

APPENDIX 3

LEGISLATION - RELEVANT SECTIONS OF THE OCCUPATIONAL SAFETY AND HEALTH ACT 1984 AND THE OCCUPATIONAL SAFETY AND HEALTH REGULATIONS 1996

Duties of employers

The Act: Section 19(1) states

19.(1) An employer shall, so far as is practicable, provide and maintain a working environment in which his employees are not exposed to hazards and in particular, but without limiting the generality of the foregoing, an employer shall-

- (a) provide and maintain workplaces, plant, and systems of work such that, so far as is practicable, his employees are not exposed to hazards;
- (b) provide such information, instruction, and training to, and supervision of, his employees as is necessary to enable them to perform their work in such a manner that they are not exposed to hazards;
- (c) consult and cooperate with safety and health representatives, if any, and other employees at his workplace, regarding occupational safety and health at the workplace;
- (d) where it is not practicable to avoid the presence of hazards at the workplace, provide his employees with, or otherwise provide for his employees to have, such adequate personal protective clothing and equipment as is practicable to protect them against those hazards, without any cost to the employees; and
- (e) make arrangements for ensuring, so far as is practicable, that -
 - (i) the use, cleaning, maintenance, transportation and disposal of plant; and
 - (ii) the use, handling, processing, storage, transportation and disposal of substances, at the workplace is carried out in a manner such that his employees are not exposed to hazards.

The Act: Section 19(4) states

19.(4) For the purpose of this section, where, in the course of a trade or business carried on by him, a person (in this section called “**the principal**”) engages another person (in this section called “**the contractor**”) to carry out work for the principal-

- (a) the principal is deemed, in relation to matters over which he has control or, but for an agreement between him and the contractor to the contrary, would have had control, to be the employer of -
 - (i) the contractor; and
 - (ii) any person employed or engaged by the contractor to carry out or to assist in carrying out the work;

and

(b) the persons mentioned in paragraph (a)(i) and (ii) are deemed, in relation to those matters, to be employees of the principal.

Duties of employees

The Act: Section 20 states (in part)

20.(1) An employee shall take reasonable care -

- (a) to ensure his own safety and health at work; and
- (b) to avoid adversely affecting the safety or health of any other person through any act or omission at work.

20.(2) Without limiting the generality of subsection (1), an employee contravenes that subsection if he -

- (a) fails to comply, so far as he is reasonably able, with instructions given by his employer for his own safety or health or for the safety or health of other persons;
- (b) fails to use such protective clothing and equipment as is provided, or provided for, by his employer as mentioned in section 19 (1) (d) in a manner in which he has been properly instructed to use it;
- (c) misuses or damages any equipment provided in the interests of safety or health; or
- (d) fails to report forthwith to his employer -
 - (i) any situation at the workplace that he has reason to believe could constitute a hazard to any person and he cannot himself correct; or
 - (ii) any injury or harm to health of which he is aware that arises in the course of, or in connection with, his work.

20.(3) An employee shall co-operate with his employer in the carrying out by his employer of the obligations imposed on him under this Act.

Duties of self-employed persons

The Act: Section 21(1) states

21.(1) An employer or a self-employed person shall-

- (a) take reasonable care to ensure his own safety and health at work; and
- (b) so far as is practicable, ensure that the safety or health of a person not being his employee is not adversely affected wholly or in part as a result of the work in which he or any of his employees is engaged.

Duties of manufacturers, etc.

The Act: Section 23 states (in part)

23.(1) A person who designs, manufactures, imports or supplies any plant for use at a workplace shall, so far as is practicable -

- (a) ensure that the design and construction of the plant is such that persons who properly install, maintain or use the plant are not, in doing so, exposed to hazards;
- (b) test and examine, or arrange for the testing and examination of, the plant so as to ensure that its design and construction are as mentioned in paragraph (a); and
- (c) ensure that adequate information in respect of -
 - (i) any dangers associated with the plant;
 - (ii) the specifications of the plant and the data obtained on the testing of the plant as mentioned in paragraph (b);
 - (iii) the conditions necessary to ensure that persons properly using the plant are not, in so doing, exposed to hazards; and
 - (iv) the proper maintenance of the plant,

is provided when the plant is supplied and thereafter whenever requested.

23.(2) A person who erects or installs any plant for use at a workplace shall, so far as is practicable, ensure that it is so erected or installed that persons who properly use the plant are not subjected to any hazard that arises from, or is increased by, the way in which the plant is erected or installed.

23.(3a) A person who designs or constructs any building or structure, including a temporary structure, for use at a workplace shall, so far as is practicable, ensure that the design and construction of the building or structure is such that -

- (a) persons who properly construct, maintain, repair or service the building or structure; and
 - (b) persons who properly use the building or structure,
- are not, in doing so, exposed to hazards.

Identification of hazards, and assessing and addressing risks, at workplaces

Regulation 3.1 states

A person who, at a workplace, is an employer, the main contractor, a self-employed person, a person having control of the workplace or a person having control of access to the workplace must, as far as practicable -

- (a) identify each hazard to which a person at the workplace is likely to be exposed;
- (b) assess the risk of injury or harm to a person resulting from each hazard, if any, identified under paragraph (a); and
- (c) consider the means by which the risk may be reduced.

Risks to be reduced in first instance by means other than protective clothing and equipment

Regulation 3.32 states

When a person is considering, for the purposes of regulation 3.1(c), the means by which a risk may be reduced, the person is to -

- (a) firstly consider the means other than the use of protective clothing and equipment by which the risk might be reduced; and
- (b) then consider the use of protective clothing and equipment to the extent that it is not practicable to reduce the risk by means other than the use of protective clothing and equipment.

Responsibilities of persons who require personal protective clothing and equipment to be used

Regulation 3.34(1) states

If a person is required under any of these regulations to identify a hazard at a workplace and to assess the risk of injury or harm to a person resulting from the hazard and the person concludes from the assessment process that personal protective clothing or equipment should be used at the workplace then the person must ensure that -

- (a) the person who uses the clothing or equipment is instructed in relation to the correct fitting, use, selection, testing, maintenance and storage of the clothing or equipment;
- (b) the person who uses the clothing or equipment is informed of the limitations in the use of the clothing or equipment;
- (c) the clothing or equipment is maintained in good working order;
- (d) the clothing or equipment is replaced -
 - (i) when it no longer provides the level of protection required to protect the wearer or user against the particular hazard;
 - (ii) when the safe working life, as specified by the person who manufactured the clothing or equipment, has expired; or
 - (iii) subject to subregulation (2), when it is damaged and cannot be repaired;

and

- (e) the area of a workplace at which the clothing or equipment is required to be used by a person other than the person who provides the clothing or equipment is identified by signs in accordance, and complying, with AS 1319.

Responsibilities of users of personal protective clothing and equipment

Regulation 3.35 states

A person to whom personal protective clothing or equipment is provided or made available for use at a workplace -

- (a) must use the protective clothing or equipment in a manner in which he or she has been properly instructed to use it;
- (b) must not misuse or damage the clothing or equipment; and
- (c) must, as soon as practicable after becoming aware of any
 - (i) damage to;
 - (ii) malfunction of; or
 - (iii) need to clean or sterilize,

the clothing or equipment, notify the person providing the clothing or equipment of the damage, malfunction or need to clean or sterilize the clothing or equipment.

Interpretation

Regulation 3.45 states

In this Division -

“**exposure standard for noise**”, in relation to a person, means -

- (a) an $L_{Aeq,8h}$ of 85 dB(A); or
- (b) an $L_{C,peak}$ of 140 dB(C),

measured at the position of the person’s ear without taking into account any protection which may be provided to the person by personal hearing protectors;

“ **$L_{Aeq,8h}$** ” means an 8 hour equivalent continuous A-weighted sound pressure level in decibels (dB(A)) referenced to 20 micropascals, that is to say, the steady noise level which would, in the course of an 8 hour period, cause the same A-weighted sound energy that would be caused by the actual noise during an actual working day, determined in accordance with AS/NZS 1269.1;

“ **$L_{C,peak}$** ” means C-weighted peak noise level, that is to say, the C-weighted peak sound pressure level in decibels (dB(C)) referenced to 20 micropascals, determined in accordance with AS/NZS 1269.1;

“**noise**” means any unwanted or damaging sound;

“**personal hearing protectors**” means a device, or pair of devices, worn by a person or inserted in the ears of a person to protect the person’s hearing.

Avoidance of noise above exposure standard

Regulation 3.46 states

A person who, at a workplace, is an employer, the main contractor or a self-employed person must, as far as practicable, ensure that noise to which a person is exposed at the workplace does not exceed the exposure standard for noise.

Standard of personal hearing protectors

Regulation 3.47 states

If it is not practicable to avoid exposing a person at a workplace to noise above the exposure standard for noise then a person who, at the workplace, is an employer, the main contractor or a self-employed person must ensure that the first-mentioned person is provided with personal hearing protectors that have been selected in accordance with the procedures specified in AS/NZS 1269.3.