

1991—No. 634

**FACTORIES, SHOPS AND INDUSTRIES ACT 1962—  
REGULATION**

(Relating to penalties)

NEW SOUTH WALES



*[Published in Gazette No. 174 of 13 December 1991]*

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Factories, Shops and Industries Act 1962, has been pleased to make the Regulation set forth hereunder.

JOHN FAHEY  
Minister for Industrial Relations and  
Minister for Further Education,  
Training and Employment.

**Commencement**

1. This Regulation commences on 1 January 1992.

**Amendment of Abrasive Blasting Regulations**

2. The Abrasive Blasting Regulations are amended:
  - (a) by inserting in Regulation 2 (a), in alphabetical order, the following definition:

**“Employee”** means an employee within the meaning of the Occupational Health and Safety Act 1983.
  - (b) by inserting at the end of Regulation 13 the following words:

Maximum penalty: 5 penalty units (in the case of a contravention of paragraph (2) (c) or the relevant penalty prescribed by Regulation 15 (in any other case).

- (c) by omitting Regulation 15 and by inserting instead the following Regulation:

**Penalty**

15. Any person who contravenes a provision of these Regulations is liable to a penalty (if a penalty is not otherwise provided) not exceeding:

- (a) 100 penalty units in the case of a corporation; or
  - (b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or
  - (c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.
- (d) by omitting all italicised headings to Regulations.

**Amendment of Bakehouse Regulations**

3. The Bakehouse Regulations are amended:

- (a) by omitting Regulation 13 (1);
- (b) by inserting at the end of Regulation 13 (2) the following words:  
Maximum penalty: 5 penalty units.
- (c) by omitting Regulation 14 and by inserting instead the following Regulation:

**Occupier's liability**

14. (1) The occupier of the bakehouse must comply with the provisions of these Regulations.

(2) An occupier who contravenes a provision of these Regulations, other than Regulation 13 (2), is liable to a penalty not exceeding 50 penalty units in the case of a corporation or 25 penalty units in any other case.

- (d) by omitting all italicised headings to Regulations.

**Amendment of Bakehouses (Welfare) Regulations**

4. The Bakehouses (Welfare) Regulations are amended:

- (a) by inserting at the end of Regulation 3 the following words:  
Maximum penalty: 50 penalty units in the case of a corporation or 25 penalty units in any other case.
- (b) by inserting at the end of Regulation 4 the following words:  
Maximum penalty: 5 penalty units.

- (c) by omitting Regulation 5.

### **Amendment of Boiler and Pressure Vessel Regulations**

**5.** The Boiler and Pressure Vessel Regulations are amended:

- (a) by inserting in Regulation 1 (4), in alphabetical order, the following definition:  
    **“Employee”** means an employee within the meaning of the Occupational Health and Safety Act 1983.
- (b) by inserting at the end of Regulations 32, 33, 35, 37–39, 39A (1), 40, 46, 72 (1) and (6), 84, 89 and 90 the following words:  
    Maximum penalty: 25 penalty units.
- (c) by omitting from Regulation 79 the matter “\$200” and by inserting instead the words “10 penalty units”;
- (d) by omitting Regulation 91 and by inserting instead the following Regulation:

#### **Penalty**

91. Any person who contravenes a provision of these Regulations is liable to a penalty (if a penalty is not otherwise provided) not exceeding:

- (a) 100 penalty units in the case of a corporation; or
- (b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or
- (c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.

### **Amendment of Chaff-cutting Machines (Safety) Regulation 1980**

**6.** The Chaff-cutting Machines (Safety) Regulation 1980 is amended:

- (a) by inserting at the end of clause 6 the following words:  
    Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.
- (b) by inserting at the end of clause 7 the following words:  
    Maximum penalty: 25 penalty units.
- (c) by omitting clause 9;
- (d) by omitting all italicised headings to clauses.

**Amendment of Engine Drivers and Boiler Attendants Certification Regulations**

7. The Engine Drivers and Boiler Attendants Certification Regulations are amended:

- (a) by inserting at the end of Regulations 17 (1), 20 (1) and (2) and 21 the following words:  
Maximum penalty: 25 penalty units.
- (b) by inserting at the end of Regulation 17 (2) the following words:  
Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.
- (c) by inserting at the end of Regulation 20 (3) the following words:  
Maximum penalty: 10 penalty units.
- (d) by omitting Regulation 22.

**Amendment of Explosive-powered Tool Regulations**

8. Explosive-powered Tool Regulations are amended:

- (a) by inserting in Regulation 1 (2) (a), in alphabetical order, the following definition:  
“**Employee**” means an employee within the meaning of the Occupational Health and Safety Act 1983.
- (b) by inserting at the end of Regulation 8 the following words:  
Maximum penalty: 25 penalty units.
- (c) by omitting Regulation 10 and by inserting instead the following Regulation:

**Penalty**

10. Any person who contravenes a provision of these Regulations is liable to a penalty (if a penalty is not otherwise provided) not exceeding:

- (a) 100 penalty units in the case of a corporation; or
- (b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or
- (c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.

**Amendment of Factories (Health and Safety—Asbestos Processes) Regulation 1984**

9. The Factories (Health and Safety—Asbestos Processes) Regulation 1984 is amended:

- (a) by omitting from clause 4 (1) the definition of “employee” and by inserting instead the following definition:

“**employee**” means an employee within the meaning of the Occupational Health and Safety Act 1983;

- (b) by inserting at the end of clauses 12 (8), 13, 16 and 18 the following words:

Maximum penalty: 50 penalty units in the case of a corporation or 25 penalty units in any other case.

- (c) by omitting clause 21 and by inserting instead the following clause:

**Penalty**

21. Any person who contravenes a provision of this Regulation is liable to a penalty (if a penalty is not otherwise provided) not exceeding:

- (a) 100 penalty units in the case of a corporation; or  
(b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or  
(c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.

**Amendment of Factories (Health and Safety—Circular Saws) Regulations 1943**

10. The Factories (Health and Safety—Circular Saws) Regulations 1943 are amended:

- (a) by inserting at the end of Regulation 14 the following words:

Maximum penalty: 58 penalty units in the case of a corporation or 25 penalty units in any other case.

- (b) by omitting Regulation 15 and by inserting instead the following Regulation:

**Penalty**

15. Any person who Contravenes a provision of these Regulations is liable to a penalty (if a penalty is not otherwise provided) not exceeding 100 penalty units in the case of a corporation or 50 penalty units in any other case.

**Amendment of Factories (Health and Safety—Dipping in Flammable Solutions) Regulation 1976**

11. The Factories (Health and Safety—Dipping in Flammable Solutions) Regulation 1976 is amended:

- (a) by inserting at the end of clauses 5 and 9 (1) the following words:  
Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.
- (b) by inserting at the end of clause 9 (2) and (3) the following words:  
Maximum penalty: 25 penalty units.
- (c) by omitting from clause 9 (3) the matter “\$400” and by inserting instead the matter “\$2,500”;
- (d) by omitting clause 12;
- (e) by omitting all italicised headings to clauses.

**Amendment of Factories (Health and Safety) Electroplating Regulation 1988**

12. The Factories (Health and Safety) Electroplating Regulation 1988 is amended:

- (a) by inserting in clause 5 (1), in alphabetical order, the following definition:  
“**employee**” means an employee within the meaning of the Occupational Health and Safety Act 1983;
- (b) by omitting from clause 6 the matter “\$2,000” and by inserting instead the words “100 penalty units in the case of a corporation or 50 penalty units in any other case”;
- (c) by omitting from clauses 7 and 25 the matter “\$2,000” wherever occurring and by inserting instead the words “25 penalty units”;
- (d) by omitting from clause 22 the words “Maximum penalty: \$2,000” and by inserting instead the following words:  
Maximum penalty:
  - (a) 100 penalty units in the case of a corporation; or
  - (b) 50 penalty units in the case of an individual who commits an offence otherwise than in his or her capacity as an employee; or
  - (c) 25 penalty units in the case of an individual who commits an offence in his or her capacity as an employee.
- (e) by omitting from clause 24 the matter “\$2,000” and by inserting instead the words “50 penalty units in the case of a corporation or 25 penalty units in any other case”.

**Amendment of Factories (Health and Safety—Furnaces) Regulation 1983**

13. The Factories (Health and Safety—Furnaces) Regulation 1983 is amended:

- (a) by inserting in clause 4, in alphabetical order, the following definition:

“**employee**” means an employee within the meaning of the Occupational Health and Safety Act 1983;

- (b) by inserting at the end of clauses 5 and 6 (1) the following words:

Maximum penalty:

- (a) 100 penalty units in the case of a corporation; or  
(b) 50 penalty units in the case of an individual who commits an offence otherwise than in his or her capacity as an employee; or  
(c) 25 penalty units in the case of an individual who commits an offence in his or her capacity as an employee.

- (c) by inserting at the end of clauses 6 (2), 7, 11 (2) and 12 (2) the following words:

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in any other case.

- (d) by inserting at the end of clauses 9, 10, 11 (1) and 12 (1) the following words:

Maximum penalty: 25 penalty units.

- (e) by omitting Part III.

**Amendment of Factories (Health and Safety) General Regulations 1913**

14. The Factories (Health and Safety) General Regulations 1913 are amended:

- (a) by omitting Regulation 2 and by inserting instead the following Regulation:

2. In these Regulations:

“**employee**” means an employee within the meaning of the Occupational Health and Safety Act 1983;

“**the Act**” means the Factories, Shop and Industries Act 1962.

- (b) by omitting Regulation 18A and by inserting instead the following Regulation:

**Penalty**

18A. Any person who contravenes a provision of Regulation 12 or 14–17A is liable to a penalty not exceeding 50 penalty units in the case of a corporation or 25 penalty units in any other case.

- (c) by inserting at the end of Regulation 49 the following words:

Maximum penalty: 50 penalty units in the case of a corporation or 25 penalty units in any other case.

- (d) by omitting Regulation 51 and by inserting instead the following Regulation:

**Penalty**

51. Any person who contravenes a provision of these Regulations is liable to a penalty (if a penalty is not otherwise provided) not exceeding:

- (a) 100 penalty units in the case of a corporation; or
- (b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or
- (c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.

**Amendment of Factories (Health and Safety—Hearing Conservation) Regulation 1979**

**15.** The Factories (Health and Safety—Hearing Conservation) Regulation 1979 is amended:

- (a) by inserting at the end of clauses 4 (1), (3) and (4), 5 (1), (2), (3), (7) and (10), 6, 7 and 9 (1), (3) and (5) the following words:

Maximum penalty: 100 penalty units in the case of a corporation or 50 penalty units in my other case.

- (b) by inserting at the end of clauses 8, 11 (2) and 12 the following words:

Maximum penalty: 50 penalty units in the case of a corporation or 25 penalty units in any other case.

- (c) by inserting at the end of clause 10 the following words:

Maximum penalty: 25 penalty units.

- (d) by omitting clause 14;

- (e) by omitting all italicised headings to clauses.



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**Amendment of Factories (Health and Safety—Spray Painting) Regulation 1977**

**16.** The Factories (Health and Safety—Spray Painting) Regulation 1977 is amended:

- (a) by inserting in clause 4, in alphabetical order, the following definition:

**“employee”** means an employee within the meaning of the Occupational Health and Safety Act 1983;

- (b) by inserting at the end of clause 22 the following words:

Maximum penalty: 50 penalty units in the case of a corporation or 25 penalty units in any other case.

- (c) by omitting clause 26 and by inserting instead the following clause:

**Penalty**

26. Any person who contravenes a provision of this Regulation is liable to a penalty (if a penalty is not otherwise provided) not exceeding:

- (a) 100 penalty units in the case of a corporation; or  
 (b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or  
 (c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.
- (d) by omitting all italicised headings to clauses.

**Amendment of Foundry Regulations**

**17.** The Foundry Regulations are amended:

- (a) by inserting in Regulation 1 (6) (a), in alphabetical order, the following definition:

**“Employee”** means an employee within the meaning of the Occupational Health and Safety Act 1983.

- (b) by inserting at the end of Regulation 34 the following words:

Maximum penalty:

- (a) 50 penalty units in the case of a corporation; or  
 (b) 25 penalty units in the case of an individual who commits an offence otherwise than in his or her capacity as an employee; or

- (c) 5 penalty units in the case of an individual who commits an offence in his or her capacity as an employee.
- (c) by omitting Regulation 37 and by inserting instead the following Regulation:

**Penalty**

37. Any person who contravenes a provision of these Regulations is liable to a penalty (if a penalty is not otherwise provided) not exceeding:

- (a) 100 penalty units in the case of a corporation; or
  - (b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or
  - (c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.
- (d) by omitting all italicised headings to Regulations.

**Amendment of Lead Regulations**

**18.** The Lead Regulations are amended:

- (a) by inserting in Regulation 1 (5) (a), in alphabetical order, the following definition:

**“Employee”** means an employee within the meaning of the Occupational Health and Safety Act 1983.
- (b) by inserting at the end of Regulation 14 the following words:

Maximum penalty: 50 penalty units in the case of a corporation or 25 penalty units in any other case.
- (c) by inserting after Regulation 16 (7) the following paragraph:

(8) The occupier of a factory must provide rooms, fixtures, furniture, fittings and appliances in accordance with this Regulation.

Maximum penalty: 50 penalty units in the case of a corporation or 25 penalty units in any other case.
- (d) by omitting Regulation 21 and by inserting instead the following Regulation:

**Penalty**

21. Any person who contravenes a provision of these Regulations is liable to a penalty (if a penalty is not otherwise provided) not exceeding:

- (a) 100 penalty units in the case of a corporation; or

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- (b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or
- (c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.
- (e) by omitting all italicised headings to Regulations.

**Amendment of Local Government Industries (Machine Safety) Regulation**

**19.** The Local Government Industries (Machine Safety) Regulation is amended:

- (a) by inserting at the end of clauses 4 (1), 8 (1) and 9 the following words:

Maximum penalty: 100 penalty units in the case of a council or other corporation or 50 penalty units in any other case.
- (b) by inserting at the end of clauses 8 (2) and 10 the following words:

Maximum penalty: 25 penalty units.
- (c) by omitting clause 12;
- (d) by omitting all italicised headings to Regulations.

**Amendment of Locomotive Regulations**

**20.** The Locomotive Regulations are amended:

- (a) by inserting in Regulation 1 (4), in alphabetical order, the following definition:

**“Employee”** means an employee within the meaning of the Occupational Health and Safety Act 1983.
- (b) by omitting from Regulation 2 (2) the words “not exceeding \$4,000” and by inserting instead the following words:

not exceeding:

  - (a) 100 penalty units in the case of a corporation; or
  - (b) 50 penalty units in the case of an individual who commits an offence otherwise than in his or her capacity as an employee; or
  - (c) 25 penalty units in the case of an individual who commits an offence in his or her capacity as an employee.

- (c) by omitting Regulation 7 and by inserting instead the following Regulation:

**Penalty**

7. Any person who contravenes a provision of these Regulations is liable to a penalty (if a penalty is not otherwise provided) not exceeding:

- (a) 100 penalty units in the case of a corporation; or
  - (b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or
  - (c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.
- (d) by omitting all italicised headings to Regulations.

**Amendment of Luminous Radioactive Substances Regulations**

21. The Luminous Radioactive Substances Regulations are amended:

- (a) by inserting in Regulation 2, in alphabetical order, the following definition:

“**Employee**” means an employee within the meaning of the Occupational Health and Safety Act 1983.

- (b) by inserting at the end of Regulation 20 the following words:

Maximum penalty: 50 penalty units in the case of a corporation or 25 penalty units in any other case.

- (c) by omitting Regulation 24 and by inserting instead the following Regulation:

**Penalty**

24. Any person who contravenes a provision of these Regulations is liable to a penalty (if a penalty is not otherwise provided) not exceeding:

- (a) 100 penalty units in the case of a corporation; or
  - (b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or
  - (c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.
- (d) by omitting all italicised headings to Regulations.

**Amendment of Timber Industry (Health and Safety) Regulation 1982**

22. The Timber Industry (Health and Safety) Regulation 1982 is amended:

- (a) by omitting from the definition of “employee” in clause 3 the words “a person” and by inserting instead the words “an employee, within the meaning of the Occupational Health and Safety Act 1983, who is”;
- (b) by inserting at the end of clause 10 (3) the following words:  
Maximum penalty: 50 penalty units in the case of a corporation or 25 penalty units in any other case.
- (c) by omitting clause 17 and by inserting instead the following clause:

**Penalty**

17. Any person who contravenes a provision of this Regulation is liable to a penalty (if a penalty is not otherwise provided) not exceeding:

- (a) 100 penalty units in the case of a corporation; or
- (b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or
- (c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.

**Amendment of Welding Regulations**

23. The Welding Regulations are amended:

- (a) by inserting in Regulation 2 (a), in alphabetical order, the following definition:

“**Employee**” means an employee within the meaning of the Occupational Health and Safety Act 1983.

- (b) by omitting Regulation 7 and by inserting instead the following Regulation:

**Penalty**

7. Any person who contravenes a provision of these Regulations is liable to a penalty not exceeding:

- (a) 100 penalty units in the case of a corporation; or
- (b) 50 penalty units in the case of an individual who contravenes the provision otherwise than in his or her capacity as an employee; or

(c) 25 penalty units in the case of an individual who contravenes the provision in his or her capacity as an employee.

(c) by omitting all italicised headings to Regulations.

### EXPLANATORY NOTE

The object of this Regulation is to amend certain regulations under the Factories, Shops and Industries Act 1962 so as:

- (a) to vary (in accordance with criteria set out below) the maximum penalty for the contravention of certain provisions of those regulations; and
- (b) to provide (in certain penalty provisions) for differential penalties depending on whether the offender is a corporation, an individual (other than an employee) or an employee; and
- (c) to express penalties in penalty units; and
- (d) to make other amendments of a minor, consequential and ancillary nature.

The following criteria have been used in setting the level of penalty in the regulations amended by this Regulation.

Type of contravention	Penalty units		
	Corporation	Individual	Employee
<b>1. Hazardous work</b>			
• Employ a person to do work without prescribed authority (e.g. certificate, qualifications) .....	100	50	
• Do work without prescribed authority .....			25
• Not work in prescribed way.....			25
• Make false representation concerning authority .....			25
<b>2. Plant and equipment</b>			
• Install, sell, deliver or use unapproved plant or equipment .....	100	58	25
<b>3. Protective equipment</b>			
• Not provide or maintain .....	100	50	
• Interfere with or not use .....			25
• Not report defective equipment.....			25
<b>4. Medical examination</b>			
• Not facilitate on prescribed occasions .....	100	50	
• Not submit to examination.....			25
• Not comply with direction after examination .....	100	90	25

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5.	<b>Notices, records and information</b>			
•	Not erect or give prescribed notices	50	25	
•	Not send prescribed notices to the Authority .....	50	25	
•	Not provide prescribed printed information .....	50	25	
•	Not keep or not produce prescribed records .....	50	25	
6.	<b>Factory amenities</b>			
•	Not provide .....	50	25	
•	Not use in prescribed way .....			5
7.	<b>Other provisions</b>			
•	concerning hazardous activities .....	100	50	25
•	concerning non-hazardous activities...	50	25	10

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