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## WORKSAFE POSITION

# Technical clarification of regulation 11.33

Regulation 11.33 of the Health and Safety at Work (Hazardous Substances) Regulations 2017 provides specific provisions for classes 3.1B and 3.1C flammable liquids in retail shops. A retail shop has a particular meaning, and is defined in regulation 3(1).

This technical note clarifies how subclauses (1) and (2) of regulation 11.33 relate to each other.

Regulation 11.33(1) describes what buildings (retail shops) regulation 11.33 applies to. If a retail shop does not meet the criteria in regulation 11.33(1), regulation 11.33(2) does not apply to that retail shop.

The criteria in regulation 11.33(1) includes separation distance requirements in paragraphs (d) and (e) depending on whether the retail shop is a standalone building or has a wall in common with another building. If the retail shop:

- is a standalone building, paragraph (d) applies, and it must be separated from any protected place that is external to it by a minimum distance of:
  - 3m, or
  - if the retail shop is separated by a wall with a fire-resistance rating of at least 240/240/240 minutes, 3m when measured around the wall.
- has a wall in common with another building, paragraph (e) applies, and the common wall must have a fire-resistance rating of at least 240/240/240 minutes and maintain a minimum separation distance of 3m when measured around the wall.

Regulation 11.33(2) provides that separation distances from and within the retail shop may be zero where:

- all containers of classes 3.1B and 3.1C flammable liquids are closed (except that paint may be opened briefly for tinting), and
- the classes 3.1B and 3.1C products are separated from particular substances by distances prescribed in paragraph (b), and
- the retail shop complies with section 3.4 of *AS/NZS 3833:2007*, and
- the quantities of classes 3.1B and 3.1C substances are not more than the quantities specified in table 9 in Schedule 12.

Regulation 11.33(2) only applies to retail shops that meet the criteria in regulation 11.33(1).

Regulation 11.33(2) does not override the separation distance requirements in regulation 11.33(1). That is, the 3m separation distance prescribed in regulation 11.33(1) is not reduced to zero by regulation 11.33(2).

Where a person conducting a business or undertaking believes that their retail shop cannot comply with regulation 11.33, it can consider:

- reducing the quantities of flammable liquids held in the building
- discussing use of regulation 6.23(3)(a) with their compliance certifier
- seeking an exemption from WorkSafe under section 220 of the Health and Safety at Work Act 2015.