

Work Health and Safety Amendment (Chemicals Labelling)
Regulations 2023

EXPLANATORY STATEMENT

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Work Health and Safety Amendment (Chemicals Labelling) Regulations 2023* (Amendment Regulations) amend the *Work Health and Safety Regulations 2011* (Principal Regulations) to remove ‘sunsetting’ provisions which would have the effect of amending existing provisions relating to hazardous chemicals labelling. The provisions which would ‘sunset’ provide for additional circumstances where a hazardous chemical is correctly labelled, for example where it complies with the requirements of another Commonwealth law and the content is substantially the same as that required by the Principal Regulations.

The purpose of the Amendment Regulations is to ensure consistency across the Commonwealth, state and territory work health and safety laws. Allowing the amendments to take effect would result in inconsistent hazardous chemical labelling requirements across Commonwealth work health and safety legislation and corresponding laws in the states and territories.

Subsection 276(1) of the *Work Health and Safety Act 2011* (WHS 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 WHS Act to be prescribed or that is necessary or convenient to be prescribed to give effect to the WHS Act.

Sunsetting

The *Legislation (Exemptions and Other Matters) Regulation 2015* at regulation 12, item 68, provides that a regulation made under WHS Act is a legislative instrument that is not subject to sunsetting. The Amendment Regulations are a legislative instrument made under the WHS Act and is therefore exempt from sunsetting.

Regulations made under the WHS Act are exempt from sunsetting because they form part of an intergovernmental scheme for a nationally consistent framework to secure the health and safety of workers and workplaces. They are part of a system of nationally harmonised WHS laws. The Commonwealth and all states and territories formally committed to the harmonisation of WHS laws by signing the Intergovernmental Agreement.

CONSULTATION

Section 17 of the *Legislation Act 2003* requires the Minister to be satisfied that any consultation considered to be appropriate, and that is reasonably practicable to undertake, has been undertaken before making the instrument.

The explanatory statement for the *Work Health and Safety Amendment (Labelling of Hazardous Chemicals) Regulations 2018*, which inserted the provisions being removed, states that they were included to ensure that the provisions which would ‘sunset’ are reviewed after five years.

The Department of Employment and Workplace Relations undertook tripartite consultation with relevant departments, union and industry bodies including:

- Animal Medicines Australia
- Australian Chamber of Commerce and Industry
- Australian Council of Trade Unions
- Australian Industry Group
- Australian Pesticides and Veterinary Medicines Authority
- Comcare
- Crop Life
- Department of Agriculture, Fisheries and Forestry
- Department of Climate Change, Energy, the Environment and Water
- Department of Defence
- Indigenous Land and Sea Corporation
- Therapeutic Goods Administration.

Feedback supported removal of the ‘sunset provisions’, that the current exceptions were appropriate with no known work health and safety concerns, and significant disruption would occur if the provisions ceased to operate.

REGULATION IMPACT STATEMENT

The Office of Impact Analysis considers the proposal is unlikely to have more than a minor impact and no impact analysis is required (ref OIA23-05855).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The Amendment Regulations are compatible with the human rights and freedoms recognised or declared in the international instruments listed in Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is set out at Attachment B.

NOTES ON SECTIONS

In these notes on sections, the following abbreviations are used

Abbreviation	Definition
WHS	work health and safety
WHS Act	<i>Work Health and Safety Act 2011</i>
Principal Regulations	<i>Work Health and Safety Regulations 2011</i>
Amendment Regulations	<i>Work Health and Safety Amendment (Chemical Labelling) Regulations 2023</i>
PCBU	person conducting a business or undertaking

Section 1 – Name

1. This section provides that the title of the instrument is *Work Health and Safety Amendment (Chemical Labelling) Regulations 2023*.

Section 2 – Commencement

2. The table in this section sets out when the provisions of the instrument commence. The instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 – Authority

3. This section provides that the instrument is made under the *Work Health and Safety Act 2011*.

Section 4 – Schedules

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

Schedule 1 – Amendments

Part 1 – Hazardous chemicals

5. This Part amends the Principal Regulations to remove five subregulations from Division 2 of Part 7.1. These subregulations provide that existing provisions relating to hazardous chemical labelling requirements cease to be in force at the end of 31 December 2023.
6. The Principal Regulations require 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. As a general rule, a hazardous chemical can be correctly labelled if the selection and use of label elements is in accordance with the Globally Harmonised System, and it complies with Part 3 of Schedule 9.
7. Subregulation 335(2A) sets out another way a hazardous chemical can be correctly labelled. A hazardous chemical is also correctly labelled if the label includes content that complies with another labelling requirement imposed by the Principal 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.
8. The reason for the additional accepted labelling in subregulation 335(2A) is to minimise unnecessary re-labelling, particularly for the agricultural and veterinary industries which have industry specific labelling requirements. Retaining this exception will ensure that labelling requirements remain consistent across all Australian jurisdictions. This is particularly important for the Commonwealth laws because of the application of the WHS Act and Principal Regulations in all states and territories. The legislation applies to the Commonwealth, public authorities and non-Commonwealth licensees rather than a geographical area which results in significant interaction between Commonwealth and state and territory work health and safety laws.
9. For completeness and consistency within the Principal Regulations, the Amendment Regulations also remove similar provisions for ‘sunsetting’ in regulation 341 and 342. These provisions would have little work to do in 2023 because they apply to hazardous chemicals manufactured, transferred, or decanted from their original container at the workplace before 1 January 2017. Most, if not all, of these chemicals would have been used or disposed of in the intervening years.
10. The Department of Employment and Workplace Relations consulted stakeholders on the proposed amendments. This consultation did not identify a reason to ‘sunset’ the relevant provisions in regulations 335, 341 and 342. If anything, requiring workplaces to re-label hazardous chemicals now would present a risk to workers. Retaining the exceptions will ensure the Commonwealth labelling requirements remain aligned with the model WHS

Regulations and the majority of all state and territory jurisdictions that have maintained this exception.

11. These items repeal subregulations which, if they applied on 31 December 2023, would result in the sunseting of other subregulations setting out exceptions to the hazardous chemical labelling requirements.

Item [1] – Subregulations 335(2B) and (8)

12. This item repeals subregulations 335(2B) and (8) which, if not repealed, would result in subregulations 335(2A) and (7) ceasing to be in force at the end of 31 December 2023.
13. Subregulation 335(2A) provides an exception to subregulation 335(1) – that the manufacturer or importer of a hazardous chemical must ensure that the hazardous chemical is correctly labelled as soon as practicable after manufacturing or importing the hazardous chemical. It provides that a hazardous chemical is correctly labelled if the label includes content that complies with another labelling requirement imposed by the Principal Regulations or another law of the Commonwealth and is the same or substantially the same as the content required by the correct labelling requirements in Part 3 of Schedule 9 to the Principal Regulations.
14. Subregulation 335(7) provides that the requirements in regulation 335 do not apply to a hazardous chemical that is a veterinary chemical product within the meaning of the Agvet Code and is listed in Part 4 of Schedule 4 to the Poisons Standard if it is packaged and supplied in a form intended for direct administration to an animal for therapeutic purposes or is listed in Part 4 of Schedule 8 to the Poisons Standard.

Item [2] – Subregulation 341(3)

15. This item repeals subregulation 341(3) which, if not repealed, would result in subregulation 341(2) ceasing to be in force at the end of 31 December 2023.
16. Subregulation 341(2) provides an exception to subregulation 341(1) – that a person conducting a business or undertaking at a workplace must ensure that a hazardous chemical used, handled or stored at the workplace is correctly labelled in accordance with regulation 335. It provides that the requirements in subregulation 341(1) do not apply to a hazardous chemical if it was manufactured or imported before 1 January 2017 and was, at the time it was manufactured or imported, labelled in accordance with the National Code of Practice for the Labelling of Workplace Substances as in force at that time.

Item [3] – Subregulations 342(1B) and (2B)

17. This item repeals subregulations 342(1B) and (2B) which, if not repealed, would result in subregulations 342(1A) and (2A) ceasing to be in force at the end of 31 December 2023.

18. Subregulation 342(1A) provides an exception to subregulation 342(1) – that a person conducting a business or undertaking at a workplace must ensure that a hazardous chemical is correctly labelled in accordance with regulation 335 if it is manufactured at the workplace or transferred or decanted from its original container at the workplace. It provides that the requirements in subregulation 342(1) do not apply to a hazardous chemical if it 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 of Practice for the Labelling of Workplace Substances as in force at that time.

19. Subregulation 342(2A) provides an exception to subregulation 342(2) – that a person conducting a business or undertaking at a workplace must ensure, so far as is reasonably practicable, that a container that stores a hazardous chemical is correctly labelled in accordance with regulation 335 while it contains the hazardous chemical. It provides that the requirements in subregulation 342(2) do not apply to a container that stores a hazardous chemical if the container is labelled as mentioned in either subregulation 341(2) or 342(1A) if those subregulations apply.

Statement of Compatibility with Human Rights

Issued by the Minister for Employment and Workplace Relations

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

Work Health and Safety Amendment (Chemical Labelling) Regulations 2023

This Disallowable Legislative Instrument is compatible with 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 Legislative Instrument

The *Work Health and Safety Amendment (Chemicals Labelling) Regulations 2023* (Amendment Regulations) amend the *Work Health and Safety Regulations 2011* (Principal Regulations) to remove ‘sunsetting’ provisions which would have the effect of amending existing provisions relating to hazardous chemicals labelling. The provisions which would ‘sunset’ provide for additional circumstances where a hazardous chemical is correctly labelled, for example where it complies with the requirements of another Commonwealth law and the content is substantially the same as that required by the Principal Regulations.

The purpose of the Amendment Regulations is to ensure consistency across the Commonwealth, state and territory work health and safety laws. Allowing the amendments to take effect would result in inconsistent hazardous chemical labelling requirements across Commonwealth work health and safety legislation and corresponding laws in the states and territories.

The explanatory statement for the *Work Health and Safety Amendment (Labelling of Hazardous Chemicals) Regulations 2018*, which inserted the provisions being removed, states that they were included to ensure that the provisions which would ‘sunset’ are reviewed within 5 years. The Department of Employment and Workplace Relations undertook consultation with relevant agencies such as the Australian Pesticides and Veterinary Medicines Authority, the regulator Comcare, and industry. Feedback indicated that the current exceptions were appropriate, there are no known work health and safety concerns, and that significant disruption would occur if the provisions ceased to operate.

Human rights implications

This Disallowable Legislative Instrument engages the following human rights:

- The right to safe and healthy working conditions under Article 7 of the International Covenant on Economic Social and Cultural Rights (ICESCR).

Right to enjoyment of just and favourable conditions of work

Article 7 of the ICESCR provides that everyone has the right to the ‘enjoyment of just and favourable conditions of work, which ensure, in particular...[s]afe and healthy working conditions’.

The content of the right to just and favourable conditions of work can be informed by specific obligations in treaties of the International Labour Organization, including, the *Occupational Safety and Health Convention 1981* (No. 155) which requires the adoption of a coherent national policy on occupational safety, occupational health and the working environment. Australia complies with its obligation under Article 7 of the ICESCR through the harmonised system of Commonwealth, state and territory work health and safety laws (including the Principal Regulations) which are designed to ensure consistency in requirements across jurisdictions.

Removing the sunset provisions to maintain a harmonised approach Australia’s hazardous chemicals labelling scheme promotes the right to a safe work environment as it ensures that duty holders and those they owe a duty to clearly understand hazardous chemical labelling requirements under the *Work Health and Safety Act 2011*. Clear, consistent requirements are more likely to be adhered to and the provisions are more likely to continue to have their intended effect.

Conclusion

This Legislative Instrument is compatible with human rights and promotes the right to safe and health working conditions.