

EXPLANATORY STATEMENT – MODEL WORK HEALTH AND SAFETY (MISCELLANEOUS AMENDMENTS) AMENDMENT REGULATIONS 2025

Model Provisions

The *Model Work Health and Safety (Miscellaneous Amendments) Amendment Regulations 2025* give effect to the decision of Work Health and Safety (WHS) ministers to make minor, technical and other clarifying amendments the Model WHS Regulations, including to:

- clarify personal protective equipment requirements
- reduce the automatic refusal timeframe for high risk licence applications
- streamline asbestos sample analysis requirements, and
- remove duplication.

Clause [1] – Short title

This clause states that the regulations are titled the *Model Work Health and Safety (Miscellaneous Amendments) Amendment Regulations 2025—Model Provisions*.

Clause [2] – Amendment of Model WHS Regulations

This clause states that the regulations amend the *Model Work Health and Safety Regulations*.

Clause [3] – Omission of r 7 (Meaning of person conducting a business or undertaking—persons excluded)

This clause omits regulation 7, as it duplicates the exclusion prescribed in subsections 5(7) and (8) of the Act. The amendment avoids overlap and clarifies that a volunteer association does not conduct a business or undertaking for the purpose of the Act.

The omitted regulation 7 exempts a strata title body corporate responsible for common areas used for only residential purposes and that does not engage employees, and a volunteer only incorporated association, from the meaning of a person conducting a business or undertaking (PCBU).

Subsections 5(7) and (8) of the Act provide that a volunteer association does not conduct a business or undertaking for the purposes of the Act and define a *volunteer association* as a group of volunteers working for one or more community purposes, without employing any person to carry out work.

Clause [4] – Omission of r 12 (Assessment of risk in relation to a class of hazards, tasks, circumstances or things)

This clause omits regulation 12, to enable greater flexibility for risk assessments.

Where the Regulations require an assessment of risks to health and safety associated with a hazard, task, thing or circumstance, the omitted regulation 12 stated a risk assessment may be carried out for a class of hazards, tasks, things or circumstances rather than each individual occurrence.

The amendment does not impact duty holder obligations to conduct risk assessments (e.g. see regulations 66(2), 158(1)(a), 166(2)(a), 176(2) and 221(1)(a)) or how duty holders may carry out those risk assessments, including through the use of generic risk assessment for a class of hazards, tasks, things or circumstances.

Clause [5] - Amendment of r 25 (Training requirements for WHS entry permits)

This clause omits sub-regulation 25(2), which required training providers to provide guidance published by the regulator. The amendment recognises that a similar outcome is achieved under sub-regulation 25(3).

Sub-regulation 25(3), which provides that the regulator must have regard to all relevant matters for the purposes of approving training, is retained and renumbered as new sub-regulation 25(2).

Regulation 25 sets out detail on prescribed training for the purposes of sections 131 and 133 of the Act. Section 131 provides for a union to apply to the authorising authority (the regulator) for a WHS entry permit for a person who is an official of the union and includes a requirement to declare the official has satisfactorily completed prescribed training. Section 133 includes a corresponding requirement on the authorising authority to not issue the permit unless satisfied the prescribed training has been completed.

Clause [6] - Amendment of r 44 (Provision to workers and use of personal protective equipment)

This clause omits the words ‘in accordance with regulation 36’ from sub-regulation 44(1). The amendment clarifies obligations for personal protective equipment to ensure the use of personal protective equipment (PPE) is not unintentionally limited by the regulation 36 hierarchy of control measures.

The amended regulation 44 now applies wherever PPE is to be used to minimise a risk to work health and safety in relation to work at a workplace.

Clause [7] - Amendment of r 53 (Flammable and combustible material not to be accumulated)

This clause omits the words ‘practicable quantity for the workplace’ and inserts ‘quantity that is reasonably practicable for conducting the business or undertaking at the workplace’ in sub-regulation 53(1). This is intended to ensure greater clarity, as ‘lowest practicable quantity’ is not defined, nor is it used elsewhere in the model WHS laws, resulting in compliance difficulties.

The amended sub-regulation 53(1) provides that a PCBU must ensure that, if flammable or combustible substances are kept at the workplace, the substances are kept at the lowest quantity that is reasonably practicable for conducting the business or undertaking at the workplace.

The term ‘reasonably practicable’ is used throughout the model WHS laws and explained further in guidance material. The meaning of ‘what is reasonably practicable to ensure health and safety’ is defined in section 18 of the Act.

Clause [8] - Amendment of r 89 (Decision on application)

This clause amends sub-regulation 89(5) by reducing the period in which the regulator can decide to grant a high risk work licence from 120 to 60 days. This amendment is intended to reduce uncertainty for both workers and businesses who are awaiting a regulator's decision to grant a high risk work licence.

High risk work licences are required for certain types of work under regulation 81. Only a person who holds a relevant qualification as specified in the Regulations can apply for a high risk work licence under regulation 86.

Regulation 89 sets out the decision making process the regulator must follow when assessing whether or not to approve an application for a high risk work licence, including the timeframe for automatic refusal.

Clause [9] - Amendment of r 158 (Preliminary steps)

This clause amends sub-regulation 158(2) by omitting the note to regulation 12.

This is a consequential amendment due to omitting regulation 12 (refer to clause [4] above).

Clause [10] - Amendment of r 419 (Work involving asbestos or ACM—prohibitions and exceptions)

This clause omits paragraph 419(5)(a) and inserts a new paragraph 419(5)(a) with the detail from the omitted subparagraph 419(5)(a)(i). This reflects that the omitted subparagraph 419(5)(a)(ii) is no longer necessary.

Sub-regulation 419(1) prohibits a PCBU carrying out, directing or allowing a worker to carry out, work involving asbestos. The amended paragraph 419(5)(a) provides that sub-regulation (1) does not apply to 'soil that a competent person has determined does not contain any visible ACM or friable asbestos'.

The omitted paragraph 419(5)(a) provided that sub-regulation (1) does not apply to soil that a competent person has determined:

- (i) does not contain any visible asbestos containing material (ACM) or friable asbestos; or
- (ii) if friable asbestos is visible—does not contain more than trace levels of asbestos determined in accordance with AS 4964:2004 (Method for the qualitative identification of asbestos in bulk samples).

Trace amounts of asbestos must be determined in accordance with AS 4964:2004, which states the term 'trace asbestos detected' and implies a detection limit of 0.1 g/kg, unless the nature and type of sample indicates otherwise. Detail in the omitted subparagraph 419(5)(a)(ii) is no longer considered necessary as visible asbestos will always contain more than trace amounts.

Clause [11] - Amendment of r 423 (Analysis of sample)

This clause omits paragraphs 423(2)(b) and (c), and inserts the detail from the omitted paragraph (c) as the new paragraph (b). The amendment reflects that the guidelines referred to in the omitted paragraph 423(2)(b) have not been, and will not be, developed by Safe Work Australia.

Regulation 423 provides that asbestos or asbestos containing material (*ACM*) may be identified by analysing a sample. Where a sample is analysed, this can only be performed by laboratories specified in sub-regulation 423(2).

The amended sub-regulation 423(2) reflects that where a person with management or control of a workplace arranges for an analysis, they must ensure the sample is analysed only by a NATA-accredited laboratory accredited for the relevant test method or a laboratory operated or approved by the regulator.

Clause [12] - Amendment of r 479 (Uncertainty as to presence of asbestos)

This clause omits paragraphs 479(2)(b) and (c), and inserts the detail from the omitted paragraph (c) as the new paragraph (b). The amendment reflects that the guidelines referred to in the omitted paragraph 479(2)(b) have not been, and will not be, developed by Safe Work Australia.

Regulation 479 requires that a PCBU who is uncertain whether work to be carried out is asbestos-related work either assume that asbestos is present or ensure a sample is analysed to determine if asbestos or ACM is present.

The amended sub-regulation 479(2) reflects that for the purpose of an analysis under sub-regulation (1), the person must ensure the sample is analysed only by a NATA-accredited laboratory accredited for the relevant test method or a laboratory operated or approved by the regulator.