RE: Lab values

Hi David,

Below is the comments made by our Toxicologist Max McEwan and attached is the table of results as prepared by Max based on the documentation provided to WorkCover by Orica.

I am not sure to whom you want this addressed to but in relatively simple dot points

- 1 The urine levels provide no evidence of any excess chromium exposure –either Cr (VI) or Cr(iii).
- 2 Even if the workers concerned inhaled 'significant' chromium for say 3-4 hours on August 8, the earliest urine collected was approximately 3 days post exposure –for some workers the delay was a week. The literature values for the half-life of chromium in the body vary with route of exposure. Level of uptake also varies with type of chromium (III or VI), particle size in the case of inhalation and solubility is also an important factor. But the half-life for absorbed chromium is in the order of 8-20 hours. So at 3 days the chromium levels in urine will down to between 1-5% of maximum levels and may represent zero to 2-3% of the absorbed dose. In other words our best urinary samples are next to useless.
- 3 What is significant exposure? US OSHA in 2006 lowered the ACGIH recommended TWA from 50 ug/m³ to 5 ug/m³. Australia still has the ACGIH level. Note this is a ten-fold reduction. This means that OSHA estimated the adverse health effects occurred at a ten times lower value than ACGIH. Which level are we to recommend is 'significant'?
- 4 Measurement of chromium-particularly chromium (VI) is difficult requiring strict collection procedures and a high standard of laboratory practice. The reliability of some of the data supplied is probably low but without performance checks and details, nothing further can be said.
- 5 As I have recommended previously to check for chromium (VI) exposure the red blood cell is the body compartment to use. I recommended Senior Hospital Scientist, Trace Elements Laboratory, PaLMS, Pathology North, NSW Health Sydney and
 This Trace Elements laboratory routinely runs chromium analysis at low levels (with low trace element tubes) by ICPMS (Inductively Coupled Plasma Mass Spectrometry) and should be approached if any certainty of meaningful results is wanted.
- 6 On hearsay only the released material contained chromium, iron, carbon (in graphite form) and water. It is possible that chromium (VI) in this mixture at room temperature will not exist as it may take electrons from the iron present and revert to chromium (III). The presence of chromium (VI) in the catalyst mixture after super-heating and reversion to room temperature should be checked.

I hope that suffices for now

Regards

Max McEwan PhD
Professional Officer 4
Chemical Hygiene & Toxicology,
WorkCover NSW
PO BOX 1476
Strawberry Hills 2012
Level 10 300 Elizabeth St
Surry Hills NSW
Ph: 02 8260 5785 Fax 02 9287 5785
Email: max.mcewan@workcover.nsw.gov.au

Regards

Dave Chamings
Acting Team Manager
Chemicals Team
WorkCover NSW
-100 Donnison Street, Gosford NSW 2250

Email: dave.chamings@workcover.nsw.gov.au

WORK SAFE ► HOME SAFE

From: David Durrheim [mailto:David.Durrheim@hnehealth.nsw.gov.au]
Sent: Monday, 29 August 2011 9:39 AM
To: Dunphy, Peter
Cc: Wayne SMITH; Chamings, Dave; Robinson, Tony; Philippe G. Porigneaux; Craig Dalton; Tony Merritt
Subject: RE: Lab values

Dear Peter

I will certainly do this.

" would also be helpful to Health to know what communication has been provided to the affected work force by Work Cover in terms of acute or ongoing risk. Are you able to provide this?

Warm regards

Dave

From: Dunphy, Peter [mailto:Peter.Dunphy@workcover.nsw.gov.au]
Sent: Monday, 29 August 2011 8:45 AM
To: David Durrheim
Cc: Wayne SMITH; Chamings, Dave; Robinson, Tony
Subject: RE: Lab values

David

If you could contact Dave Chamings he should be able to assist you with the specific reference information you are seeking.

His contact details are:

Dave Chamings, A/Manager, Chemicals Team
Ph 02 4321 5196

Dave.Chamings@workcover.nsw.gov.au

Regards

Peter Dunphy

Director | Operations | Work Health and Safety

WorkCover NSW

92-100 Donnison Street, Gosford NSW 2250

Ph: 02 4321 5280

Fax: 02 9287 5280

Email: peter.dunphy@workcover.nsw.gov.au

WORK SAFE ► HOME SAFE

From: David Durrheim [<mailto:David.Durrheim@hnehealth.nsw.gov.au>]

Sent: Saturday, 27 August 2011 7:50 PM

To: Dunphy, Peter

Cc: Wayne SMITH

Subject: Lab values

Attachment image001.jpg has been removed from this message as it is a picture file that may contain inappropriate content.

You may release the original message (please wait 15 mins) via the Quarantine Web Interface at <http://EmailQuarantine>

<http://EmailQuarantine:28080>

Please Contact Workcover IT Service Desk on 02 4321 5490 for further information.

Dear Peter

Still have not received the normal limits of chromium for workcover lab.

Warm regards

Dave

Dr David Durrheim

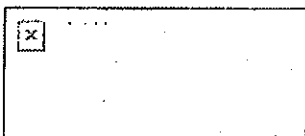
DrPH, MPH&TM, MBChB, FACTM, FAFPHM

Service Director Health Protection- Population Health

and Conjoint Professor of Public Health Medicine, University of Newcastle

Locked Bag 10, Wallsend NSW, AUSTRALIA, 2287

Tel 02 4924 6395 | Fax 02 4924 6215 | David.Durrheim@hnehealth.nsw.gov.au
www.health.nsw.gov.au



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| Name | Company | Urine -Cr ug/L BOEL-<5 | Urine Cr Creatinine Corrected nmol/mmol Crt | Spirometry (Fev1/FVC) In red pre- exposure | Symptoms (Nil unless stated) |
|------|------------------------|------------------------------|---|---|---|
| | Orica | 0.08 | 0.5 | 67%--(74) | |
| | Downer | 0.63 | 1.2 | 81% | |
| | Downer | 0.35 | 1 | 93% | |
| | UGL | 0.11 | 0.1 | 71% | Exp to yellow rain to hands&face, Metallic taste, skin irrit, Nil further |
| | Orica | 0.42 | 0.4 | 83%--(89) | |
| | O'Donnell I Griffin | 0.06 | 0.3 | 85% | |
| | Orica | 0.26 | 0.2 | 77%--(88) | |
| | Unknown | | 0.5 | | Blood level 11 nmol/L Exp Unknown |
| | Horvat | 0.14 | 1 | 87% | |
| | Chandler McCloud | 0.32 | 0.2 | 84% | |
| | O'Donnell Griffin | 0.14 | 0.2 | 80% | |
| | PFM | 0.34 | 0.4 | 79% | Exp, outside on incident night, Nil symptoms |
| | UGL | 0.14 | 1 | 78% | Exp, irrit on hands, Nil other symptoms |
| | Orica | 0.14 | 0.7 | 74%--(71) | |
| | Read workforce | 0.14 | 0.3 | 90% | Exp -Nil symptoms |
| | People Fusion | 0.16 | 0.6 | 82% | |
| | Unknown | 0.12 | 0.2 | 77% | |
| | Orica | 0.17 | 0.5 | 79%--(85) | |
| | Downer | 0.21 | 0.4 | 76% | |
| | Integrate d group | 0.17 | 0.3 | 78% | |
| | Orica | 0.61 | 0.7 | 74%--(79) | |
| | RCR Energy | 0.24 | 0.8 | 82% | |
| | EMA | 0.08 | 0.6 | 91%F | |
| | Man Power | 0.15 | 0.3 | 75% | |
| | Not supplied | 0.27 | 0.4 | 100% | |

| Name | Company | Urine -Cr ug/L BOEL-<5 | Urine Cr Creatinine Corrected nmol/mmol Crt | Spirometry (Fev1/FVC %) In red pre- exposure | Symptoms (Nil unless stated) |
|------|------------------------|------------------------------|---|--|---|
| | Orica | 0.07 | 0.7 | Not tested— (83) | Exp -funny taste in air, NIL symptoms |
| | UGL | 0.22 | 0.5 | 74% | Skin Contact, No rash-Nil symptoms |
| | Downer | 0.1 | 0.4 | 79%% | |
| | Jarpar | 0.04 | 0.2 | 86% | |
| | Seimens | 0.22 | 0.7 | 76% | |
| | RCR Energy | 0.5 | 0.4 | 69% | |
| | Worley Parsons | 0.15 | 0.3 | 75% | Exp to yellow rain-Nil symptoms |
| | | 0.2 | 0.6 | 84% | |
| | O'Donnell Griffin | 0.14 | 0.7 | 87% | |
| | UGL | 0.1 | 0.2 | 87% | |
| | | 0.08 | 0.2 | 91%--(87) | |
| | Siemens | 0.12 | 0.3 | Not Tested | Exp?-No direct contact or rash, irritating cough |
| | Downer | 0.3 | 0.4 | 81% | |
| | UGL | 0.28 | 0.5 | 67% | Exp, skin irit, burning sensation, 2/7 later breathing difficulty, chest tightness, mucous |
| | Boom Logistics | 0.13 | 0.2 | 87% | Exp to 'dust', Nil symptoms |
| | Orica | 0.16 | 0.3 | 87%--(78) | Exp direct contact -Nil symptoms |
| | Orica | 0.15 | 0.2 | 87%--(83) | |
| | UGL | 0.5 | 0.5 | 79% | Exp Burning on hands, eye irit, wheeze on night of incident, Nil symptoms Now |
| | Orica | 0.58 | 0.6 | 63%--(76) | |
| | UGL | 0.11. | 0.6 | 77% | Exp-direct on skin -Nil symptoms |
| | UGL | 0.14 | 0.8 | 87% | Exp? Rash rt hand, sore left external ear |
| | Macquari e Drilling | 0.09 | 0.6 | 73% | |
| | RCR Energy | 0.32 | 0.5 | 79% | |

| Name | Company | Urine -Cr ug/L BOEL-<5 | Urine Cr Creatinine Corrected nmol/mmol Cr | Spirometry (Fev1/FVC) In red pre- exposure | Symptoms (Nil unless stated) |
|------|----------------------------------|------------------------------|--|---|---|
| | Orica | 0.14 | 0.5 | 76%--(82) | |
| | Orica | 0.3 | 0.2 | 86%--(82) | |
| | Orica | 0.14 | 0.6 | 79%--(74) | |
| | Downer | 0.05 | 0.8 | 83% | |
| | RCR Energy | 0.25 | 0.7 | 77% | |
| | IPS | 0.15 | 0.2 | 94% | |
| | UGL | 0.09 | 0.2 | 69% | |
| | Orica | 1.27 | 1.3 | 77%--(86) | Exp -walking at plant at time of incident, Nil skin reaction , 6/7 resp concern-saw doctor-prn ventolin |
| | UGL | 0.16 | 0.2 | 84% | Exp to yellow rain on hands, rash wrist, Nil further |
| | Orica | 0.18 | 0.3 | 75% | |
| | Orica | 0.15 | 0.4 | 65%--(83) | |
| | RCR Energy | 0.24 | 0.5 | 78% | |
| | Unknown | | 0.6 | | Blood level 10 nmol/L Exp Unknown |
| | RCR Energy | 0.17 | 1.6 | 87% | |
| | Connect | 0.08 | 0.2 | 83%--(82) | |
| | Macquari e Engineeri ng | 0.14 | 0.2 | 78%--(74) | |
| | Orica | 0.45 | 0.7 | 83% | |
| | Orica | 0.18 | 0.2 | 75% | |
| | UGL | 0.17 | 0.4 | 75% | Exp to piping 9/8/11 NIL symptoms |
| | PFM | 0.12 | 0.2 | 74% | |
| | UGL | 0.33 | 0.3 | 76% | Exp-outside at time incident Nil symptoms |
| | URS Australia | 0.21 | 0.3 | 94% | |

| Name | Company | Urine -Cr ug/L BOEL-<5 | Urine Cr Creatinine Corrected nmol/mmol Crt | Spirometry (Fev1/FVC %) In red pre- exposure | Symptoms (Nil unless stated) |
|------|----------------------|------------------------------|---|--|---|
| | Unknown | | 1.3 | | Blood level 14 nmol/L Exp Unknown |
| | Unknown | | 0.8 | | Blood level 11 nmol/L Exp Unknown |
| | Downer | 0.07 | 0.4 | Not tested | |
| | Horvat | 0.14 | 0.6 | 79% | |
| | IECSS | 0.33 | 0.3 | 90% | Exp skin irrit forearms |
| | Orica | 0.32 | 0.8 | 71%--(83) | |
| | UGL | 1.03 | 3.3 | 75% | Exp to yellow rain NIL |
| | Chandler McLeod | 0.17 | 0.3 | 83% | Exp-face rash &sore throat-Now Nil symptoms |
| | Downer | 0.24 | 0.2 | 81% | |
| | EMA | 0.14 | 1.2 | 77% | |
| | UGL | 0.11 | 0.5 | 76% | Exp? -next morning after incident-Nil symptoms- later URTI symptoms |
| | RCR Energy | 0.21 | 0.5 | 69% | |
| | O'Donnell Griffin | 0.14 | 2.4 | 79% | |



Chemical Incident Improvement Plan

Work Health and Safety Division
WorkCover NSW

13 Oct 2011

Contents

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Introduction

On Monday 8 August 2011, there was a release of hexavalent chromium at the Orica ammonia nitrate plant at Kooragang Island near Newcastle. The preliminary findings of an independent expert are that during the start-up process steam came into contact with cold surfaces causing excess condensation which caused hexavalent chromium to leach from the catalyst material. The larger than expected volumes of condensate overwhelmed the plant drainage system and overflowed into the vent stack. The stack was not designed to cope with the level of condensate, resulting in a pollution emission from the top of the stack.

The Orica pollution incident affected areas downwind of the emission including parts of the plant and some residential areas of the suburb of Stockton. The serious pollution incident led to the establishment of an independent review authorised by the Director General of the Department of Premier and Cabinet and the Legislative Council has established a *Select Committee on the Kooragang Island Orica Chemical Leak*.

Purpose

WorkCover's Work Health and Safety Division has developed the *Chemical Incident Improvement Plan* with the objective to address the lessons learned from the Orica incident and to review existing policies and practices to continuously improve arrangements for chemical incident prevention, preparedness and response. The improvement plan addresses the Divisional Business Plan 2011/12 and Corporate Plan initiative 1.4.A: Work closely with industry groups, to enforce standards and promote leading practices in the ongoing prevention and response to potential high consequence incidents.

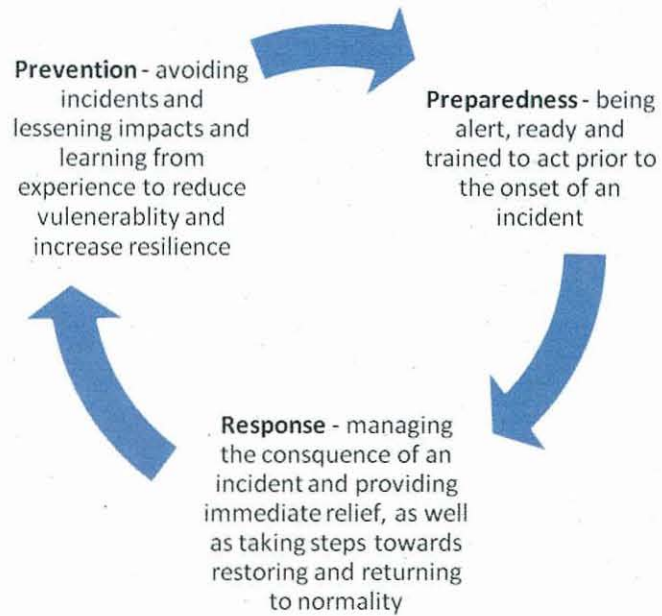
The *Chemical Incident Improvement Plan* aims to achieve best practice by following the *Organisation for Economic Co-operation and Development (OECD) Guiding Principles for Chemical Accident Prevention, Preparedness and Response (OECD Guiding Principles)*. The objective of the *OECD Guiding Principles* is to provide guidance, applicable worldwide, to prevent incidents and mitigate the adverse effects of incidents that do occur.

Scope

The *Chemical Incident Improvement Plan* addresses improvements to WorkCover's policies and practices relating to the three stages of the safety continuum for chemical incidents:

- prevention
- preparedness
- response

The OECD Guiding Principles explain the three stages of the safety continuum in the diagram below.



What is best practice?

The *OECD Guiding Principles* recognises the role of Public Authorities at each stage of the safety continuum setting out roles and responsibilities called “golden rules”. Public Authorities include all policy sectors of environment, public health, work health and safety, industrial development/planning, emergency response and civil protection. The eight golden rules for Public Authorities are:

1. Seek to develop, enforce and continuously improve policies, regulations and practices.
2. Provide leadership to motivate all stakeholders to fulfil their roles and responsibilities.

3. Monitor the industry to help ensure that risks are properly addressed.
4. Help ensure that there is effective communication and co-operation among stakeholders.
5. Promote inter-agency co-ordination.
6. Know the risks within your sphere of responsibility, and plan appropriately.
7. Mitigate the effects of accidents through appropriate response measures.
8. Establish appropriate and coherent land-use planning policies and arrangements.

Quality Improvement Priorities

The *Chemical Incident Improvement Plan* has identified 3 priority areas which correspond to the three stages of the safety continuum and the eight OECD 8 golden rules. The improvement plan addresses the recommendation from the Brendan O'Reilly Report on behalf of the Director General, Department of Premier and Cabinet and the recommendations from WorkCover's submission and response to that Review.

| Priority Area | Focus for Improvement | Key Deliverables | Lead Officer | Status / Due By |
|--|---|--|------------------|---------------------|
| Prevention - MHF Verification Program (Golden Rules 1, 2, 3, 4, 5, 6, 7) | Verification program of 42 MHFs to focus on lesson learnt from Orica incident and compliance with emergency response and plant recommissioning protocols. Collaboration with OEH's MHF Environmental Audit program where possible. | Development of MHF audit program, verification tools & KPIs. | Manager MHF Team | Oct 2011 |
| | | Verification visits of all 42 sites completed by Feb 2012. | | Oct 2011 - Feb 2012 |
| | | Letter from CEO to DG, OEH seeking collaborative approach to WCA / OEH MHF audit programs. | | Oct 2011 |
| | | Joint WC/OEH MHF | | |

| Priority Area | Focus for Improvement | Key Deliverables | Lead Officer | Status / Due By |
|--|---|---|-----------------------------------|---|
| | | <p>workplace visits.</p> <p>Letter from CEO to OEH and Dept of Infrastructure & Planning seeking commitment to fully time secondment of staff to MHF Team.</p> <p>Protocol established for MHF Multi-agency staff to liaise immediately with their agency on joint agency approach to all MHF incidents.</p> <p>Verification program findings and recommendations communicated to stakeholders.</p> | | <p>Oct 2011 – Feb 2012</p> <p>Oct 2011</p> <p>Oct 2011</p> <p>Feb 2012 – April 2012</p> |
| Preparedness – Emergency Response (Golden Rules 4, 5, 7) | Review emergency response policies and practices including interagency protocols with Fire and Rescue NSW. | Revised WCA / Fire and Rescue NSW protocol. | Manager, Response Management Team | First meeting held on 5 Oct 2011 to review interagency protocols. |
| | Seek opportunities to be more involved in the activities of the State Emergency Management Committee (SEMC) | Senior Officer (GM WHSD, Dir Ops) meeting with SEMC seeking closer involvement in preparedness activities. | Director, Operations | Nov 2011 |
| Response - Serious Incident Management | Changes to Strategic Assessment Centre policies and practices. | In anticipation of the new work health and | Manager, Response | Completed - Sep 2011 |

| Priority Area | Focus for Improvement | Key Deliverables | Lead Officer | Status / Due By |
|------------------------|-----------------------|---|-----------------------------------|----------------------|
| (Golden Rules 1, 4, 7) | | safety legislation which commences on 1 January 2012 requiring additional compliance decisions to be made in relation to incident scene preservation and response, so that only highly trained inspectors staff the emergency phone line during business hours. All after hours serious incident notifications are already referred to a senior officer to review | Management Team | |
| | | Strategic Assessment Centre staff have been instructed to follow protocols which involve notifying the Major Hazard Facilities Team of all chemical incidents at a major hazard facility. | Manager, Response Management Team | Completed - Sep 2011 |
| | | Refresher training to Strategic Assessment Centre staff to reinforce protocols and procedures, including specific guidance for collecting and recording information on chemical notifications. | Manager, Response Management Team | Oct 2011 |

| Priority Area | Focus for Improvement | Key Deliverables | Lead Officer | Status / Due By |
|---------------|---|---|--|----------------------|
| | | All MHF near misses, chemical incidents to be prioritised as Serious Incident by SAC. | Manager, Response Management Team. | Oct 2011 |
| | | Operations Team to generate an IM8 report. | Team Managers, Operations. | Oct 2011 |
| | An internal audit and review of serious incident reporting, assessment, and allocation processes and practices. | Internal Audit Report – <i>Review of Policies & Procedures for Responding to Serious Incidents.</i> | Manager, Audit Manager & Operational Governance Team | Completed – Sep 2011 |
| | | Preparation of management response & action plan to Internal Audit Report. | Manager, Response Management Team | Oct 2011 |
| | | Implementation of management response and action plan. | Manager, Response Management Team | From Oct 2011 |
| | Capability Review of Strategic Assessment Centre. | Engage an expert to conduct an independent capability review of the Strategic Assessment Centre. | Director, Operations | Nov 2011 |

Reporting and Evaluation of the Plan

The Work Health and Safety Division will perform a quarterly review and evaluation of the *Chemical Incident Improvement Plan* at each Quarterly Business Review Forum (QBRF). The Director, Operations is to provide a report to each QBRF.

The Work Health and Safety Division will provide a quarterly report to the WorkCover Board on the progress of the *Chemical Incident Improvement Plan*.

Review of the Plan

The plan is to be reviewed as new information and findings arise from WorkCover's Investigation of the incident, the external capability review and the *Legislative Council Select Committee on the Kooragang Island Orica Chemical Leak*.

Peter Dunphy
Director, Operations

Tony Robinson
Director, Specialist Services

John Watson
General Manager
Work Health and Safety Division