



Australian Government

Comcare

Major hazard facilities

an overview of the
commonwealth legislation

Publication details

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ISBN 1 921160 16 0

First published July 1999

Second edition September 2001

This edition March 2007

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Purpose and scope

This guidance has been produced to provide employers with an overview of the regulatory framework of part 9 Major Hazard Facilities of the Occupational Health and Safety (Safety Standards) Regulations 1994 (“the Safety Standards Regulations”). The Safety Standards Regulations principal legislation is the Occupational Health and Safety Act 1991 (“the OHS Act”) administered by the Safety, Rehabilitation and Compensation Commission (“the Commission”).

The Commission has delegated many of its functions and powers under part 9 Major Hazard Facilities (MHF) regulations to Comcare. For practical purposes, powers and functions undertaken by Comcare on behalf of the Commission will be referred to in this guidance as duties undertaken by Comcare.

This guidance applies to any employer in the Commonwealth jurisdiction for occupational health and safety, who operates a facility that may have the potential to cause a major accident.

This guidance will summarise topics covered in a series of Comcare guidance material and application packs that provide more specific guidance to the duties and processes associated with the control of a MHF.

This material provides guidance only. An employer who believes they may have duties under the MHF regulations should refer to, and be familiar with the specific requirements of the MHF regulations.

The reason for major hazard facilities regulation

In September 1996, the Australian Safety and Compensation Council (ASCC) formerly known as the National Occupational Health and Safety Commission (NOHSC) released a National Standard for the Control of Major Hazard Facilities [NOHSC:1014(1996)]. The Commission recognises the importance of controlling facilities that pose a high risk of catastrophic consequences to people, property and the environment. For this reason the Commission seeks to protect all persons at or near a Commonwealth workplace that could be affected by a major accident at that workplace.

Major accidents differ from OHS accidents and demand different controls. They are high risk and low frequency accidents which can produce catastrophic events caused by large quantities of dangerous goods, radiation hazards and biological hazards. For this reason, there is a need to protect employees, the community and the environment from the probability of a major accident through controls designed to eliminate or if not practicable, minimise the underlying and immediate causes of major accidents and limit their consequences.

Who should read this guidance?

This guidance should be read by any employer wanting to determine whether they may be in control of a facility that is likely to cause a major accident.

A major accident is defined by the MHF regulations as a sudden occurrence at the facility causing serious danger or harm to a person at or near the facility, an at-risk community, or property or the environment near the facility, whether the danger or harm occurs immediately or at a later time.

Some examples of a major accident are:

- a major emission of dangerous goods or hazardous substances from the facility;
- a loss of containment of dangerous goods or a hazardous substance;
- a fire or explosion;
- a release of energy; or
- a sudden occurrence leading to serious danger or harm to people, whether immediate or delayed.

The MHF regulations define what type of facility may have the potential of causing a major accident. For the purpose of regulation in the Commonwealth, these facilities are “potential major hazard facilities”. A potential MHF is a facility contained within a workplace as described in the OHS Act. A potential MHF falls into one of these categories:

- a facility where any material listed in Schedule 9 of the MHF regulations is present, or likely to be present, in a quantity equal to or greater than 10% of the corresponding threshold or aggregate quantity; or
- a facility meeting the definition of a Nuclear Installation or a Prescribed Radiation Facility as described in the *Australian Radiation Protection and Nuclear Safety Act 1998* (“ARPANS Act”) and *Australian Radiation Protection and Nuclear Safety Regulations 1999* (“ARPANS Regulations”); or
- a laboratory dealing with agents which require Physical Containment 3 or 4 as defined in the Australian Standard 2243 – Safety in Laboratories – Part 3: Microbiological aspects and containment facilities; or
- a facility identified by Comcare as a potential MHF, where Comcare believes, after a risk assessment and consultation with the employer, that the facility has the potential to cause a major accident.

An employer who operates or intends to operate a potential MHF, as described above, should follow this guidance. Further clarification on the types of materials and quantities can be found in Schedule 9 of the Safety Standards Regulations.

Information on whether notification to Comcare is appropriate for the type of facility operated by an employer can be found in the notification pack for notification of a Commonwealth potential major hazard facility.

Summary of regulatory requirements

Notification of potential MHFs

Employers are required by the MHF regulations to determine if they are in control of a potential MHF. This should be done by filling in and submitting to Comcare the notification form contained in notification pack for notification of a Commonwealth potential major hazard facility.

Comcare may also identify a facility that does not meet the definition of a potential MHF and ask the employer to notify as a potential MHF, where Comcare believes there is a potential for a major accident at the facility. In this case, Comcare will write to the employer and ask the employer to notify as a potential MHF. The employer will be required to fill in and submit to Comcare the notification form contained in the notification pack for notification of a Commonwealth potential major hazard facility.

The notification requirements are designed to give Comcare a reasonable understanding of any potential for a major accident that may occur at the facility and the subsequent consequences.

Employers in control of a potential MHF should provide details about the type of material and quantities stored, handled and used in processes at the facility.

Employers should establish whether any activity undertaken at the facility involves or is likely to involve, temporarily or permanently, the processing, production, disposal, handling, use or storage of a quantity of schedule 9 materials that equals or exceeds 10% of the corresponding threshold quantity or aggregate threshold quantity.

Employers in control of a nuclear installation or radiation facility or a physical containment laboratory 3 and 4, are also required to provide information on the type, quantity of materials stored or handled at the facility. They must also detail how these materials are contained and processes in which these materials are used at the facility.

Employers in control of a facility that is not a potential MHF at the commencement of these regulations, but because of modification in the future may become a potential MHF, must notify Comcare at least 3 months prior to the modification being made.

Where an employer intends to operate a facility not yet operational but could, once operational be a potential MHF the employer must notify Comcare at least 3 months prior to operation commencing at the facility.

Summary of timeframes for notification of potential MHF to Comcare:

- for a potential major hazard facility— within 3 months after the commencement of the Regulations; or
- for an existing facility that, because of a modification to the facility, will become a potential major hazard facility—at least 3 months before the modification is made; or
- for a facility identified by Comcare as having the capacity to cause a major accident and where Comcare has written to the employer requesting the employer to notify as a potential MHF – within 3 months after Comcare has requested the employer to notify; or
- for a proposed potential major hazard facility - at least three (3) months before the operation commences at the facility.

Classification of a potential MHF

Once Comcare has received the notification, Comcare will assess each notification and categorise the classification of facilities. Facilities will meet one of the two classification categories summarized below.

Facilities that will be classified as a MHF

Facilities that clearly have the potential to cause a major accident will be classified as a MHF. These include:

- a facility that holds, temporarily or permanently, a quantity of schedule 9 material which matches or exceeds 100% of the corresponding threshold or aggregate threshold quantity; or
- a facility that is a nuclear installation as described in part 2 of the ARPANS Act; or
- a facility that is a laboratory dealing with biological agents requiring physical containment level 4 as described in the technical standard: AS/NZS 2243.3:2002. Safety in laboratories - Microbiological aspects and containment facilities.

Facilities that may be classified

All remaining facilities that meet the definition of a potential MHF will be assessed by Comcare. Comcare will examine the notification information and consult with the employer. Comcare may conduct on-site verifications to determine whether control measures at the facilities have reduced the risk of a major accident. These types of facilities include:

- a facility where the quantity of a single schedule 9 material at the facility is over 10% of the threshold quantity;
- a facility where there are multiple schedule 9 materials and, after application of the aggregate rule, the aggregate quantity ratio is .1. That is, 10% of the aggregate quantity which is 1;
- a laboratory dealing with biological agents requiring physical containment level 3 as described in the technical standard: AS/NZS 2243.3:2002: Safety in laboratories - Microbiological aspects and containment facilities;
- a prescribed radiation facility as described in regulation 6 of the ARPANS Regulations; or
- a facility that Comcare becomes aware of, where Comcare believes there may be a potential for a major accident. The potential for the major accident could arise from the activities at the facility or the type of substances at the facility.

Comcare may consider the following factors before making a decision whether to classify a potential MHF as a MHF:

- properties of materials at the facility, including extreme toxicity or environmental hazard, toxic combustion products, toxic hydrolysis products, toxic volatile materials, synergistic effects;
- process and storage conditions, including pressure above atmospheric pressure, temperature about ambient temperature, variety of dangerous goods, container size, level of technology;
- organisational issues, including adequacy of existing hazard controls, organisational quality, major accident and dangerous occurrence preparedness; and
- off-site issues, including surrounding land use, pipelines, environmental sensitivity, potential for external threat.

Following classification of a potential MHF as a MHF, the employer in control of the MHF is required to undertake duties to prepare the facility to hold a licence or certificate of compliance to operate as a MHF, unless the employer holds a bridging licence (see the section called Employers holding a bridging licence).

Duties of employers in control of a major hazard facility

Once a facility is classified as a MHF the employer is required to apply for a licence or a certificate of compliance to operate the facility as a MHF, unless the employer holds a bridging licence (see the section called Employers holding a bridging licence).

Employers applying for a licence to operate the MHF and employers who have been granted a licence under the MHF regulations, have a range of duties specific to the control of the major hazard facility, these duties include:

- identify and assess all foreseeable hazards that could cause a major accident;
- implement risk controls to eliminate or minimise the risk of a major accident as far as practicable;
- prepare and implement a comprehensive and integrated safety management system (SMS) for managing safety and preventing the occurrence of major accidents at the MHF;
- prepare and submit a safety report outline to Comcare;
- prepare a safety report that outlines the technical and managerial aspects of the facility and demonstrates how the chosen control measures will eliminate or reduce the risk of a major accident at the facility and maintain safe operation;
- arrange an assessment of the safety report by an Approved Assessor before applying for a licence;
- apply for a (new) licence or a (new) certificate of compliance to operate the facility;
- review of the safety report at intervals stated in the MHF regulations;
- provide information to the at-risk community;
- develop a training program that addresses the hazards and risks identified relevant to the roles and responsibilities of each relevant person at the facility;
- provide ongoing training and education to each relevant person at the facility;
- prepare and implement an emergency plan that details the on-site and off-site emergency procedures;
- review the emergency plan at intervals stated by the MHF regulations;
- establish and maintain a system for securing the MHF; and
- investigate all major accidents and provide a report to Comcare on the outcome of the investigation.

All employers in control of a major hazard facility, whether holding a bridging licence, applying for or holding a licence or certificate of compliance must continue to comply with the incident notification requirements under the *OHS Act*

and *Occupational Health and Safety (Safety Arrangements) Regulations 1991*. In particular, employers must notify to Comcare all incidents involving deaths, serious personal injuries and dangerous occurrences.

Employers in control of an MHF who join the Commonwealth from other state or territory OHS jurisdictions may hold a bridging licence in the interim, before applying for a licence. During this period, the employer must comply with the duties contained within the conditions of the bridging licence. Comcare may vary the conditions of a bridging licence. The regulations also require an employer holding a bridging licence to investigate any major accident that occurs at the facility and provide a report to Comcare on the outcome of the investigation.

Employers in control of MHFs, who have been granted a certificate of compliance, must comply with the duties contained within the conditions of the certificate. Comcare may vary the conditions of a certificate of compliance. The regulations also require an employer holding a certificate of compliance to investigate any major accident that occurs at the facility and provide a report to Comcare on the outcome of the investigation.

Employers holding a bridging licence

Employers in control of a MHF at the time of migrating to the Commonwealth OHS jurisdiction from a state or territory authority:

- a) will be deemed as classified as a MHF by Comcare;
- b) will be deemed to hold a bridging licence; and
- c) must comply with the conditions of the bridging licence.

The conditions of a bridging licence require that the employer in control of the MHF comply with the conditions set by the former state or territory authority who issued the licence.

Employers holding a bridging licence are required to provide Comcare with a copy of the licence held under the former state or territory authority and any other information requested by Comcare to assist it in determining any further appropriate conditions for the bridging licence.

A bridging licence remains in force for 18 months unless the timeframe has been extended by Comcare. An employer holding a bridging licence must apply for a licence 6 months before the expiry of the bridging licence. The application for licence must be accompanied by an executive summary of the assessment of the current safety report by an Approved Assessor.

Application for licence or certificate of compliance

As mentioned above, an employer is required to apply for a licence or a certificate of compliance to operate the facility as a MHF, unless the employer holds a bridging licence (see the section called Employers holding a bridging licence). If the employer holds a bridging licence, the employer must apply for a licence before the expiry of their bridging licence.

Employers must submit an application for licence or a certificate of compliance to operate a MHF. Detailed information on how to apply for a licence or certificate of compliance can be found in the application packs called *Application for a licence to operate a Commonwealth MHF* or *Application for certificate of compliance to operate a Commonwealth MHF*.

An employer may apply for a certificate of compliance where it believes it complies with an existing comparable Commonwealth legislation with similar safety outcomes. The employer must provide evidence of compliance with this

comparable scheme.

An employer who wishes to apply for a licence must have their safety report assessed by an Approved Assessor prior to applying for a licence. The employer will then submit to Comcare an application for licence accompanied by an executive summary of the Approved Assessors assessment of the safety report.

Comcare will conduct an evaluation of the application material and on the basis of that evaluation may make a decision on whether or not to issue a licence and the conditions for the licence. Before a decision is made, Comcare may seek further information from the employer or request an on-site visit to assist it in making a decision.

Employers may hold a licence for a period of up to 5 years. If the employer intends to operate the facility as a MHF after this 5 year period, the employer must make a new licence application before the expiry of their current licence.

Employers may hold a certificate of compliance for the time period specified on the certificate. If the employer intends to operate the facility as a MHF after this period, and intends to continue to comply with the existing Commonwealth scheme, the employer must make a new application for a certificate of compliance before the expiry of their current certificate.

Duties of employees and contractors

Employees and contractors have specific duties under the MHF regulations. This is because contractors at the facility and employees working at the facility on a regular basis play a vital role in the safe operation of the facility.

Complex processes combined with the possibility of high consequences if those processes fail, highlight the dependence MHFs have on the skill and diligence of its workforce. These characteristics are the reason why the regulations place strong emphasis on employers for the training and education of employees and including those employees in the consultation process required under the MHF regulations.

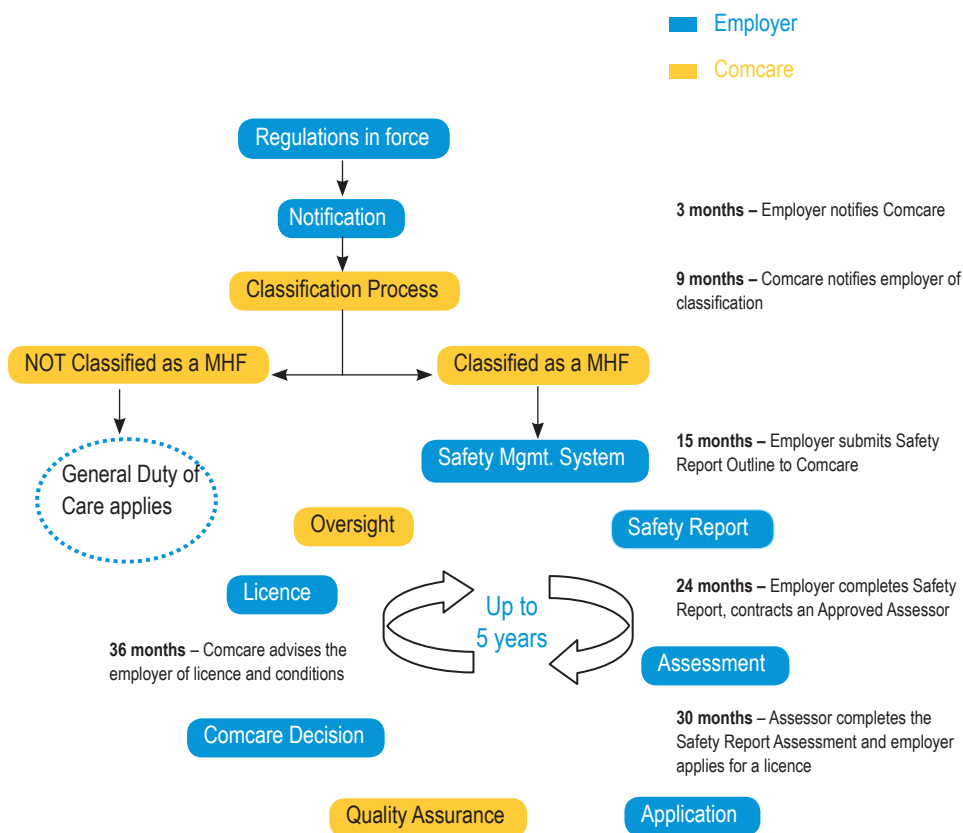
There are also specific obligations on employees at the MHF to take necessary actions to prevent or mitigate the consequences of a major accident at the facility. Employees and contractors must notify the employer and may notify Comcare if the employee or contractor believes there is a hazard at the MHF that may cause a major accident.

Timelines for licensing and certificate of compliance

The diagrams and tables below have been developed to provide employers with guidance on key regulatory deadlines for compliance under the MHF regulations.

Employers should note the stated timeframes commence from the date at which the MHF regulations come into force.

The licensing cycle



Time Scale	Time taken for Activity	Activity
0	0	Regulations in force
3 months	3 months	Employer notifies Comcare of a potential MHF
9 months	6 months	Comcare notifies employer of Classification
15 months	6 months	Employer submits a Safety Report Outline to Comcare
24 months	9 months	Employer completes Safety Report, then contracts an Approved Assessor
30 months	6 months	Approved Assessor completes the Safety Report Assessment and employer applies to Comcare for a licence to operate the MHF
36 months	6 months	Comcare issues the employer with a licence and conditions for licence up to 5 years

Note: The lighter shaded areas are duties of the employer.

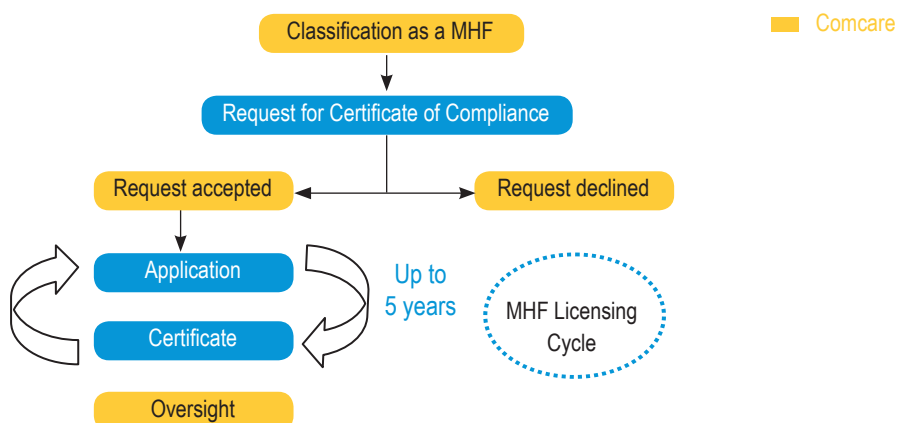
The certificate of compliance cycle

9 months – Comcare notifies employer of classification

12 months – Employer writes to Comcare requesting Certificate of Compliance

15 months – Comcare notifies employer of whether Certificate of Compliance will be issued & specifies conditions

Employer complies with conditions of certificate for a specified period and will apply for a new certificate prior to the expiry of the current certificate



Time Scale	Time taken for Activity	Activity
9 months from MHF regulations being in force	6 months	Comcare notifies employer of Classification as a MHF
12 months	3 months (or at the discretion of the employer)	Employer applies for a certificate of compliance to Comcare and provides evidence of compliance with statutory provisions, for other regulations with another authority, that may be equivalent to the safety outcomes of MHF regulations
15 months	6 months	Comcare writes to the employer advising whether a Certificate of Compliance will be issued and conditions for certificate (for example, if the employer is required to provide further evidence to meet all safety outcomes of the MHF regulations) For employers issued with a Certificate of Compliance, Comcare will specify the conditions for certificate and period for which the certificate will be in force, up to 5 years.

Note: The lighter shaded areas are duties of the employer.

Declassification of a major hazard facility

Once a MHF is classified, employers in control of a MHF may apply to have the classification revoked, if circumstances change at the facility where the employer believes there is no risk of a major accident. Specific information on an application to revoke classification is contained in the application pack for revocation of classification as a Commonwealth major hazard facility.

An employer in control of a MHF may make an application to revoke classification as a MHF at any time, after being classified as a MHF.

There are specific grounds on which Comcare may revoke the classification of a facility as a MHF. These grounds are stated in the MHF regulations and take into consideration the grounds on which the facility was first classified. Before making a decision to revoke classification, Comcare may conduct on-site verifications to determine whether the risks at the facility have been reduced to the point where there is no risk of a major accident.

References

For related Comcare publications go to www.comcare.gov.au

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OHS 70 (March 07)