

EXPLANATORY STATEMENT – MODEL WORK HEALTH AND SAFETY REGULATIONS (HAZARDOUS CHEMICALS) AMENDMENT 2020 – Model Provisions

The *Model Work Health and Safety Regulations (Hazardous Chemicals) Amendment 2020* (the amendments) amend the model Work Health and Safety (WHS) Regulations to update references to the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) and Australian Standards that have been superseded.

These amendments are made under section 276 and clause 5 of Schedule 3 to the model WHS Act.

Details of the Model Work Health and Safety Regulations (Hazardous Chemicals) Amendment 2020 – Model Provisions

Regulation 1 – Name of model provisions

This regulation sets out the name of the amendment to the model provisions.

Regulation 2 – Legislation amended

This regulation provides that Schedule 1 amends the model WHS Regulations.

Schedule 1 to the Model Work Health and Safety Regulations (Hazardous Chemicals) Amendment 2020

Item 1 – Regulation 5(1), Definitions, definition of “GHS”

This item amends the definition of **GHS**, to remove the words “third revised edition” and replace them with “seventh revised edition”. The seventh revised edition of the GHS (GHS 7) was published by the United Nations in July 2017. The definition of GHS in regulation 5(1) refers to the GHS 7 published by the United Nations as modified under Schedule 6 to the model WHS Regulations.

Item 2 – Regulation 5(1), Definitions, definition of “GHS 3”

This item adds the definition of **GHS 3** to regulation 5(1).

Item 3 – Regulation 5(1), Definitions, definition of “hazardous chemical”

This item amends the definition of **hazardous chemical** to clarify that a substance, mixture or article will be a hazardous chemical if it satisfies the criteria for any one or more hazard classes in the GHS (including those referred to in Schedule 6 to the model WHS Regulations), but it will not be a hazardous chemical under the model WHS Regulations if the only hazard class or classes for which it satisfies the criteria are one or more of the listed hazard classes.

This item also removes “serious eye damage/eye irritation – category 2B” from the definition of **hazardous chemical** on the basis that Australia, as a general rule, does not require sub-categorisation of hazard classes. Should manufacturers and importers have sufficient data available, sub-categorisation into categories 2A and 2B can be undertaken but is not mandatory.

Item 4 – Regulation 223, Lasers

The Australian Standard “AS 2397:1993 – Safe use of lasers in the building and construction industry” has been superseded. This item updates the superseded Australian Standard referenced in regulation 223(6) to the current Australian Standard “AS2397:2015 – Safe use of lasers in the building and construction industry” (AS2397:2015).

Item 5 – Regulation 338, Supplier labelling hazardous chemicals

This item amends regulation 338, by adding in sub-regulation 338(2). Sub-regulation 338(2) provides that sub-regulation 338(1) does not apply where the hazardous chemical was manufactured or imported before 1 January 2023 and was, at the time it was manufactured or imported, labelled in accordance with GHS 3.

This item enables suppliers to on-sell GHS 3 labelled stock already in the supply chain. Existing labels may be used until stock runs out and end users are able to use existing labelled stock indefinitely.

Note that some jurisdictions have supplier labelling exemptions for chemicals manufactured or imported before 1 January 2017 and labelled in accordance with *National Code of Practice for the Labelling of Workplace Substances* [NOHSC: 2012 (1994)] (NOHSC: 2012 (1994)).

Item 6 – Regulation 341, Labelling hazardous chemicals – general requirement

This item omits existing sub-regulation 341(2) and replaces it with a new sub-regulation which provides that sub-regulation 341(1) does not apply to a hazardous chemical that was:

- supplied before 1 January 2017 and was labelled in accordance with NOHSC: 2012 (1994)
- supplied before 1 January 2023 and was labelled in accordance with GHS 3, or
- manufactured or imported before 1 January 2023 and was labelled in accordance with GHS 3.

This sub-regulation enables persons conducting a business or undertaking (PCBUs) to use, handle or store a hazardous chemical that was already in the supply chain provided it meets the labelling requirements that applied at the time of supply.

Item 7 – Regulation 342, Labelling hazardous chemicals – containers

This item omits existing sub-regulation 342(1A) and replaces it with a new sub-regulation which provides that sub-regulation 342(1) does not apply to a hazardous chemical that was:

- manufactured at the workplace, or transferred or decanted from its original container at the workplace, before 1 January 2017 and was labelled in accordance with NOHSC: 2012 (1994), or
- manufactured at the workplace before 1 January 2023 and was labelled in accordance with GHS 3, or
- transferred or decanted from its original decanter at the workplace if it was manufactured or imported before 1 January 2023 and was labelled in accordance with GHS 3.

This sub-regulation means that a PCBU does not need to relabel a hazardous chemical that was manufactured at the workplace, or transferred or decanted from its original container at the workplace provided that it was correctly labelled in accordance with the labelling requirements that applied at the time of manufacture, transfer or decanting (as applicable).

Item 8 – Regulation 342(2A)

This item omits sub-regulation 342(2A) and replaces it with a new sub-regulation that provides sub-regulation 342(2) does not apply to a container that contains a hazardous chemical if the container was:

- supplied before 1 January 2017 and was labelled in accordance with NOHSC: 2012 (1994),
- supplied before 1 January 2023 and was labelled in accordance with GHS 3, or
- manufactured or imported before 1 January 2023 and was labelled in accordance with GHS 3.

This sub-regulation means that a PCBU does not need to relabel a container that contains hazardous chemical if the container was already in the supply chain provided that the container meets the labelling requirements that applied at the time of supply.

Items 9 and 11 – Schedule 5

The Australian Standard AS 4343:2005 (Pressure equipment – Hazard levels) has been superseded. These items update references in item 1.1 of clause 1 of Part 1 and items 3.1 and 3.2 in clause 3 of Part 2 of Schedule 5 to the current Australian Standard, AS 4343:2014 (Pressure equipment – Hazards levels).

Items 10 and 12 - Schedule 5

The Australian Standard AS 1200:2000 (Pressure equipment) has been superseded. These item update references in clause 2(1)(a)(b) of Part 1 and clause 4(1)(a) of Part 2 to Schedule 5 to the current Australian Standard AS/NZS 1200:2015 (Pressure equipment).

Items 13, 14, 15, 16 and 17 – Schedule 6

These items update the page references included in the notes to Tables 6.1 – 6.5 in Schedule 6 to ensure that they are consistent with the GHS 7.

Item 13 advises that Table 6.1 replaces Table 3.4.5 in the GHS (p 159) and GHS 3 (151).

Item 14 advises that Table 6.2 replaces Table 3.6.1 in the GHS (p 174) and GHS 3 (p 166).

Item 15 advises that Table 6.3 replaces Table 3.7.1 in the GHS (p 187) and GHS 3 (p 180).

Item 16 advises that Table 6.4 replaces Table 3.8.2 in the GHS (p 197) and GHS 3 (p 192).

Item 17 advises that Table 6.5 replaces Table 3.9.3 in the GHS (p 207) and GHS 3 (p 203).

Items 18 and 19 – Schedule 7

These items omit phrases from the text of clause 1 of Schedule 7 as they are inconsistent with the text of GHS 7.

Item 18 omits the phrase “: product identifier and chemical identity” from clause 1(2)(a) of Schedule 7.

Item 19 omits the phrase “, including how the chemical may be safely used” from clause 1(2)(g) of Schedule 7.

Items 20 and 21 – Schedule 8

Consistent with the amendment to the definition of *hazardous chemical* in regulation 5(1), these items remove the sub-categorisation for serious eye damage/eye irritation from item 13 of Table 8.1 in clause 2 and from item 3 of Table 8.2 in clause 3 of Schedule 8.

Item 22 – Schedule 11, Placard and manifest quantities

This item omits existing Table 11.1 in Schedule 11 and replaces it with a new table.

The new table amends item 1, column 3 to make clear that there are two sub-categories of ‘Flammable gases,’ consistent with the GHS 7 – that is ‘Flammable gases – Category 1A’ and ‘Flammable gases – Category 1B.’ The placard and manifest quantities for Category 1A or Category 1B or any combination of these are 200L and 5000L respectively.

The new table also includes ‘Aerosols’ as a new hazard class, consistent with the GHS 7 classifications. Aerosols were previously included with ‘Gases under pressure.’ This means there are now three categories of aerosols at items 43 of Table 11.1 to Schedule 11. The placard and manifest quantity for each of these categories or any combination of these are 5000L and 10,000L respectively.