

Queensland



Subordinate Legislation 1995 No. 41

Workplace Health and Safety Act 1989

**WORKPLACE HEALTH AND SAFETY
AMENDMENT REGULATION (No. 1) 1995**

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SCHEDULE 6**HAZARDOUS SUBSTANCES FOR WHICH HEALTH
SURVEILLANCE MUST BE SUPPLIED**

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MINOR AMENDMENTS

Short title

1. This regulation may be cited as the *Workplace Health and Safety Amendment Regulation (No. 1) 1995*.

Commencement

2. This regulation commences 6 months after the day it is notified in the Gazette.

Regulation amended

3. This regulation amends the *Workplace Health and Safety Regulation 1989*.

Amendment of s 5 (Definitions)

4. Section 5—

insert—

‘“**ADG Code**” means the Australian Code for the Transport of Dangerous Goods by Road and Rail.¹’.

Amendment of s 11A (Rural industry exclusions)

5. Section 11A(2)—

insert—

‘(ga)sections 199 to 199K;’.

Insertion of new Pt 19

6. After Part 18—

insert—

¹ The ADG Code is prepared by the Federal Office of Road Safety of the Commonwealth Department of Transport and Communications.

‘PART 19—CONFINED SPACES

‘Standard that applies

‘166.(1) If work is performed in a confined space, the employer must ensure the work is performed under AS 2865.²

‘(2) In this section—

“confined space” means an area that—

- (a) is not intended as a place where work is performed regularly; and
- (b) has restricted entry and exit; and
- (c) is at atmospheric pressure when a person is in the area; and
- (d) may have inadequate ventilation or a contaminated or oxygen-deficient atmosphere.

Examples of confined spaces—

- boilers, silos, storage tanks, process vessels, tank cars and other compartments having only an inspection opening for entry
- open topped areas more than 1.5 m deep and lacking good natural ventilation, including, for example, pits or degreasing tanks
- ducts, pipes, sewers, shafts, tunnels.’.

Replacement of Pt 27 (Confined spaces)

7. Part 27—

omit, insert—

² AS 2865 is entitled ‘Safe working in a confined space’.

‘PART 27—HAZARDOUS SUBSTANCES

‘Division 1—Interpretation

‘Definitions for Part

‘199. In this Part—

“approved criteria” means the criteria stated in NOHSC’s document entitled ‘Approved Criteria for Classifying Hazardous Substances’.

“article” means a thing (other than a fluid or particle)—

- (a) formed during production to a predetermined design or shape or to have a predetermined surface; and
- (b) used for a purpose depending wholly or partly on its design, shape or surface; and
- (c) keeping its chemical composition or physical state during use.

“biological monitoring” means testing for the presence of a hazardous substance, its metabolites or a biochemical change in a person’s body tissue, exhaled air or fluid.

“chemical name”, for a substance, means its scientific or technical name.

“consumer package” means—

- (a) a single packaged item, holding less than 30 kg or 30 L, intended for retail sale; or
- (b) a package containing only identical packaged items mentioned in paragraph (a).

“container” means a thing (other than a bulk container or tank defined in the ADG Code) in which a hazardous substance is or has been wholly or partly cased, contained, covered, enclosed or packed.

“control measures”, for use of a hazardous substance, means the ways of preventing or minimising a person’s exposure to the substance.

“designated hazardous substance” means a substance listed in NOHSC’s document entitled ‘List of Designated Hazardous

Substances' as a designated hazardous substance.

“enclosed system” includes a pipe or piping system and a process or reactor vessel.

“exposure” see section 199A.

“generic name” means the name of a chemical category or group including, for example, ‘azo dyes’ and ‘halogenated aromatic amines’.

“hazardous substance” see section 199B.

“health surveillance” means the monitoring (including biological monitoring) of an individual in relation to the individual’s exposure.

“ingredient” means a component (including an impurity) of a substance.

“medical record”, of a person, means personal medical results or clinical findings obtained from health surveillance of the person.

“monitoring” an employer or employee means to check regularly, other than by biological monitoring, the person’s risk from or level of exposure to a hazardous substance and the effectiveness of hazardous substance control measures at the person’s workplace.

“MSDS” stands for Material Safety Data Sheet.³

“national exposure standard”, for a hazardous substance, means the exposure standard for the substance stated in the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment contained in NOHSC’s document entitled ‘Exposure Standards for Atmospheric Contaminants in the Occupational Environment’.

“product name”, of a hazardous substance, means the brand name, code name, trade name or code number given to the substance by its manufacturer, importer or supplier.

“register” means the register mentioned in section 199X.⁴

“Repository” means the Australian National Material Safety Data Sheet

³ Section 199D (Preparation, review and amendment of hazardous substance’s MSDS) states what information must be contained in an MSDS.

⁴ Section 199X (Register to be kept at a workplace)

Repository kept by Worksafe Australia.⁵

“representative”, of an employee, includes a co-employee elected by employees at the employee’s workplace to represent the employee on health and safety matters.

“retail warehouse operator” means an operator of a warehouse where unopened packaged goods intended for retail sale are stored.

“risk assessment” means a risk assessment made under section 199R.

“risk phrase” means a phrase stated in NOHSC’s document entitled ‘National Code of Practice for the Labelling of Workplace Substances’ and giving information about a substance’s hazards.

“safety phrase” means a phrase stated in NOHSC’s document entitled ‘National Code of Practice for the Labelling of Workplace Substances’ and giving information about—

- (a) the safe handling and storage of a hazardous substance; or
- (b) the personal protective equipment for a hazardous substance.

“substance” does not include an article.

“type 1 ingredient”, in a substance, means an ingredient present in the substance in a concentration more than the ingredient’s concentration cut-off level stated in the approved criteria and—

- (a) described in the approved criteria as—
 - (i) carcinogenic, corrosive, mutagenic, teratogenic, toxic or very toxic; or
 - (ii) a respiratory or skin sensitiser; or
 - (iii) a harmful substance capable of causing a person an irreversible adverse health effect after acute exposure; or
 - (iv) a harmful substance capable of causing serious damage to a person’s health after repeated or prolonged exposure; or
- (b) listed, and having an exposure standard stated, in the Adopted

⁵ The postal address for Worksafe Australia is—
GPO Box 58
SYDNEY NSW 2001

National Exposure Standards for Atmospheric Contaminants in the Occupational Environment contained in NOHSC's document entitled 'Exposure Standards for Atmospheric Contaminants in the Occupational Environment'.

“type 2 ingredient”, in a substance, means an ingredient, other than an ingredient mentioned in paragraph (a) of the definition “type 1 ingredient”, present in the substance—

- (a) in a concentration more than the ingredient's concentration cut-off level stated in the approved criteria; and
- (b) described in the approved criteria as a harmful substance.

“type 3 ingredient”, in a substance, means an ingredient, other than a type 1 ingredient or type 2 ingredient, present in the substance.

“use”, of a hazardous substance, includes handling, production, storage, movement and disposal of the substance, but does not include the carriage of a substance covered by the ADG Code or the International Maritime Dangerous Goods Code.⁶

‘Meaning of “exposure”

‘199A. A person is **“exposed”** to a hazardous substance if the person absorbs or is likely to absorb the substance by ingestion or inhalation or through the skin or mucous membrane.

‘Meaning of “hazardous substance”

‘199B.(1) In this Part, other than Division 4⁷—

“hazardous substance” means—

- (a) for 2 years after the commencement day—a substance that—
 - (i) is a designated hazardous substance; or

⁶ The International Maritime Dangerous Goods Code is prepared by the Inter-Governmental Maritime Consultative Organisation and is available from the Australian Government Publishing Service.

⁷ Division 4 (Employer's duties)

- (ii) is not covered by subparagraph (i) but contains a designated hazardous substance in a concentration more than the concentration cut-off level for the designated hazardous substance stated in NOHSC's document entitled 'List of Designated Hazardous Substances'; or
 - (iii) is not covered by subparagraph (i) or (ii) but is listed, and has an exposure standard stated, in the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment contained in NOHSC's document entitled 'Exposure Standards for Atmospheric Contaminants in the Occupational Environment'; and
- (b) after the 2 years is—
- (i) a designated hazardous substance; or
 - (ii) a substance that is not a designated hazardous substance but meets the approved criteria.
- ‘(2) However, a hazardous substance does not include—
- (a) a substance containing a disease causing organism; or
 - (b) a radioactive substance; or
 - (c) a substance brought into a workplace by an individual for personal or sanitary use not related to a work activity.

Example of subsection (2)(c)—

Skin cream brought into the workplace by an employee for the employee's personal use, but not a skin cream supplied at the workplace for removing grease or other chemicals from the skin.

‘(3) For 2 years after the commencement day, a manufacturer, importer or supplier may elect to apply subsection (1)(b) as well as or instead of subsection 1(a) to work out if a substance is a hazardous substance.

‘(4) However, after the 2 years, a manufacturer, importer or supplier must apply only subsection 1(b) to work out if a substance is a hazardous substance.

‘Division 2—Manufacturers’ and importers’ duties

‘Application of Division

‘199C. This Division applies to a person who manufactures or imports a hazardous substance for use at a workplace.

**‘Preparation, amendment and review of hazardous substance’s
MSDS**

‘199D.(1) A manufacturer or importer of a hazardous substance must—

- (a) prepare an MSDS for the substance as soon as practicable after manufacturing or importing it; and
- (b) amend the MSDS whenever necessary to ensure it contains current information; and
- (c) review the MSDS at least once in every 5 years to see if it contains current information.

‘(2) A substance’s MSDS must state—

- (a) the substance’s product name; and
- (b) information about the substance’s—
 - (i) chemical and physical properties; and
 - (ii) health hazard information; and
 - (iii) safe use and handling; and
- (c) the substance’s importer’s or manufacturer’s name, Australian address and Australian telephone number.⁸

‘(3) The MSDS must also state—

- (a) for a substance containing a type 1 ingredient—the ingredient’s chemical name; and

⁸ See NOHSC’s document entitled ‘National Code of Practice for the Preparation of Material Safety Data Sheets’ for further information about the things mentioned in paragraphs (a) to (c).

- (b) for a substance containing a type 2 ingredient—
 - (i) the ingredient's chemical name; or
 - (ii) if the manufacturer or importer reasonably believes disclosure of the ingredient's chemical name gives insufficient commercial protection—the ingredient's generic name; and
- (c) for a substance containing a type 3 ingredient—
 - (i) the ingredient's chemical name; or
 - (ii) the ingredient's generic name.

'(4) Despite subsection (3)(c), instead of stating a type 3 ingredient's chemical or generic name, the MSDS may state that the ingredient is not hazardous if—

- (a) the ingredient is not a hazardous substance with a known synergistic effect; and
- (b) the manufacturer or importer reasonably believes disclosure of its chemical or generic name gives insufficient commercial protection.

'(5) The MSDS must also be in English and contain—

- (a) unit measures commonly used in Australia; and
- (b) the national exposure standard (if any) for the substance.

'Copy of MSDS to be given to Repository and others

'199E.(1) A manufacturer or importer who prepares an MSDS for a substance under section 199D must give a copy of it—

- (a) to the Repository as soon as practicable after it is prepared; and
- (b) if the manufacturer or importer is not the direct supplier of the substance to an employer for use at a workplace—to each person to whom the manufacturer or importer supplies the substance—
 - (i) when first supplying the substance to the person; and
 - (ii) when later supplying the substance to the person after

preparing an amended MSDS.⁹

‘(2) A manufacturer or importer who amends a substance’s MSDS under section 199D by changing information mentioned in section 199D(2) must give a copy of the amended MSDS to the following entities—

- (a) the Repository within 1 month after amending it;
- (b) each person to whom the manufacturer or importer supplies the substance when next supplying the person with the substance.

‘(3) A manufacturer or importer of a hazardous substance must, on request, give a copy of the substance’s current MSDS to the following persons—

- (a) the employer, an employee or employee’s representative at a workplace where the substance is, or is to be, used;
- (b) the Director.

‘(4) Subsections (1)(b) and (2)(b) do not apply to a manufacturer or importer who supplies a substance to a retailer or retail warehouse operator in a consumer package that will not be opened on the retailer’s or retail warehouse operator’s premises.

‘Notification of use of a type 2 ingredient’s generic name

‘**199F.** A manufacturer or importer who, under section 199D,¹⁰ states a type 2 ingredient’s generic name in an MSDS, must, as soon as practicable after preparing the MSDS, give Worksafe Australia¹¹ notice in the approved form of the use of the generic name.

⁹ Section 199J deals with the provision of an MSDS by the substance’s direct supplier to a person at a workplace.

¹⁰ Section 199D (Preparation, amendment and review of hazardous substance’s MSDS)

¹¹ The postal address for Worksafe Australia is—
GPO Box 58
SYDNEY NSW 2001.

‘Disclosure of ingredient’s chemical name

‘199G.(1) Despite section 199D(3), a manufacturer or importer of a hazardous substance must immediately give the chemical name of an ingredient contained in the substance to a doctor who—

- (a) believes a person has been exposed to the substance at a workplace and needs urgent medical treatment; and
- (b) asks for the information for the person’s treatment.

‘(2) Also, despite section 199D(3), if an ingredient’s chemical name is needed to provide adequate protection to the employer or an employee at a workplace against exposure, the employer, employee or the employee’s representative at the workplace may ask the substance’s manufacturer or importer to give the person the ingredient’s chemical name.

‘(3) A request under subsection (2) must be written and contain the reason for the request and an undertaking to use the information only for the purpose mentioned in the subsection.

‘(4) The manufacturer or importer must not refuse a request under subsection (2) unless the manufacturer or importer has a reasonable excuse.

‘(5) Without limiting subsection (4), it is a reasonable excuse to refuse the request if the manufacturer or importer is not satisfied the ingredient’s chemical name is needed and the manufacturer or importer gives the requester, within 30 days after receiving the request—

- (a) written reasons for refusing the request; and
- (b) a reference to the evidence on which the reasons are based; and
- (c) information other than the ingredient’s chemical name (if any) that may help protect the employer or employee from exposure.

‘Provision of NICNAS summary report and other information

‘199H.(1) In this section—

“NICNAS summary report” means a summary report under the *Industrial Chemicals (Notification and Assessment) Act 1990*

(Cwlth).¹²

‘(2) An employer at a workplace where a hazardous substance is used may ask, in writing, the substance’s manufacturer or importer to give the employer—

- (a) information from the substance’s NICNAS summary report (if any) that may help in the substance’s safe use; and
- (b) other information, not contained in the substance’s MSDS, that may help in the substance’s safe use.

‘(3) The manufacturer or importer must give the employer the information within 30 days after receiving the request, unless the manufacturer or importer has a reasonable excuse.

‘Division 3—Suppliers’ duties

‘Application of Division

‘**199I.** This Division applies to a person (“**supplier**”) who supplies a hazardous substance to a person for use at a workplace.¹³

‘Provision of hazardous substance’s MSDS

‘**199J.(1)** A supplier must give a copy of a hazardous substance’s current MSDS to the employer at a workplace—

- (a) when first supplying the substance for use at the workplace; and
- (b) when later supplying the substance for use at the workplace after preparing or receiving an amended MSDS.¹⁴

‘(2) A supplier must, on request, give a copy of a hazardous substance’s current MSDS to the following persons—

¹² NICNAS summary reports refer only to pure substances and are available from the Australian Government Publishing Service.

¹³ This Division also applies to a manufacturer or importer of a hazardous substance who supplies the substance to a workplace.

¹⁴ Section 199D deals with the amendment of an MSDS.

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- (a) the employer, an employee or employee's representative, at a workplace where the substance is used or to be used;
 - (b) the Director.

'(3) Subsection (1) does not apply to a supplier who is a retailer or retail warehouse operator who supplies the substance in a consumer package that will not be opened on the supplier's premises.

'Labelling of a hazardous substance's container

'199K.(1) A supplier must ensure a label is fixed to a hazardous substance's container when the substance is supplied.

'(2) For 1 year after the commencement day, a label must state the substance's product name and, if it is reasonably practicable, the other information mentioned in subsection (3).

'(3) After the year, a label must state—

- (a) the substance's product name and its risk phrases and safety phrases (other than a safety phrase giving information about a risk phrase); and
- (b) if the substance contains a type 1 or type 2 ingredient—the ingredient's chemical name.

'(4) Despite subsection (3)(b), if a substance contains a type 2 ingredient and the substance's manufacturer or importer reasonably believes disclosure of the ingredient's chemical name gives insufficient commercial protection, the label must state the ingredient's generic name.

Example of a safety phrase giving information about a risk phrase in subsection (3)(a)—

A safety phrase stating 'Keep away from heat' if the risk phrase states 'Heating may cause an explosion'.

Division 4—Employers’ duties

‘Application of Division

‘**199L.** This Division applies to an employer at a workplace where a hazardous substance is used.¹⁵

‘Meaning of “hazardous substance” for Division

‘**199M.** In this Division—

“**hazardous substance**” means a substance for which its supplier, under section 199J,¹⁶ must give an employer its current MSDS.

‘Obtaining hazardous substance’s MSDS

‘**199N.(1)** If, when a substance in a container labelled under section 199K is first supplied to an employer for use at a workplace, the employer does not receive an MSDS for the substance, the employer must—

- (a) ask the supplier if the substance is a hazardous substance; and
- (b) if it is—ask the supplier to give the employer a copy of its current MSDS.

‘**(2)** This section does not apply to an employer who is a retailer or retail warehouse operator if the substance has been supplied to the employer for retail sale and is contained in a consumer package that will not be opened on the employer’s premises.

‘Recording and displaying hazardous substance’s MSDS

‘**199O.(1)** An employer must—

- (a) place the copy of a hazardous substance’s MSDS in the register

¹⁵ This Division also applies to a hazardous substance’s manufacturer, importer or supplier who is an employer.

¹⁶ Section 199J (Provision of hazardous substance’s MSDS)

immediately after the employer receives it; and

- (b) ensure the information mentioned in section 199D(2) and (3) on the copy is not changed.

‘(2) The employer must also keep a copy of the MSDS close enough to where the substance is being used to allow an employee who may be exposed to the substance to refer to it easily.

‘(3) This section does not apply to an employer who is a retailer or retail warehouse operator if the substance has been supplied to the employer for retail sale and is contained in a consumer package that will not be opened on the employer’s premises.

‘Labelling of a hazardous substance’s container and packaging

‘199P.(1) An employer must ensure a label complying with section 199K¹⁷ is fixed to the container of a hazardous substance used at the workplace.

‘(2) The employer must take reasonable steps to ensure the label on a container is not interfered with at the workplace.

‘(3) If a hazardous substance is transferred, partly or wholly, from one container into another container (the “**second container**”) and the entire contents of the second container are not used immediately, the employer must ensure the second container is fixed with a label stating—

- (a) for 1 year after the commencement day—the substance’s product name and, if it is reasonably practicable, the substance’s risk phrases and safety phrases (other than a safety phrase giving information about a risk phrase); and
- (b) after the year—the substance’s product name, its risk phrases and safety phrases (other than a safety phrase giving information about a risk phrase).

Example of a safety phrase giving information about a risk phrase in subsection (3)—

A safety phrase stating ‘Keep away from heat’ if the risk phrase states ‘Heating may cause an explosion’.

¹⁷ Section 199K states what information must be contained on a label.

‘(4) This section does not apply to a container if it has been cleaned of the hazardous substance.

‘(5) In this section—
“**container**” does not include an enclosed system.

‘Warning of hazardous substance in an enclosed system

‘**199Q.** If a hazardous substance is in an enclosed system at a workplace, the employer at the workplace must ensure suitable warning of the substance’s presence and location is given to persons who may be exposed to the substance if it escapes from the enclosed system.

Example of suitable warning—

A suitable warning stated in AS1345.¹⁸

‘Risk assessment

‘**199R.(1)** An employer must ensure an assessment is made of the risk to the employer’s or an employee’s health from a hazardous substance that is used or is to be used at the workplace.

‘(2) For a substance supplied to the workplace before the commencement, the assessment must be done within 1 year after the commencement.

‘(3) For a substance supplied to the workplace after the commencement, the assessment may be done before the substance is used at the workplace, but if not done before it is used, must be done as soon as is reasonably practicable after it is first used at the workplace.

‘(4) The assessment must include the following—

- (a) the identification of the hazardous substance;
- (b) if the substance’s MSDS is available—a review of the MSDS;
- (c) if the substance’s MSDS is not available—a review of available equivalent information;

¹⁸ AS1345 is entitled ‘Identification of the contents of piping, conduits and ducts’.

- (d) if the substance is in a consumer package—a review of the package’s label;
- (e) a decision whether any employees may be exposed to the substance;
- (f) a decision about the control measures, health surveillance and monitoring needed in relation to the substance.

‘(5) The assessment may be a generic assessment prepared for workplaces where the substance is used in the same or similar circumstances.

Example of generic assessment in subsection (5)—

An assessment prepared by an industry body or trade association about the use of brake fluid at service stations.

‘(6) An employer must ensure a risk assessment is reviewed at least once in every 5 years and when any of the following happen at the workplace—

- (a) a work practice involving the substance is significantly modified;
- (b) new information about the substance’s hazards is available;
- (c) health surveillance¹⁹ or monitoring²⁰ shows control measures need to be reviewed;
- (d) new or improved control measures are implemented.²¹

Examples of significantly modified work practices in paragraph (a)—

- the form of a catalyst for a chemical reaction is changed from liquid to a vaporised state
- the form of a substance used is changed from pellets to fine powder.

‘Risk assessment record

‘199S.(1) If a risk assessment for a hazardous substance shows the risk to the employer’s or an employee’s health from the substance is significant,

¹⁹ See section 199V (Supply of health surveillance).

²⁰ See section 199U (Monitoring).

²¹ A record of the assessment review must be made. See section 199S(4).

the employer must ensure a record is made of the following information—

- (a) the date of the assessment;
- (b) the substance's product name or other identification;
- (c) a statement that the reviews mentioned in section 199R(4) have been done;
- (d) that the degree of risk is significant;²²
- (e) the control measures for use of the substance;
- (f) the type of monitoring that is needed and the intervals at which the monitoring must be done;
- (g) the type of health surveillance that is needed and the intervals at which the health surveillance must be done.

‘(2) If the assessment shows the degree of risk is not significant, the employer must ensure a record noting that the assessment was done is made in the register.

Example of content of a record mentioned in subsection (2)—

- (a) the date of the assessment; and
- (b) the substance's product name or other identification; and
- (c) a statement that the reviews mentioned in section 199R(4) have been done; and
- (d) that the degree of risk is not significant; and
- (e) the control measures (if any) for use of the substance.

‘(3) The record mentioned in subsection (1) or (2) must be made as soon as practicable after the risk assessment is done.²³

‘(4) An employer must also ensure the result of an assessment review under section 199R(6) is recorded as soon as practicable after the review is done.

²² For guidance in deciding if the degree of risk is significant, see the Code of Practice for the Management of Hazardous Substances. The Code is available from Goprint.

²³ Section 199X (Register to be kept at a workplace) also requires an employer to make the register readily accessible to the employees at the workplace.

‘Control of exposure

‘199T.(1) If a risk assessment shows an employer or employee may be exposed to a hazardous substance, the employer must—

- (a) prevent the exposure; or
- (b) if that is not practicable—reduce the exposure to as low a level as is reasonably practicable.

‘(2) However, the level of exposure must not be more than the national exposure standard for the relevant period for the substance.

‘(3) The employer must prevent or reduce the exposure as far as is practicable by ways other than the use of personal protective equipment.

‘(4) However, if the exposure cannot be prevented or reduced by ways other than the use of personal protective equipment, the employer must ensure that persons who may be exposed are properly instructed in the use of personal protective equipment and use the equipment when being exposed to the substance.

‘(5) The employer must also ensure the control measures recommended under the risk assessment for the substance are implemented as soon as practicable at the workplace and effectively maintained.

‘(6) In this section—

“relevant period” means the exposure period stated in NOHSC’s document entitled ‘Exposure Standards for Atmospheric Contaminants in the Occupational Environment’.

‘Monitoring

‘199U.(1) If, under a risk assessment, monitoring is needed at a workplace, the employer at the workplace must ensure—

- (a) the monitoring is done at the workplace; and
- (b) a record of the monitoring result is made as soon as practicable; and
- (c) an employee who may be exposed is given a copy of the record.

‘(2) The employer must allow the employer’s employees who may be

exposed to a hazardous substance at the workplace to inspect the record at any reasonable time.

‘Supply of health surveillance

‘199V.(1) An employer must supply and pay for health surveillance of an employee if a risk assessment²⁴ shows the employee has been exposed to a hazardous substance and—

- (a) the substance is listed in column 1 of Schedule 6 and the degree of risk to the employee’s health is significant; or
- (b) the employer reasonably believes, or ought to reasonably believe—
 - (i) an identifiable adverse health effect may be related to the exposure; and
 - (ii) the health effect may happen under the employee’s work conditions; and
 - (iii) a valid technique capable of detecting signs of the health effect exists; or
- (c) the employer reasonably believes, or ought to reasonably believe—
 - (i) an identifiable adverse health effect may be related to the exposure; and
 - (ii) the health effect may happen under the employee’s work conditions; and
 - (iii) a valid biological monitoring procedure is available to detect, in the employee, changes from the current accepted values for the substance.

Examples of changes from current accepted values in paragraph (c)(iii)—

- lower than normal blood levels of acetylcholinesterase resulting from organophosphate pesticide exposure
- raised urinary mercury levels in a laboratory technician exposed to

²⁴ Section 199R deals with risk assessments.

mercury vapour.

‘(2) If the health surveillance relates to exposure to a hazardous substance mentioned in column 1 of Schedule 6, the surveillance must include the things stated in column 2 of Schedule 6 for the substance.

‘(3) The employer must ensure—

- (a) health surveillance is done by or under the supervision of a doctor chosen by the employer; and
- (b) the doctor gives the employer a copy of the health surveillance report; and
- (c) if the health surveillance is of an employee—the employee is given a copy and explanation of the health surveillance report; and
- (d) the copy given to the employer is kept as a record at the workplace.

‘(4) If the health surveillance is of an employee, the employer must consult the employee before choosing a doctor to do or supervise the surveillance.

‘(5) In this section—

“**doctor**” means a medical practitioner—

- (a) entitled to registration as a specialist in occupational medicine under the *Medical Act 1939*; or
- (b) who has satisfactorily completed a health surveillance training program supplied by the Director.

“**health surveillance report**” means information, other than a medical record, about effects on human health related to a person’s exposure to a hazardous substance at a workplace and the need (if any) for remedial action.

‘Employee’s medical record to be kept confidential

‘199W.(1) An employer, without an employee’s written approval, may not obtain the employee’s medical record.

‘(2) An employer must not disclose to a person (other than the employee

or the employee's representative who has the employee's written consent) the contents of a medical record obtained with the employee's written approval.

'Register to be kept at a workplace

'199X.(1) An employer must keep a register at the employer's workplace containing—

- (a) a list of all hazardous substances that are used at the workplace; and
- (b) the current MSDS for each substance.

'(2) The employer must allow the employer's employees who may be exposed to a hazardous substance at the workplace to inspect the register at any reasonable time.

'(3) This section does not apply to an employer who is a retailer or retail warehouse operator to the extent that the hazardous substance to which the employer or an employee may be exposed is in a consumer package that will not be opened on the employer's premises.

'Keeping of records

'199Y.(1) If a risk assessment²⁵ or a review of it shows there is a significant degree of risk to the employer's or an employee's health because of a hazardous substance's use at a workplace, the employer must keep the following records in relation to the substance for 30 years from the day the particular record was made—

- (a) the risk assessment record;²⁶
- (b) the result of a risk assessment review;²⁷
- (c) a monitoring result;²⁸

²⁵ See section 199R (Risk assessment).

²⁶ See section 199S (Risk assessment record).

²⁷ See section 199S (Risk assessment record).

²⁸ See section 199U (Monitoring).

(d) a health surveillance report.²⁹

‘(2) If a risk assessment or a review of it shows a hazardous substance’s use at a workplace does not cause a significant degree of risk to the employer’s or an employee’s health and monitoring or health surveillance is not needed, the employer must keep a record of the assessment or review for 5 years from the day the particular record was made.

‘(3) The employer must allow the employer’s employees who may be exposed to a hazardous substance at the workplace to inspect a record at any reasonable time.

‘(4) If a person ceases to be an employer in the period the record is required to be kept under subsection (1) or (2), the person must ask for, and comply with, the Director’s directions about the record’s storage.

‘Induction and training about hazardous substances

‘**199Z.(1)** An employer must give all employees who may be exposed to a hazardous substance at the workplace induction and ongoing training about the substance.³⁰

‘(2) The induction and training must be appropriate having regard to—

- (a) the level of risk identified in a risk assessment; and
- (b) the employees who may be exposed to the substance.

‘(3) The employer must keep a record of induction and training given to employees.

‘(4) The record must include the following information—

- (a) the date of each induction or training session;
- (b) the topics dealt with at each session;
- (c) the name of the person who conducted the induction or training

²⁹ See section 199V (Supply of health surveillance).

³⁰ See also section 9 of the Act which imposes a general obligation on an employer to ‘provide, so far as is practicable, such information, instruction, training and supervision to such persons as are necessary to enable the employees to perform their work in a manner that is safe and without risks to their health and safety’.

session;

- (d) the names of the employees who attended the induction or training session.

‘(5) The record must be kept for 5 years from the date of its last entry.’.

Amendment of Pt 37 (Hazardous substances)

8. Part 37, heading—

omit, insert—

‘PART 37—SPECIFIED DANGEROUS GOODS’.

Amendment of s 265 (Interpretation)

9.(1) Section 265, heading—

omit, insert—

‘Definitions for Part’.

(2) Section 265, definitions **“hazardous substance”** and **“highly hazardous substances”**—

omit, insert—

“specified dangerous goods” has the meaning given by section 265A.

“highly dangerous goods” means goods assigned to Class 2.3 and Packaging Group 1 under the ADG Code.’.

(3) Section 265, definitions **“class label”** and **“mixed stores”**, ‘hazardous substance’—

omit, insert—

‘specified dangerous goods’.

(4) Section 265, definitions **“depot”** and **“handling”**, ‘hazardous substances’—

omit, insert—

‘specified dangerous goods’.

Insertion of new s 265A

10. After section 265—

insert—

‘Meaning of “specified dangerous goods”

‘265A. In this Part—

“specified dangerous goods” means goods classified under the ADG Code as dangerous goods of a following class—

- Class 2—Gases: compressed, liquefied or dissolved under pressure
 - Class 2.1 Flammable gases
 - Class 2.2 Nonflammable gases
 - Class 2.3 Poisonous gases
- Class 4—Flammable solids
 - Class 4.1 Flammable solids
 - Class 4.2 Substances liable to spontaneous combustion
 - Class 4.3 Substances which emit flammable gases on contact with water
- Class 5—Oxidising agents and organic peroxides
 - Class 5.1 Oxidising agents
 - Class 5.2 Organic peroxides
- Class 6—Poisonous (toxic) and infectious substances
 - Class 6.1a Substances which are liable to cause death or serious injury to human health if swallowed, inhaled or ingested
 - Class 6.1b Substances which are harmful to human health if swallowed or inhaled or by skin contact
 - Class 6.2 Infectious substances
- Class 8—Corrosives
- Class 9—Miscellaneous dangerous substances.’

Amendment of s 275 (Suppliers' duties)

11.(1) Section 275(1), from 'in accordance with'—

omit, insert—

'under NOHSC's document entitled 'National Code of Practice for the Preparation of Material Safety Data Sheets'.'

(2) Section 275(3), from 'in accordance with'—

omit, insert—

'under NOHSC's document entitled "National Code of Practice for the Labelling of Workplace Substances".'

Amendment of s 276 (Employers' duties)

12. Section 276(4), from 'in accordance with'—

omit, insert—

'under NOHSC's document entitled 'National Code of Practice for the Labelling of Workplace Substances'.'

Amendment of s 280 (Anhydrous ammonia)

13. Section 280—

insert—

'(2) However, if an inconsistency arises between the application of this section and the application of a provision of Part 27,³¹ the provision prevails to the extent of the inconsistency.'

Amendment of s 281 (Chlorine)

14. Section 281—

insert—

'(2) However, if an inconsistency arises between the application of this

³¹ Part 27 (Hazardous substances)

section and the application of a provision of Part 27,³² the provision prevails to the extent of the inconsistency.’.

Amendment of s 282 (Hazardous substances of Class 5.2)

15. Section 282—

insert—

‘(2) However, if an inconsistency arises between the application of this section and the application of a provision of Part 27,³² the provision prevails to the extent of the inconsistency.’.

Amendment of s 283 (Pesticides)

16. Section 283—

insert—

‘(2) However, if an inconsistency arises between the application of this section and the application of a provision of Part 27,³² the provision prevails to the extent of the inconsistency.’.

Amendment of s 287 (Laboratories)

17. Section 287(a), after ‘construction’—

insert—

‘(other than sections 2.2.3.1, 2.2.3.3, 2.3.3, 2.3.4, 2.3.6.3, 2.3.7.1, 7.2 and 12.6).’.

Insertion of new Sch 6

18. After Schedule 5—

insert—

³² Part 27 (Hazardous substances)

‘SCHEDULE 6

‘HAZARDOUS SUBSTANCES FOR WHICH HEALTH SURVEILLANCE MUST BE SUPPLIED

section 199V of the regulation

Column 1	Column 2
Hazardous substance	Health surveillance
4,4' Methylenebis (2-chloroaniline) (MOCA)	Dipstick analysis of urine for haematuria Urinary total MOCA Urine cytology
Acrylonitrile	Demographic, medical and occupational history Exposure record Medical interview if required by the doctor supervising the health surveillance
Asbestos	Demographic and occupational history Exposure record Medical interview
Cadmium	Demographic, medical and occupational history Exposure record Health advice including counselling about the effect of smoking on cadmium exposure

	Physical examination with emphasis on the respiratory system
	Standard respiratory questionnaire to be completed
	Standard respiratory function tests including, for example, FEV ₁ , FVC and FEV ₁ /FVC
	Urinary cadmium and β_2 -microglobulin
Crystalline silica	Chest X-ray, full size Pa view
	Demographic, medical and occupational history
	Standard respiratory function test including, for example, FEV ₁ , FVC and FEV ₁ /FVC
	Standard respiratory questionnaire to be completed
Inorganic arsenic	Demographic, medical and occupational history
	Exposure record
	Health advice
	Physical examination with emphasis on the peripheral nervous system and skin
	Urinary total arsenic
Inorganic mercury	Demographic, medical and occupational history
	Health advice

	Physical examination with emphasis on dermatological, gastrointestinal, neurological and renal systems
	Urinary inorganic mercury
Isocyanates	Physical examination of respiratory system and skin
	Standard respiratory function tests including, for example, FEV ₁ , FVC and FEV ₁ /FVC
	Standard respiratory questionnaire to be completed
Organophosphate pesticides	Baseline examination of red cell and plasma cholinesterase activity levels
	Estimate of red cell and plasma cholinesterase activity towards the end of a working day on which organophosphate pesticides have been used
	Medical and occupational history
	Physical examination
Polycyclic aromatic hydrocarbons	Exposure record
	Demographic, medical and occupational history
	Health advice including recognition of photochemical skin burns and skin changes
	Physical examination
Thallium	Demographic, medical and occupational history
	Physical examination

Vinyl chloride	Urinary thallium Demographic and occupational history Exposure record.'.
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SCHEDULE**MINOR AMENDMENTS**

section 3 of the regulation

1. Sections 266, 267, 268(2), 269, 270, 271, 272, 273(b), 275, 276, 278, 279, 282, 284, 285, 286 and 287, ‘hazardous substances’—*omit, insert—*

‘specified dangerous goods’.

2. Sections 270 and 282, heading, ‘Hazardous substances’—*omit, insert—*

‘Specified dangerous goods’.

3. Sections 266(a), 268(1), 269, 270, 271, 272, 275, 276, 278(5) and 284(b), ‘hazardous substance’—*omit, insert—*

‘specified dangerous goods’.

4. Sections 266, 268(2), 272 (heading), 276(4), 278(4A)(e), 285 and 286, ‘substances’—*omit, insert—*

‘dangerous goods’.

5. Sections 266, 268(1), 270(2), 271, 272(2) and 274(1), ‘substance’—*omit, insert—*

‘dangerous goods’.

ENDNOTES

1. Made by the Governor in Council on 23 February 1995.
2. Notified in the Gazette on 24 February 1995.
3. Laid before the Legislative Assembly on . . .
4. The administering agency is the Department of Employment, Vocational Education, Training and Industrial Relations.