

CLIENT BRIEFING

WORK, HEALTH AND SAFETY UPDATE

FEDERAL

Globally Harmonised System (GHS) of Classification and Labelling of Chemicals

The GHS of Classification and Labelling of Chemicals is a United Nations initiative that standardises chemical classification, labelling and safety data sheets (SDS) for use in workplaces internationally.

The Commonwealth Government, along with some states and territories, adopted the GHS with the introduction of the WHS Act in their jurisdictions on 1 January 2012, with a five-year transition period for full implementation by 1 January 2017.

Changes brought about by GHS include the use of a common set of pictograms, signal words, hazard statements and precautionary statements for labels and SDS to communicate information about a chemical to the user.

To meet the new requirements, manufacturers and importers of hazardous chemicals will need to reclassify their products, re-label them and prepare new safety data sheets.

Essential tasks for person conducting business or undertaking (PCBU) in readiness for GHS implementation include:

- Reviewing current inventory holdings for GHS compliant and non-compliant stock
- Allowing holdings of GHS non-compliant stock to run down
- Ensuring all new purchases are both GHS compliant and Australian specific, which includes:
 - Contact details for the Australian supplier
 - Specific cut off concentrations which may differ from the country of origin

- Reviewing SDS to ensure hazard management practices are in place
- Ensuring workers are aware of the new labelling system and SDS

Chemicals manufactured or imported before 1 January 2017 can continue to be supplied without needing to meet the labelling requirements under the Globally Harmonised System, of the model Work Health and Safety Regulations

Comcare's compliance and enforcement policy

Comcare introduced a new Compliance and Enforcement Policy on the 1 July 2016. The policy details the regulatory functions and powers under the *Work Health & Safety Act 2011* and the *Safety, Rehabilitation and Compensation Act 1988*.

The three strands of the new policy are:

- Comcare's vision as a regulator
- Four focus areas to guide change into the future
- Categorising Comcare's compliance and enforcement into four streams:
 - Providing information and advice
 - Making authorisation and approval decisions
 - Monitoring the extent of compliance in the jurisdiction
 - Investigating alleged or potential contraventions

Harmonisation update

With the exception of Victoria and Western Australian, all states and territories in Australia have now adopted the Model WHS Act, with some [key variations](#) between jurisdictions.

Amendments were made to the model WHS laws on 21 March 2016, focussing on the following:

Model WHS Act

- Introduction of a notification period for entry into workplaces by union officials or others assisting health and safety representatives (HSRs)
- Increase in financial penalties for contravening WHS entry permits
- Clarification on provisional improvement notices (PINs) to include “recommendations” rather than “directions” to remedy a contravention
- Removal of the need to notify the regulator of appointed HSRs by PCBU

Model WHS Regulations

- Insertion of “up to” to indicate duration of training and refresher courses for HSRs
- Minor technical amendments to various activities and definitions

As at 1 December 2016, no jurisdiction had implemented any of the above changes

WESTERN AUSTRALIA

Harmonisation

The Work Health and Safety Bill 2014 (WA) (the Green Bill) contains the core provisions of the model WHS Act, importantly including the primary duty of care of the PCBU and due diligence obligations for officers, but with a total of 35 local modifications and exclusions of the model act clause provisions.

The Green Bill was published for public comment in 2015, and 58 submissions were received. The submissions identified areas of potential improvement, in relation to record keeping, electrical and asbestos management. A report by WorkSafe WA on the finding from public comment was to be complete and sent to the minister by the 31 October 2016.

With a state election due to take place in April 2017, any changes to WHS legislation in WA are unlikely to be pursued until after the election outcome is known.

As emphasised by some ministers, it is important to note that training on the proposed WHS Bill is not necessary, as there may be further changes. Additionally, there will be a sufficient transitional period to allow time to plan and prepare for any changes resultant from new WHS legislation.

The Department of Mines and Petroleum has published a draft Code of Practice for Emergency Response in collaboration with mine operators and original equipment manufacturers. The draft code is available for consultation and public response until 3 February 2017.

VICTORIA

Harmonisation

The Victorian Government has reaffirmed its position that it will not be implementing the model WHS laws in their current form.

The Victorian *Occupation Health and Safety Regulations 2007* and the *Equipment (Public Safety) Regulations 2007* are both set to expire in June 2017. Under the *Subordinate Legislation Act 1994*, WorkSafe is required to conduct a review and remake the regulations by this date.

Following the release of the 2017 proposed revisions to the OHS and EPS regulations released for public comment, WorkSafe is now in the process of considering and responding to submissions to ensure the new regulations will continue to support Victoria’s position of having the safest workplaces in Australia.

The *Treasury and Finance Legislation Amendment Bill 2016* came into effect on 28 June 2016 and targets reckless behaviour from body corporates and employers. The bill makes amendments to the *Workplace Injury Rehabilitation and Compensation Act 2013*, the *Accident Compensation Act 1985*, and *Occupational Health and Safety Act 2004*. Further, it increases the fines in relation to the OHS Act 2004, s32(b) to in excess of \$3.1million per offence.

NEW SOUTH WALES

SafeWork NSW has become the workplace health and safety regulator, following a split from WorkCover NSW in late 2015. In August 2016, SafeWork NSW released a six year plan, *Work Health and Safety Roadmap for NSW 2022*, to improve WHS across NSW and reduce the rates of injury, illness and fatalities across the state's workplaces.

WHS legislation updates

The *Work Health and Safety Amendment (Fees and Transitional Periods) Regulation 2016* amends the *Work Health and Safety Regulation 2011*. The amendments aim to:

- Increase certain fees, including fees relating to licences, accreditation as an assessor and registration of items of plant
- Clarify certain fees, including the fees payable with respect to an initial application for accreditation as an assessor in relation to a class or a number of classes of high risk work
- Extend the transitional periods relating to high risk work licensing from 1 July 2016 to 1 July 2017, and the registration of an item of plant from 1 July 2016 to 1 January 2018

These amendments took effect on 1 July 2016.

Codes of practice revisions

Six codes of practice were updated on 23 September 2016, these being:

- [Hazardous manual tasks](#) – relates to additional diagrams and amendment to hierarchy of control table.
- [How to manage and control asbestos in the workplace](#) – relates to further information on health monitoring.
- [How to safely remove asbestos](#) – relates to technical wording changes.
- [Welding processes](#) – relates to flash back arrestors.
- [Managing electrical risks in the workplace](#) – relates to the removal of technical question.
- [Demolition work](#) – relates to the technical definition of the word "pier".

QUEENSLAND

WHS legislation updates

On 4 December 2015 the *Work Health and Safety Amendment Regulation 2015* amended the *Work Health and Safety Regulation 2011*. These changes were transitioned over two phases, with some provisions introduced on 1 January 2016 and more due to take effect 1 January 2017:

Provisions that commenced 1 January 2016

- Asbestos - Sections 435 to 444

Provisions that commence 1 January 2017

- High risk work (HRW) - Section 726(2)
- Plant and structures - Section 272
- Asbestos - Sections 471, 472, 483 and 484
- Hazardous chemicals - Section 781

Codes of practice revisions

The *Formwork Code of Practice 2016* has been amended and changes are primarily minor and technical in nature and reflect current best practice.

The *Formwork Code of Practice 2016* applied to new construction from 31 March 2016.

SOUTH AUSTRALIA

WHS legislation updates

A review of the *Work Health and Safety Act 2012* is currently being undertaken and comments are being sought by SafeWork SA to inform the review of the model WHS laws in 2018. The consultation period closes on 30 November 2016.

SafeWork SA Reform

Structural reforms to SafeWork SA, which commenced 1 July 2016, have seen the agency move towards providing employers with tailored support and education services.

SafeWork will now go beyond enforcing WHS laws and will comprise two clear operational units – a regulator and an educator.

The regulator is comprised of industry teams staffed by inspectors, focused on ensuring compliance with work health and safety laws and taking suitable enforcement action when breaches are detected.

The educator's team of mobile work health and safety advisors, supported by customer service staff, will support and provide people with access to resources, information, licensing services and one-on-one advice. The new workplace advisory service would not have any inspector powers under the Act.

TASMANIA

Codes of practice revisions

WorkSafe Tasmania has recently made effective 27 Codes of Practice as of 1 October 2016. The majority of these Codes of Practice link to the model codes produced by SafeWork Australia at the point of initial harmonisation. Most were published in 2012 or have been revised in the intervening period.

NORTHERN TERRITORY

WHS legislation updates

Following a period of public consultation in 2015, the Northern Territory government progressed with amendments to *Work Health and Safety (National Uniform Legislation) Regulations 2011*, which came into effect on 4 April 2016.

The amending instrument is the *Work Health and Safety (National Uniform Legislation) Amendment Regulations 2016*, which:

- Increases the construction project trigger point value to \$500,000
- Makes the regulator the sole issuer of construction induction cards in the Northern Territory
- Allows licence and permit holders to notify matters to the regulator via phone, email, mail or in person

AUSTRALIAN CAPITAL TERRITORY

WHS legislation updates

The *Work Health and Safety Amendment Regulation 2016* came into force on 10 September 2016, amending the *Work Health and Safety Regulation 2011*. The changes were intended to make technical amendments, address inadvertent errors and clarify policy content.

Codes of practice revisions

WorkSafe ACT utilises the model WHS Codes of Practice, originally developed by SafeWork Australia in 2012, or approved codes from other jurisdictions including WorkSafe VIC / NSW.

NEW ZEALAND

WHS legislation updates

The new *Health and Safety at Work Act 2015* came into effect on 4 April 2016 replacing the *Health and Safety in Employment Act 1992*.

The *Health and Safety at Work Act 2015* is part of New Zealand's 'Working Safer: a blueprint for health & safety at work', a 2013 reform package aimed at reducing the country's work injury and death toll by 25% by 2020.

WorkSafe NZ highlighted the benefits of aligning New Zealand's WHS legislation with Australia's model WHS laws to create a "consistent trans-Tasman approach that will reduce transaction costs for firms and individuals operating in both countries".

The *Health and Safety at Work Act*'s key emphasis is on everyone in the workplace – namely, persons conducting a business or undertaking (PCBUs), as well as officers, workers and others – being responsible for health and safety.

In addition to the Act, nine new sets of Regulations also came into effect on the same day, covering general issues, and major industries / activities in NZ, these being:

- *Health and Safety at Work (General Risk and Workplace Management) Regulations 2016*
- *Health and Safety at Work (Worker Engagement, Participation and Representation) Regulations 2016*
- *Health and Safety at Work (Major Hazard Facilities) Regulations 2016*
- *Health and Safety at Work (Asbestos) Regulations 2016*
- *Health and Safety at Work (Adventure Activities) Regulations 2016*
- *Health and Safety at Work (Mining Operations and Quarrying Operations) Regulations 2016*

- *Health and Safety at Work (Petroleum Exploration and Extraction) Regulations 2016*
- *Health and Safety at Work (Rates of Funding Levy) Regulations 2016*
- *Health and Safety at Work (Infringement Offences and Fees) Regulations 2016*

Draft Regulations in respect of work involving hazardous substances have gone through a public consultation phase and new Regulations are due to be released.

Guidance

Following the implementation of the new Act and Regulations in New Zealand a number of guides have been produced by WorkSafe NZ, these being in the following forms:

- Interpretative Guides
- Good Practice Guides
- Fact Sheets

Industry specific guidance is still available on the WorkSafe NZ website; however, the majority of these guides, pre-date the new Act and Regulations.

NEXT STEPS

For more information about how you can benefit from our services, please contact your Marsh Advisor call 1800 194 888

marsh.com.au

Disclaimer: Statements concerning legal matters should be understood to be general observations based solely on our experience as insurance brokers and risk consultants and should not be relied upon as legal advice, which we are not authorized to provide. All such matters should be reviewed with your own qualified legal advisors.

The information contained in this publication is based on sources we believe reliable, but we do not guarantee its accuracy. This information provides only a general overview of the subjects covered.

Copyright 2016 Marsh Pty Ltd. All rights reserved. | MAD_A_16-3163