

EXPLANATORY STATEMENT – MODEL WORK HEALTH AND SAFETY REGULATIONS AMENDMENT 2016 (No. 2) – Model Provisions

The model Work Health and Safety (WHS) Act and the model Work Health and Safety (WHS) Regulations have been developed in accordance with the Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety (IGA).

In December 2015, Safe Work Australia Members agreed some technical and drafting changes to the model WHS Regulations.

The Model Work Health and Safety Regulations Amendment 2016 (No.2) – Model Provisions (Amendment Regulations) amend the model WHS Regulations to:

- amend the definition of the term 'ADG Code', which currently refers to the 7th edition, so that it now includes the Australian Code for the Transport of Goods by Road and Rail approved by the Australian Transport Council as amended from time to time.
- insert a new regulation that specifies the minimum content that is required in an exemption certificate issued by an authorising authority under section 117 of the model WHS Act to exempt a WHS entry permit holder from having to give at least 24 hours' notice before entering the workplace to inquire into a suspected contravention of the Act.
- amend regulation 335 to clarify that it is not necessary for hazardous chemical labels to include duplicate label elements required by other labelling laws.
- amend regulations 341 and 342 to allow a person conducting a business or undertaking (PCBU) to use, store or handle (including transfer or decant) hazardous chemicals labelled in accordance with the National Occupational Health and Safety Commission (NOHSC) Code of Practice if the hazardous chemicals were supplied to the workplace prior to 1 January 2017, and are not being supplied to another workplace.
- correct a typo in clause 3(3) of Schedule 13.

Details of the Model Work Health and Safety Regulations Amendment 2016 (No. 2)

Regulation 1 – Name of model provisions

This regulation sets out the name of the Amendment Regulations.

Regulation 2 – Amendment of Model Regulations

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

Schedule 1 – Amendments to the model Work Health and Safety Regulations

Item [1] – Regulation 5 Definitions

This item amends the definition of 'ADG Code' contained in subregulation 5(1) to mean the *Australian Code for the Transport of Dangerous Goods by Road and Rail* approved by the Transport and Infrastructure Council, as in force in the model WHS Regulations from time to time. If the *Australian Code of the Transport of Dangerous Goods by Road or Rail* is amended or remade, a reference in the regulations to a provision of that document extends to the corresponding provision (if any) of the amended or remade document.

The effect of this amendment is that the definition of ADG Code is no longer limited to a specific edition, rather it always refers to the latest edition.

Item [2] – Regulation 28A

New regulation 28A - Exemption Certificate – entry without notice under section 117

This item amends the model WHS Regulations by inserting new regulation 28A. New regulation 28A specifies the minimum content that is required in an exemption certificate issued by an authorising authority under subsection 117(7) of the model WHS Act. Under new regulation 28A, an exemption certificate must specify the following:

- (a) if known, the full name of the WHS entry permit holder, or holders, who entered or will enter the premises,
- (b) the name of the union that applied for the exemption certificate,
- (c) that section 117(1) of the Act authorises the entry and that section 117(6) provides that notice of entry is not required if an exemption certificate has been issued,
- (d) the name and address of the workplace entered or proposed to be entered,
- (e) the relevant person conducting the business or undertaking,
- (f) the date of entry or proposed entry, and
- (g) so far as is practicable, particulars of the suspected contravention, or contraventions, to which the entry relates.

Item [3] – Regulation 335 Labelling hazardous chemicals

This item omits and replaces subregulation 335(2).

Subregulation 335(1) requires a manufacturer or importer of a hazardous chemical to ensure that the hazardous chemical is correctly labelled as soon as practicable after manufacturing or importing the hazardous chemical. New subregulation 335(2) sets out two ways a hazardous chemical can be 'correctly labelled'. First, a hazardous chemical can be correctly labelled if the selection and use of label elements is in accordance with the GHS and it complies with Part 3 of Schedule 9. This is consistent with the omitted provision. Part 3 of Schedule 9 specifies general requirements for the labelling of hazardous chemicals. Second, a hazardous label is correctly labelled if the label includes content that complies with another labelling requirement imposed by the model WHS Regulations or by another law of the relevant jurisdiction or of the Commonwealth, provided the content is the same, or substantially the same, as the content that is required by Part 3 of Schedule 9.

In cases where some, but not all, elements of a label are the same, or substantially the same, as the content required by Part 3 of Schedule 9, only those elements, that are not already included on the label are required to be added.

It is intended that this provision not be construed in a technical manner. It recognises that there may be some minor differences in the kinds of information and manner in which that information is displayed in accordance with different laws. However, if the content requirements provided for under another law of the relevant jurisdiction or of the Commonwealth result in a hazardous chemical being labelled with information that is, overall, the same or substantially the same, as that required under Part 3 of Schedule 9, subregulation 335(1) will be satisfied.

Item [4] – Regulation 341 Labelling hazardous chemicals – general requirement

This item inserts a new subregulation at the end of regulation 341. New subregulation 341(2) has the effect that a PCBU is not required to ensure that a hazardous chemical used,

handled or stored at the workplace is correctly labelled in accordance with regulation 335 if the chemical:

- (a) was supplied to the PCBU before 1 January 2017, and
- (b) was, at the time it was supplied, labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* as in force at that time.

The effect of this item is that there is no requirement for a PCBU to relabel a hazardous chemical that was correctly labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* when it was supplied to the PCBU prior to 1 January 2017.

However, if the hazardous chemical is supplied by the PCBU to another workplace after 1 January 2017, new subregulation 341(2) does not apply and regulation 338 will apply to require the PCBU to correctly label the hazardous chemical in accordance with regulation 335.

Items [5] and [6] – Regulation 342 Labelling hazardous chemicals – containers Regulation 342(2A)

Item [5] inserts a new subregulation after subregulation 342(1). New subregulation 342(1A) has the effect that a PCBU is not required to ensure that a hazardous chemical is correctly labelled in accordance with regulation 335 if the chemical:

- (a) was manufactured, or transferred or decanted from its original container at the workplace, before 1 January 2017, and
- (b) was, at the time it was manufactured, or transferred or decanted from its original container at the workplace, labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* as in force at that time.

Item [6] inserts a new subregulation after subregulation 342(2). New subregulation 342(2A) has the effect that a PCBU is not required to ensure, so far as is reasonably practicable, that a container that stores a hazardous chemical is correctly labelled in accordance with regulation 335 (while the container contains a hazardous chemical) if the container:

- (a) was supplied before 1 January 2017; and
- (b) was, at the time it was supplied, labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* as in force at that time.

These new subregulations ensure that there is no requirement to relabel a hazardous chemical or a container that stores a hazardous chemical if that hazardous chemical or container was correctly labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* when it was supplied to the PCBU prior to 1 January 2017.

However, if the hazardous chemical or container is supplied by the PCBU to another workplace after 1 January 2017, new subregulations 342(1A) and 342(2A) do not apply and regulation 338 will apply to require the PCBU to correctly label the hazardous chemical or container in accordance with regulation 335.

Item [7] – Schedule 13 Placard requirements

This item corrects a typographical error contained in clause 3(3) of Schedule 13 to the model WHS Regulations. It replaces the incorrect reference, “2007S”, with the correct reference, “2700S”. The clause now reads:

‘In this clause, red means the colour ‘signal red’ in accordance with AS 2700S-1996 (R13) (Colour standards for general purposes – signal red)’.