

Summary of Feedback for 2018 Review of the Model WHS Laws

WHS Regulation S423 (2)(b)

Asbestos analysis

s423 (2) states: If a person with management or control of a workplace arranges for an analysis, the person must ensure that the sample is analysed only by—

- (a) a NATA-accredited laboratory accredited for the relevant test method; or
- (b) a laboratory approved by the regulator in accordance with guidelines published by Safe Work Australia; or
- (c) a laboratory operated by the regulator.

I contacted SWA in late 2016 for a copy of the guidelines referred to in section (b) as our workplace has a legitimate case to apply for this approval. SWA responded by saying there are no guidelines written for this clause and when prompted further, they said the clause was only put in the legislation in case they need them one day. I asked if they could be drafted and sent to me as my workplace would like to pursue this option to which the response was no.

I don't believe anything should be written in legislation for companies to comply to if it does not exist.

In addition to this issue, I sought advice from our local and state WHS Regulators and SWA on interpretation of the WHS Act and Regulations in regards to analysis identification of synthetic mineral fibre (SMF). The legislation covers asbestos well but makes no reference to SMF. I asked if our internal laboratory (run by competent personnel) can identify samples for SMF. I was told by all parties consulted they were not sure of the answer but suggested that it's a way of confirming something is not asbestos it should be done through a NATA lab. This is inconsistent with the legislation as the main purpose for the analysis is confirmation of positive SMF not a negative test for asbestos.

WHS Regulation s50

Personal Monitoring for Gas Exposure

- (1) A person conducting a business or undertaking at a workplace must ensure that air monitoring is carried out to determine the airborne concentration of a substance or mixture at the workplace to which an exposure standard applies if—
 - (a) the person is not certain on reasonable grounds whether or not the airborne concentration of the substance or mixture at the workplace exceeds the relevant exposure standard; or
 - (b) monitoring is necessary to determine whether there is a risk to health.
- (2) A person conducting a business or undertaking at a workplace must ensure that the results of air monitoring carried out under subsection (1) are—
 - (a) recorded, and kept for 30 years after the date the record is made; and
 - (b) readily accessible to persons at the workplace who may be exposed to the substance or mixture.

There is nothing in the Regulations for how to comply with personal monitoring for gas exposure. Interpretation of the Act and Regs was sought from Regulators with inconsistent feedback and the lack of ability to give advice. There is no recognised standard for how to monitor for personal exposure

to gas and no current monitoring device that provides accurate information on exposure. Current devices have too many issues with cross sensitivity so cannot be used to accurately determine compliance to exposure standards. They are more used as an indicative tool.

Retention of records is another issue. Confined space monitoring requires records to be kept until the task is complete, however s50 (2)(a) states they need to be kept for 30 years.

There is also no clear guidance on what constitutes a notifiable incident when it comes to gas exposure with Regulators unsure themselves.