

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Jobs and Industrial Relations

Work Health and Safety Act 2011

Work Health and Safety Amendment (Labelling of Hazardous Chemicals) Regulations 2018

The *Work Health and Safety Act 2011* (the 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 WHS laws developed by Safe Work Australia (SWA) under the *Intergovernmental Agreement for Regulatory and Operational Reform in Occupational Health and Safety*.

Subsection 276(1) of the Act provides that the Governor-General may make regulations in relation to any matter relating to work health and safety; and any matter or thing required or permitted by the Act to be prescribed or that is necessary or convenient to be prescribed to give effect to the Act.

The purpose of the *Work Health and Safety Amendment (Labelling of Hazardous Chemicals) Regulations 2018* (the Regulations) is to give effect to SWA policy by amending the WHS Regulations to:

- provide for transitional arrangements for the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) (regs 341, 342);
- clarify that it is not necessary for hazardous chemical labels (GHS labels) to include duplicate label elements required by other labelling laws (reg 335);
- exempt certain veterinary chemicals from GHS labelling requirements—that are already subject to other labelling regimes and are adequately regulated (see reg 335); and
- make several minor updates and corrections of a technical nature to align with the model WHS laws.

The first three measures sunset after five years, to allow for a review of the measures.

The transitional arrangements for the implementation of the GHS are as follows:

- 1 January 2012 – 31 December 2016: the initial five-year transitional period for the introduction of the GHS;
- 1 January 2017 – 31 December 2018: yearly administrative exemptions implemented by the Commonwealth regulator (Comcare) to allow for the ongoing use of existing chemical stock already in the supply chain without the requirement to re-label, subject to certain conditions: see the *Work Health and Safety (Labelling of Hazardous Chemicals) Exemption 2016* and the *Work Health and Safety (Labelling of Hazardous Chemicals) Exemption 2017*; and
- 1 January 2019 onwards: the Regulations implement transitional measures prospectively.

Together with states and territories, the Commonwealth regulates the labelling of hazardous chemicals under its WHS laws. Most jurisdictions (other than Victoria and Western Australia) have generally adopted the policy and model wording developed by SWA. Victoria and Western Australia regulate hazardous chemicals under their own respective WHS laws.

The Regulations adopt SWA's model wording with the following exceptions. The wording reflects both the model wording and a subsequent decision SWA made in late 2016. That decision allows jurisdictions that have adopted the model legislation to make further provision to avoid any unnecessary burden on suppliers and end users to re-label existing chemical stock manufactured or imported prior to 1 January 2017. It is designed to ensure a smooth transition to the new system. This measure would also 'sunset' (or cease to have effect) after five years, to allow for review. Subject to these changes, the Regulations generally extend the effect of the administrative exemptions that have been in place since the commencement of the new labelling requirements on 1 January

2017. This means they will cover properly labelled old chemical stock that was supplied, manufactured or imported prior to 1 January 2017.

Consultation

The Regulations follow an extensive period of consultation with stakeholders by SWA and the Commonwealth WHS Regulator, Comcare, about the transitional arrangements. Consultation covered a number of industry bodies for both veterinary medicines (Animal Medicines Australia) and agriculture (CropLife Australia), as well as the Australian Pesticides and Veterinary Medicines Authority (APVMA) and Comcare. There is broad industry and regulatory support for the transitional arrangements.

No retrospective operation

The Australian Government Solicitor has certified the Regulations do not operate retrospectively and would not be affected by subsection 12(2) of the *Legislation Act 2003*. As discussed above, the Regulations will extend prospectively administrative exemptions that have been in place since the commencement of the new labelling requirements on 1 January 2017. However, they will not affect any rights or liabilities of a person conducting a business or undertaking prior to their commencement. Their operation is entirely prospective. Moreover, the Regulations will benefit persons as they will not become subject to new labelling requirements for any (properly labelled) old chemical stock when the existing administrative exemption expires.

Regulation Impact Statement and other matters

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (OBPR ID 21678).

Details of the Regulations are provided at [Attachment A](#).

The Statement of Compatibility with Human Rights concludes that the Regulations do not engage, and are therefore compatible with human rights ([Attachment B](#)).

The Act does not impose any conditions that need to be satisfied before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations will commence on 1 January 2019.

Details of the Work Health and Safety Amendment (Labelling of Hazardous Chemicals) Regulations 2018

Section 1 – Name

This section sets out the name of the instrument as the *Work Health and Safety Amendment (Labelling of Hazardous Chemicals) Regulations 2018* (the Regulations).

Section 2 – Commencement

This section provides details about when the provisions of the Regulations commence.

Section 3 – Authority

This section provides that the Regulations are made under the *Work Health and Safety Act 2011* (the Act).

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Item 1 – Subregulation 5(1)

This item inserts a definition of ‘Agvet Code’ into the general definitions at subregulation 5(1) of the *Work Health and Safety Regulations 2011* (WHS Regulations). This definition previously appeared in subregulation 328(7) of the WHS Regulations, but is repealed by item 2. This effectively moves the definition upfront into the general definitions section to aid clarity.

For Part 7.1 of the WHS Regulations the term ‘Agvet Code’ is defined as the Agricultural and Veterinary Chemicals Code set out in the Schedule to the *Agricultural and Veterinary Chemicals Code Act 1994*.

Section 10 of the *Acts Interpretation Act 1901* (as applied by paragraph 13(1)(a) of the *Legislation Act 2003*) has the effect that references to Commonwealth disallowable legislative instruments can be taken to be references to versions of those instruments as in force from time to time. That is the intention here. The instrument is published on the Federal Register of Legislation and available free of charge.

Item 2 – Subregulation 328(7)

This item omits existing subregulation 328(7) of the WHS Regulations, as the definition of ‘Agvet Code’ it contained has been moved: see item 1.

Item 3 – After subregulation 335(2)

This item inserts new subregulation 335(2A).

Subregulation 335(1) requires the 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(2A) sets out another way a hazardous chemical can be correctly labelled. Under existing arrangements, 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.

Under new subregulation 335(2A), a hazardous chemical is also correctly labelled if the label includes content that complies with another labelling requirement imposed by the WHS Regulations or by another law 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 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, the new subregulation will be satisfied.

New subregulation 335(2B) ‘sunsets’ this new measure so it ceases to have effect after five years.

Item 4 – Paragraph 335(3)(a)

This item amends paragraph 335(3)(a) by updating the reference to the ‘*Standard for the Uniform Scheduling of Medicines and Poisons 2011* published by the Commonwealth, as in force or remade from time to time’. It is replaced with the new generic term ‘Poisons Standard’, which is defined in new subregulation 335(8) (see item 5).

Item 5 – At the end of regulation 335

This item exempts certain veterinary chemicals from the workplace labelling requirements in regulation 335. New subregulation 335(7) exempts a hazardous chemical that is a veterinary chemical product within the meaning of the Agvet Code that is listed in:

- the Poisons Standard, Part 4, Schedule 4, if the chemical product is packaged and supplied in a form intended for direct administration to an animal for therapeutic purposes; or
- the Poisons Standard, Part 4, Schedule 8.

By new subregulation 335(8), this new measure ‘sunsets’ so it ceases to have effect after five years.

This item also inserts new subregulation 335(9) to define ‘Poisons Standard’ for the purpose of regulation 335 to mean ‘*Poisons Standard June 2018* published by the Commonwealth, as in force or remade from time to time’ (Poisons Standard).

Paragraph 276(3)(d) of the Act provides the WHS Regulations may apply, adopt or incorporate any matter contained in any document formulated, used or published by a person or body whether with or without modification, as in force at a particular time or as in force or remade from time to time.

The Poisons Standard consists of decisions regarding the classification of medicines and poisons into Schedules, which are referred to under Commonwealth, state and territory legislation for regulatory purposes. This enables restrictions to be placed on the supply of scheduled substances to the public, according to the degree of risk associated with them and the degree of control over their availability, in the interest of public health and safety.

Here, the Poisons Standard is referenced to easily identify appropriate lower-risk veterinary chemicals, for which additional workplace labelling requirements are not required. This provides a useful, shorthand way of identifying the relevant chemicals, without separately listing the lengthy Schedules (i.e. lists of chemicals) in the WHS Regulations.

Incorporating the Poisons Standard as in force or remade from time to time, ensures that the laws reference the most up-to-date Schedules in the Poisons Standard. This is also the approach previously taken under subparagraph 335(3)(a), which is amended by the Regulations (see item 4).

The Poisons Standard is available in electronic form, free of charge, on the Federal Register of Legislation website. The Poisons Standard is made under the *Therapeutic Goods Act 1989*, and it is a legislative instrument for the purposes of the *Legislation Act 2003*.

Item 6 - Regulation 341

Item 7 - At the end of regulation 341

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 (i.e. with a GHS label).

This item inserts new subregulation 341(2). New subregulation 341(2) provides an ongoing exemption in relation to a hazardous chemical used, handled or stored at a workplace that was:

- manufactured or imported before 1 January 2017; and
- at the time it was manufactured or imported—labelled in accordance with the *National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)]* (the National Code) as in force under an applicable law at that time.

The effect of this item is that there is no requirement for a PCBU to relabel a hazardous chemical that meets these conditions. Subregulation 342(2) makes it clear that the label (whether the original label or a copy) must stay affixed to the container, for as long as it contains the hazardous chemical (see Item 9 below).

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. A legislative note following the provision makes this clear.

By new subregulation 341(3), the new transitional measure ‘sunsets’ so it ceases to have effect after five years.

Item 8 - After subregulation 342(1)

This item inserts a new subregulation after subregulation 342(1). New subregulation 342(1A) provides an ongoing exemption in relation to a hazardous chemical at a workplace that:

- was manufactured, or transferred or decanted from its original container at the workplace, before 1 January 2017, and
- 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 as in force under an applicable law at that time.

The effect of this item is that there is no requirement for a PCBU to relabel a hazardous chemical that meets these conditions. Subregulation 342(2) makes it clear that the label must stay affixed to the container, for as long as it contains the hazardous chemical (see Item 9 below).

However, if the hazardous chemical is subsequently 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. A legislative note following the provision makes this clear.

Hazardous chemicals that do not meet the exemption criteria must be correctly labelled—see regulation 335. Modified requirements for labelling transferred or decanted hazardous chemicals are included in item 6 of Schedule 9 to the WHS Regulations.

By new subregulation 342(1B), the new transitional measure ‘sunsets’ so it ceases to have effect after five years.

Item 9 – After subregulation 342(2)

Subregulation 342(2) requires PCBUs to ensure, so far as is reasonably practicable, that containers storing hazardous chemicals remain correctly labelled, for as long as the container contains the hazardous chemical (see regulation 335).

This item amends the provision to add a new subregulation 342(2A), so the provision also accommodates other labels (i.e. other than GHS labels) that are permitted under the new transitional arrangements—see subregulations 341(2) and 342(1A).

In effect, containers storing hazardous chemicals at workplaces must be (and continue to be) properly labelled, either with:

- a GHS label (see regulation 335); or
- as mentioned under the new transitional arrangements,

for as long as they contain those chemicals.

Under the transitional arrangements, this could be the original manufacturer’s/importer’s label or a copy—providing the label complies with the relevant content requirements under the National Code.

Even if the transitional arrangements apply, end users may still opt to replace old, compliant labels with new GHS labels, as prescribed by the WHS Regulations.

By new subregulation 342(2B), the new transitional measure ‘sunsets’ so it ceases to have effect after five years.

Incorporation of Documents: Items 7 - 9

Paragraph 276(3)(d) of the Act provides the WHS Regulations may apply, adopt or incorporate any matter contained in any document formulated, used or published by a person or body whether with or without modification, as in force at a particular time or as in force or remade from time to time. Items 7 – 9 of Schedule 1 to the Regulations incorporate the National Code. The National Code is incorporated at a particular time, as published, and may be accessed without any cost online, including the SWA website: <https://www.safeworkaustralia.gov.au/doc/national-code-practice-labelling-workplace-substances-nohsc-2012-1994>.

This National Code of practice was previously used by manufacturers and importers to label hazardous substances under WHS laws, up to the commencement of new GHS labelling requirements. The National Code is only referred to here in the context of transitional arrangements; it no longer has ongoing effect. That is because, under the WHS Regulations, manufacturers and importers have been required to use the GHS to label hazardous chemicals manufactured or imported on or after 1 January 2017. See above for more details.

Item 10 - Schedule 6 (table 6.2, cell at item 1, column headed “Ingredient classification”)

Item 11 - Schedule 6 (table 6.2, cell at item 2, column headed “Ingredient classification”)

These items amend table 6.2 of Schedule 6 to make corrections are of a minor and technical nature and align the WHS Regulations with the model laws.

Statement of Compatibility with Human Rights

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

Work Health and Safety Amendment (Labelling of Hazardous Chemicals) Regulations 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

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- exempt certain veterinary chemicals from GHS labelling requirements—that are already subject to other labelling regimes and are adequately regulated (see reg 335); and
- make several minor updates and corrections of a technical nature to align with the model WHS laws.

The first three measures will sunset or cease to have effect after five years, to allow for a review.

The transitional arrangements for the implementation of the GHS are as follows:

- 1 January 2012 – 31 December 2016: the initial five-year transitional period for the introduction of the GHS;
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- 1 January 2019 onwards: this Instrument implements transitional measures prospectively.

Together with states and territories, the Commonwealth regulates the labelling of hazardous chemicals under its WHS laws. Most jurisdictions (other than Victoria and Western Australia) have generally adopted the policy and model wording developed by SWA. Victoria and Western Australia regulate hazardous chemicals under their own respective WHS laws.

This Instrument adopts SWA's model wording with the following exceptions. The wording reflects both the model wording and a subsequent decision SWA made in late 2016. That decision allows

jurisdictions that have adopted the model legislation to make further provision to avoid any unnecessary burden on suppliers and end users to re-label existing chemical stock manufactured or imported prior to 1 January 2017. It is designed to ensure a smooth transition to the new system. The Instrument also makes provision for sunseting after five years, to allow for a review.

Human rights implications

The right to just and favourable conditions of work in article 7 of *International Covenant on Economic, Social and Cultural Rights* (ICESCR) encompasses a number of elements, including safe and healthy working conditions.

This Instrument supports implementation of the GHS, which promotes safe and healthy workplaces via the provision of information about hazardous chemicals to workers and others at workplaces. This Instrument does not, however, deal with substantive safety issues in its own right. Instead, it deals with a range of transitional, consequential and minor technical issues. In general, this Instrument puts into place transitional arrangements to accommodate the introduction of the GHS; makes some adjustments where the GHS requirements overlap with more specific labelling requirements elsewhere; and makes some minor corrections of a technical nature. Details of the substantive amendments are provided below.

On this basis, this Instrument does not engage any of the human rights and freedoms noted above.

Transitional arrangements for the GHS

The GHS is an internationally agreed system for classifying and labelling hazardous chemicals, that superseded the Australian system, referred to as NOHSC labelling. All hazardous chemical products manufactured or imported from 1 January 2017 must be labelled in accordance with GHS requirements before being supplied into the supply chain (i.e. with GHS labels).

Under the auspices of Safe Work Australia (SWA), it has been agreed at the national level that products already in the supply chain, that were correctly labelled under the superseded NOHSC labelling regime, will not need to be relabelled. Accordingly, under this Instrument, products with old NOHSC labels already in the supply chain and in workplaces may continue to be used, handled and stored until spent or disposed of (i.e. without being re-labelled). This arrangement allows for products with old NOHSC labels to be sensibly and gradually phased out of the supply chain and workplaces.

NOHSC labels are considered to provide a safe and acceptable alternative to GHS labels for the transitional period. Workers and others at workplaces will continue to have access to accurate and comprehensive information about hazardous chemicals. Accordingly, the transitional arrangements will allow for a safe and appropriate transition to the GHS labelling regime, without any diminution of existing safety standards.

Agricultural and veterinary chemicals: labelling requirements

In Australia the GHS overlaps with several other more specialised labelling regimes, including the labelling regime for agricultural and veterinary chemicals (AgVet chemicals). At a national level, it has been agreed that GHS labelling requirements will not apply to prescribed veterinary chemicals classified under the Poisons Standard June 2018 (Poisons Standard). That is:

- ‘Schedule 8’ veterinary chemicals—because they are restricted and analogous to the exempted therapeutic goods for humans as they are handled in small quantities by specially trained workers; and
- ‘Schedule 4’ veterinary chemicals—because they are packaged to be directly administered to animals, and are analogous to the exempted therapeutic goods for humans insofar as they are like prescription medicines usually administered by trained workers.

This Instrument adopts this policy.

These products are already adequately labelled under the AgVet labelling regime, which is administered by the Australian Pesticides and Veterinary Medicines Authority (APVMA). The APVMA subjects AgVet chemicals to rigorous hazard identification, risk assessment and risk mitigation analysis prior to their registration. The GHS does not require additional labelling for chemicals in these circumstances.

GHS information for these products will also be available in a complete and useful format in each product's safety data sheet: see the WHS Regulations, regulations 330, 339.

This means the information available to workers who handle these chemicals will not change, except additional GHS information will be available in the safety data sheet format for new stock entering the supply chain. APVMA labelling requirements will remain in place and appropriate chemical label safety standards will continue to apply.

Other Commonwealth labelling requirements

The WHS Regulations require manufacturers or importers of hazardous chemicals to ensure they are correctly labelled as soon as practicable after being manufactured or imported. Hazardous chemicals are correctly labelled if labelled with a GHS label (as described above), subject to transitional arrangements.

There are additional measures to deal with the situation where two or more Commonwealth labelling regimes may apply in relation to a single product. The intention is to aid clarity and simplicity, by making it clear that there is no need to repeat content on a label that is the same, or substantially the same, as what is already required under another relevant law. However, if the GHS (as applied by the WHS Regulations) requires something more, or something different, then that additional content must be added to the label (i.e. to comply with the GHS requirements).

This policy recognises that there is no utility in having the same, or substantially the same, information repeated on a single label—just because the product is covered by two or more labelling regimes. 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. If the content requirements provided for under another law of the Commonwealth result in a hazardous chemical being labelled with information that is, overall, the same or substantially the same, as the required GHS content, subregulation 335(1) will be satisfied.

This Instrument involves no diminution in safety standards, nor quality of information available about hazardous chemicals to people in workplaces. This Instrument sets out a practical way of dealing with the possibility of having duplicate information on labels, where two or more labelling regimes apply in relation to a single product.

Conclusion

This Instrument is compatible with human rights because it does not raise any human rights issues.

**Minister for Jobs and Industrial Relations
the Hon Kelly O'Dwyer MP**