Explanatory Statement

Subject – Work Health and Safety Regulations 2011

Work Health and Safety (Labelling Hazardous Chemicals) Exemption 2016

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 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.

On 1 January 2017 new labelling requirements will apply to hazardous chemicals. The Work Health and Safety (Labelling of Hazardous Chemicals) Exemption 2016 (the Instrument) provides suppliers, by way of a limited 1 year exemption, an additional period of transition for hazardous chemicals already in the supply chain.

The Instrument also exempts persons conducting a business or undertaking (PCBUs) in relation to hazardous chemicals that were purchased, manufactured at the workplace or decanted before the new requirements commenced. This exemption is not intended to be limited to 1 year and regulations will be made to provide an ongoing exemption. The Instrument will ensure that PCBUs do not become non-compliant prior to the commencement of these regulations.

The additional transitional arrangements were agreed to by a majority of Safe Work Australia Members and will be implemented by all jurisdictions that have enacted the model WHS legislation.

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. Reasons for making the Instrument are set out below.

Classifying and labelling hazardous chemicals at workplaces

WHS Regulations impose duties on manufacturers, suppliers and PCBUs at a workplace. They specify the way in which some duties under the 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 standard classification and labelling of hazardous chemicals at workplaces.

From 1 January 2017 an internationally agreed system for classifying and labelling chemicals, known as the Globally Harmonised System of Classification and Labelling of Chemicals or GHS, is scheduled to come into effect under the WHS Regulations and mirror legislation in force in other participating jurisdictions (regulation 335(2) and Part 3 of Schedule 9).
The transitional provisions contained in Chapter 12 of the WHS Regulations provide for the phase in of labelling requirements under the GHS. The transitional provisions replaced the labelling requirements in Part 3 of Schedule 9 of the WHS Regulations by providing that a hazardous chemical will be compliant with the regulations if they are labelled in accordance with the standards that applied to labelling before the implementation of the model WHS laws.

The Commonwealth WHS Regulations require that as of 1 January 2017:

- a manufacturer or importer must, as soon as practicable after the manufacture or importing of the hazardous chemical, label it in accordance with the GHS requirements (regulation 335),
- a supplier must not supply a hazardous chemical if they know, or ought to reasonably know that it has not been labelled in accordance with the GHS (regulation 338), and
- a PCBU must ensure that a hazardous chemical used at the workplace, or container used to store a hazardous chemical, is correctly labelled in accordance with regulation 335 (regulations 341 and 342).

The effect of these Regulations is that on and from 1 January 2017, a supplier of a hazardous chemical that is not labelled in accordance with the GHS would need that chemical to be re-labelled consistently with the new system, in order to supply that chemical in compliance with the WHS Regulations. This is the case whether the chemical is held at distributor, supplier, retailer and reseller premises and regardless of the chemical’s date of manufacture.

PCBUs that use hazardous chemicals at the workplace would need to ensure that the chemical is re-labelled consistently with the new system, or dispose of the chemical. This is the case regardless of whether the chemical was appropriately labelled at the time it was purchased.

Need for additional transitional arrangements

Further to consultation with suppliers, manufacturers, importers, and industry representatives, it has become apparent that from 1 January 2017 there will still be substantial amounts of chemicals which are not labelled in accordance with the GHS in supply chains and stored at workplaces. Without action, a significant number of PCBUs will become non-compliant with the WHS Regulations on 1 January 2017. To comply, duty holders will have to incur significant costs of either relabelling or disposing of chemicals which were appropriately labelled at the time of purchase. Relabelling or disposing of hazardous chemicals may also give rise to public health, worker health and safety and environmental hazards.

The transitional arrangements provided for in the Instrument will:

- Allow suppliers to continue to progress existing stock throughout the supply chain,
- Prevent supply shortages which might arise due to the lack of availability of correctly labelled stock,
- Avoid costs of relabelling or disposing of existing chemicals which were correctly labelled at the time they entered the supply chain, and
- Ensure PCBUs can continue to store, handle and use chemicals in the workplace without incurring penalties resulting from the change in regulation.
The Instrument does not exempt manufacturers or importers, and hazardous chemicals entering the supply chain will comply with the new labelling requirements. The additional transitional arrangements will not significantly delay the introduction of globally consistent labelling.

**Stakeholder consultation**

Safe Work Australia, which is responsible for the policy underpinning the model WHS laws, is a body made up of representatives from all jurisdictions, as well as the Australian Chamber of Industry and Commerce, the Australian Industry Group and the Australian Council of Trade Unions. Safe Work Australia’s members consulted stakeholders within their jurisdictions or among their membership (whichever applies) on the transitional arrangements for hazardous chemicals labelling.

**Regulation Impact Statement**

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

**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 Subregulation 692(2) of the WHS Regulations, an exemption is a legislative instrument within the meaning of the Legislation Act 2003.

The exemption commences on the day after it is registered on the Federal Register of Legislative Instruments and has effect until December 31 2017.
Details of the Work Health and Safety (Labelling Hazardous Chemicals) Exemption 2016

The Work Health and Safety (Labelling Hazardous Chemicals) Exemption 2016 (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 its own initiative.

The Instrument applies to two classes of persons, suppliers and persons conducting a business or undertaking (PCBUs). All terms used in the instrument have the same meaning as in the Work Health and Safety Act 2011.

The Instrument exempts suppliers of hazardous chemicals from complying with the requirements in regulation 338, if:

- the hazardous chemical was manufactured or imported before 1 January 2017; and
- the hazardous chemical is labelled in accordance with the National Code of Practice for Labelling of Workplace Substances [NOHSC:2012 (1994)] as in force at the time.

This means that new labelling requirements under regulation 335 which commence on 1 January 2017 will not apply to existing stock that was labelled correctly at the time it was manufactured or imported.

This Instrument also exempts another class of persons, being PCBUs, from complying with the requirements in regulations 341 and 342 in certain circumstances. Regulation 341 requires a PCBU to ensure that hazardous chemicals used, handled or stored at the workplace are correctly labelled. Regulation 342 requires a PCBU to ensure that hazardous chemicals that are manufactured at the workplace, transferred or decanted from original containers remain correctly labelled. It also provides that a container that is used to store a hazardous chemical must be correctly labelled.

PCBUs are exempt from Regulation 341 if the hazardous chemical:

- was supplied to the PCBU before 1 January 2017, and
- 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.

PCBUs are exempt from Regulation 342(1) if the hazardous chemical:

- was either manufactured at the workplace or transferred or decanted from its original container at the workplace before 1 January 2017, and
- is labelled in accordance with the National Code of Practice for the Labelling of Workplace Substances [NOHSC: 2012 (1994)] as in force at that time.
PCBU's are exempt from subregulation 342(2) if the relevant container used to store the hazardous chemical:

- was supplied before 1 January 2017, and
- 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 the Instrument is that there is no requirement for a PCBU to relabel a hazardous chemical or container that was correctly labelled immediately before 1 January 2017.

The instrument incorporates the National Code of Practice for Labelling of Workplace Substances [NOHSC:2012 (1994)]. The document is incorporated at a particular time, as published, and may be accessed without any cost online. For example a copy is available on Safe Work Australia’s website.
Statement of Compatibility with Human Rights

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

Work Health and Safety (Labelling Hazardous Chemicals) Exemption 2016

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 standard classification and labelling of hazardous chemicals at workplaces.

On 1 January 2017 new labelling requirements will apply to hazardous chemicals. The Work Health and Safety (Labelling of Hazardous Chemicals) Exemption 2016 (the Instrument) provides suppliers, by way of a limited 1 year exemption, an additional period of transition for hazardous chemicals already in the supply chain.

The Instrument also exempts PCBUs in relation to hazardous chemicals that were purchased, manufactured at the workplace or decanted before the new requirements commenced. This exemption is not intended to be limited to 1 year and regulations will be made to provide an ongoing exemption. The Instrument will ensure that PCBUs do not become non-compliant prior to the commencement of these regulations.

Classifying and labelling hazardous chemicals at workplaces

From 1 January 2017 an internationally agreed system for classifying and labelling chemicals, known as the Globally Harmonised System of Classification and Labelling of Chemicals or GHS, is scheduled to come into effect under the WHS Regulations and mirror legislation in force in other participating jurisdictions (Regulation 335(2) and Part 3 of Schedule 9).

The transitional provisions contained in Chapter 12 of the WHS Regulations provide for the phase in for labelling requirements under the GHS. The transitional provisions replaced the labelling requirements in Part 3 of Schedule 9 of the WHS Regulations by providing that a hazardous chemical will be compliant with the regulations if they are labelled in accordance with the standards that applied to labelling before the implementation of the model WHS laws.
The Commonwealth WHS Regulations require that as of 1 January 2017:

- a manufacturer or importer must, as soon as practicable after the manufacture or importing of the hazardous chemical, label it in accordance with the GHS requirements (regulation 335),
- a supplier must not supply a hazardous chemical if they know, or ought to reasonably know that it has not been labelled in accordance with the GHS (regulation 338), and
- a PCBU must ensure that a hazardous chemical used at the workplace, or container used to store a hazardous chemical, is correctly labelled in accordance with regulation 335 (regulations 341 and 342).

The effect of these Regulations is that on and from 1 January 2017, a supplier of a hazardous chemical that is not labelled in accordance with the GHS would need that chemical to be re-labelled consistently with the new system, in order to supply that chemical in compliance with the WHS Regulations. This is the case whether the chemical is held at distributor, supplier, retailer and reseller premises and regardless of the chemical’s date of manufacture.

PCBsUs that use hazardous chemicals at the workplace would need to ensure that the chemical is re-labelled consistently with the new system, or dispose of the chemical. This is the case regardless of whether the chemical was appropriately labelled at the time it was purchased.

Need for additional transitional arrangements

Further to consultation with suppliers, manufacturers, importers, and industry representatives, it has become apparent that from 1 January 2017 there will still be substantial amounts of chemicals which are not labelled in accordance with the GHS in supply chains and stored at workplaces. Without action, a significant number of PCBUs will become non-compliant with the WHS Regulations on 1 January 2017. To comply, duty holders will have to incur significant costs of either relabelling or disposing of chemicals which were appropriately labelled at the time of purchase. Relabelling or disposing of hazardous chemicals may also give rise to public health, worker health and safety and environmental hazards.

The transitional arrangements provided for in the Instrument will:

- Allow suppliers to continue to progress existing stock throughout the supply chain,
- Prevent supply shortages which might arise due to the lack of availability of correctly labelled stock,
- Avoid costs of relabelling or disposing of existing chemicals which were correctly labelled at the time they entered the supply chain,
- Avoid any work health and safety risks arising from re-labelling or disposing of hazardous chemicals, and
- Ensure PCBUs can continue to store, handle and use chemicals in the workplace without incurring penalties resulting from the change in regulation.

Human rights implications

This Instrument does not engage any of the applicable rights or freedoms.

The Instrument effectively extends the transitional arrangements that are already in place for hazardous chemicals labelling. Duty holders will be required to comply with the labelling
requirements that applied immediately before 1 January 2017. This will ensure that workers have access to accurate and comprehensive information about the relevant hazardous chemical. Safety standards will not be diminished.

Importantly, the Instrument does not exempt manufacturers or importers and hazardous chemicals entering the supply chain will comply with the new labelling requirements. The additional transitional arrangements will not significantly delay the introduction of globally consistent labelling.

**Conclusion**

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