

Explanatory Statement

Subject – *Work Health and Safety Regulations 2011*

Work Health and Safety (Safety Data Sheets and Labelling Hazardous Chemicals - Lockheed Martin Australia Pty Ltd, HAAS/WESCO Group Australia Pty Ltd and Department of Defence) Exemption 2018.

The *Work Health and Safety Act 2011* (the WHS Act) and accompanying *Work Health and Safety Regulations 2011* (the WHS Regulations) provide the primary work health and safety (WHS) legislation for the Commonwealth jurisdiction. They are based on model laws developed by Safe Work Australia under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*.

Regulation 684 provides that the regulator may exempt a person or class of persons from compliance with any of the WHS Regulations. An exemption may be made on the regulator's own initiative.

All terms used in the Instrument and Explanatory Statement have the same meaning as in the WHS Act and Regulations.

Further, in this document, ***proprietary hazardous chemicals*** means the hazardous chemicals listed in Schedule 1 of the Instrument.

Work Health and Safety (Safety Data Sheets and Labelling Hazardous Chemicals – Lockheed Martin Australia Pty Ltd, HAAS/WESCO Group Australia Pty Ltd and Department of Defence) Exemption 2018

The *Work Health and Safety (Safety Data Sheets and Labelling Hazardous Chemicals – Lockheed Martin Australia Pty Ltd, HAAS/WESCO Group Australia Pty Ltd and Department of Defence) Exemption 2018* exempts Lockheed Martin Australia Pty Ltd (ABN 30 008 425 5069) and HAAS/WESCO Group Australia Pty Ltd (ABN 143 513 295) as the importer and supplier from disclosing the chemical identity of a number of ***proprietary hazardous chemicals*** in safety data sheets (SDS) in accordance with clause 1, (2) (c), Schedule 7 of the WHS Regulations, and on the product labels of the ***proprietary hazardous chemicals*** listed in the Instrument in accordance with regulation 335 of the WHS Regulations.

Hazardous Chemicals at Workplaces

The WHS Regulations impose duties on manufacturers or importers, suppliers and persons conducting a business of undertaking (PCBUs) at a workplace. Chapter 7 of the WHS Regulations imposes duties upon importers and manufacturers of hazardous chemicals in relation to the classification, packing and labelling, safety data sheets (SDSs) and disclosure of chemical identities. It imposes complementary duties upon suppliers of hazardous chemicals about packing, labelling and SDSs and prohibits supply of certain carcinogenic substances.

The WHS Regulations also impose duties on PCBUs at a workplace about the use, handling and storage of hazardous chemicals, control of risk and information, training and supervision for workers. It requires health monitoring by a PCBU in respect of workers carrying out specified work for the business or undertaking.

Details of the Exemption

The exemption applies so that Lockheed Martin Australia and HAAS/WESCO Australia can import and supply the *proprietary hazardous chemicals* listed in the Instrument to the Department of Defence (Defence) with an SDS that does not contain the chemical identity of the *proprietary hazardous chemicals* in relation to compliance with clause 1, (2) (c) of Schedule 7 (r. 330).

The exemption applies so that Lockheed Martin Australia and HAAS/WESCO Australia are not required to disclose the chemical identity of the *proprietary hazardous chemicals* listed in the Instrument to a medical practitioner or emergency services worker if requested in accordance with regulations 332 and 333 respectively.

The exemption applies so that Lockheed Martin Australia and HAAS/WESCO Australia may supply to Defence the *proprietary hazardous chemicals* listed in the Instrument that do not disclose the chemical identity of the *proprietary hazardous chemicals* on the product label in accordance with regulation 335 (r. 338).

The exemption applies so that Lockheed Martin Australia, HAAS/WESCO Australia and Defence may use, handle and store at the workplace the *proprietary hazardous chemicals* listed in the Instrument that have been supplied with an SDS which is not compliant with clause 1, (2) (c) of Schedule 7, or has a product label that does not disclose the chemical identity of the *proprietary hazardous chemicals* in accordance with regulation 335 (r. 341).

Relevant Matters in Granting an Exemption

Regulation 685 provides that the regulator must consider all relevant matters before granting an exemption, including a number of specified matters. The regulator (Comcare) considered all relevant matters in making the Instrument, including that the making of the instrument will result in a standard of health and safety that is at least equivalent to the standard that would be achieved if the new labelling requirements were complied with.

Stakeholder consultation

Lockheed Martin Australia have consulted with the alternative importer and supplier of the hazardous chemicals: HAAS/WESCO Australia. As the alternative importer and supplier, Lockheed Martin Australia maintains this consultation on an ongoing basis.

Consultation has also been undertaken with Defence as the PCBU who will be using, handling and storing the *proprietary hazardous chemicals* at the workplace. Defence has also been consulted on the training requirements for the use, handling and storage of the *proprietary hazardous chemicals*.

Regulation Impact Statement

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (OBPR ID: 24467).

Statement of Compatibility with Human Rights

A Statement of Compatibility with Human Rights has been completed for the Instrument, in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The statement's assessment is that the Instrument is compatible with human rights. A copy of the statement is attached.

In accordance with sub-regulation 692(2) of the WHS Regulations, an exemption is a legislative instrument within the meaning of the *Legislation Act 2003*.

The exemption commences on **1 January 2019** and has effect until **31 December 2024**.

ATTACHMENT A

Details of the Work Health and Safety (Safety Data Sheets and Labelling Hazardous Chemicals – Lockheed Martin Australia Pty Ltd, HAAS/WESCO Group Australia Pty Ltd and Department of Defence) Exemption 2018

Work Health and Safety (Safety Data Sheets and Labelling Hazardous Chemicals – Lockheed Martin Australia Pty Ltd, HAAS/WESCO Group Australia Pty Ltd and Department of Defence) Exemption 2018 (the Instrument) is made by the regulator (Comcare) under regulation 684 of the *Work Health and Safety Regulations 2011* (WHS Regulations).

The exemption provided for in the Instrument is granted by Comcare on the written application of Lockheed Martin Australia Pty Ltd.

The Instrument applies to three classes of persons: the manufacturer or importer; the supplier; and the person conducting a business or undertaking (PCBU).

All terms used in the Instrument have the same meaning as in the *Work Health and Safety Act 2011* and *Work Health and Safety Regulations 2011*.

Further, in this document, ***proprietary hazardous chemicals*** means the hazardous chemicals listed in Schedule 1 of the Instrument.

Regulation 330 provides that a manufacturer or importer of a hazardous chemical must prepare a safety data sheet (SDS) before manufacturing or importing the hazardous chemical for the first time. If that is not practicable, the manufacturer or importer must prepare the SDS as soon as practicable after manufacturing or importing the hazardous chemical and before supplying it to a workplace for the first time. The SDS is required to include the information outlined in clause 1 of Schedule 7 unless the hazardous chemical is a research chemical, waste product or sample for analysis to which regulation 331 applies.

Clause 1(2) (c) of Schedule 7 requires that the composition and information of ingredients including the disclosure of chemical identities, in accordance with Schedule 8 is provided for on the SDS.

The Instrument exempts the manufacturer or importer from disclosing the chemical identity of the ***proprietary hazardous chemicals*** listed in the Instrument on the SDS in accordance with clause 1(2) (c) of Schedule 7.

Regulation 332 places a responsibility on the manufacturer or importer of a hazardous chemical to provide the chemical identity of an ingredient of the hazardous chemical as soon as practicable to a registered medical practitioner who has requested the information if the medical practitioner reasonably believes that knowing the chemical identity may help to treat a patient.

Regulation 333 requires the manufacturer or importer of a hazardous chemical to provide the chemical identity of an ingredient of the hazardous chemical to an emergency service worker as soon as practicable after the worker requests it.

The Instrument exempts the manufacturer or importer from disclosing the chemical identity of the ***proprietary hazardous chemicals*** listed in the Instrument to a medical practitioner or emergency services worker.

As the SDS and product labels of the ***proprietary hazardous chemicals*** will contain all relevant safety, emergency and environmental information, medical practitioners and emergency services workers will have all the relevant information required, therefore safety standards will not be diminished.

Regulation 335 requires the manufacturer or importer of a hazardous chemical to ensure that the hazardous chemical is correctly labelled in accordance with the GHS and in compliance with Part 3 of Schedule 9 as soon as practicable after manufacturing or importing the hazardous chemical.

The Instrument exempts the manufacturer or importer from disclosing the chemical identity of the ***proprietary hazardous chemical*** listed in the Instrument on the product label of the hazardous chemical.

Regulation 338 requires that the supplier of a hazardous chemical must not supply the hazardous chemical to another workplace if the supplier knows or ought reasonably to know that the hazardous chemical is not correctly labelled in accordance with regulation 335.

The Instrument exempts the supplier from supplying the ***proprietary hazardous chemicals*** listed in the Instrument to the PCBU from the requirements of regulation 338.

Regulation 341 requires the PCBU to ensure that a hazardous chemical used, stored or handled at the workplace is correctly labelled as required under regulation 335.

The Instrument permits the PCBU to use, handle and store at the workplace a ***proprietary hazardous chemical*** listed in the Instrument that have been supplied with a product label that does not disclose the chemical identity of the ***proprietary hazardous chemicals*** in accordance with regulations 335.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Work Health and Safety (Safety Data Sheets and Labelling Hazardous Chemicals – Lockheed Martin Australia Pty Ltd, HAAS/WESCO Group Australia Pty Ltd and Department of Defence) Exemption 2018

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Work Health and Safety Regulations 2011* (WHS Regulations) impose duties on manufacturers, suppliers and persons conducting a business or undertaking (PCBUs) at a workplace. They specify the way in which some duties under the *Work Health and Safety Act 2011* (WHS Act) must be met and prescribe procedural or administrative requirements to support the WHS Act (for example, requiring licences for specific activities and the keeping of records).

Chapter 7 of the WHS Regulations regulates hazardous chemicals and (among other things) provides for the preparation of safety data sheets (SDS) and labelling of hazardous chemicals at workplaces.

This Instrument exempts the manufacturer or importer from disclosing:

- a. the chemical identities of a number of ***proprietary hazardous chemicals*** in section 2(c) of an SDS and product labels in accordance with clauses 3 and 4 of Schedule 8 of the WHS Regulations
- b. the chemical identity of the ***proprietary hazardous chemicals*** listed in the Instrument to a medical practitioner or emergency services worker in accordance with WHS Regulations 332 and 333 respectively, and
- c. the chemical identity of the ***proprietary hazardous chemicals*** listed in this Instrument on the product label of the hazardous chemical in accordance with WHS Regulation 335.

The Instrument exempts the supplier from the requirements of supplying the ***proprietary hazardous chemicals*** listed in the Instrument that do not disclose the chemical identity of the ***proprietary hazardous chemicals*** on the product label in accordance with WHS Regulation 335.

The Instrument exempts PCBUs in relation to the use, handling and storage at the workplace of the *proprietary hazardous chemicals* listed in the Instrument that have been supplied with a product label that do not disclose the chemical identity of the *proprietary hazardous chemicals* in accordance with WHS Regulation 335.

Human rights implications

Article 7 of the International Covenant on Economic, Social and Cultural Rights provides for the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular (b) safe and healthy working conditions.

In relation to this right, the Committee on Economic, Social and Cultural Rights has stated that ‘people must be afforded minimum conditions of occupational health and safety, and State parties are responsible for adopting policies and laws to that end. A coherent national policy in this regard is incumbent on all States parties.’¹

In Australia, the right to safe and healthy working conditions underpins the formulation of work health and safety legislation at the Commonwealth, state and territory levels.

As stated above, Chapter 7 of the WHS Regulations regulates hazardous chemicals and (among other things) provides for the preparation of safety data sheets (SDS) and labelling of hazardous chemicals at workplaces.

While the Instrument exempts the importer and supplier from disclosing the chemical identity of a number of *proprietary hazardous chemicals* on the SDS and product label of the hazardous chemicals listed in Schedule 1 of the Instrument, the exemption will not affect work health and safety in the workplace.

Importantly, all relevant safety information such as first aid measures, firefighting measures, accidental release measures, how the chemical may be used safely, exposure controls and personal protection, disposal consideration and environmental considerations for the *proprietary hazardous chemicals* will be included on the SDS and product labels. This will ensure that workers, medical practitioners and emergency services workers have access to accurate and comprehensive information about the *proprietary hazardous chemicals*. Safety standards will not be diminished.

For the reason stated above, the exemption is considered to be compatible with the right to safe and healthy working conditions.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because it will not result in a diminution of workers’ rights to safe and healthy workplaces.

¹ UN Office of the High Commissioner for Human Rights (OHCHR), *Fact Sheet No. 16 (Rev.1), The Committee on Economic, Social and Cultural Rights*, May 1996, No. 16 (Rev.1), available at: <https://www.refworld.org/docid/4794773cd.html> [accessed 3 December 2018]