

EXPLANATORY STATEMENT

DANGEROUS GOODS LEGISLATION AMENDMENT BILL 2003

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Section 2B

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences) and defines terms used for offences to which the Criminal Code applies (eg. conduct, intention, recklessness and strict liability).

New Section 2B is consequent on the creation of the new offences in proposed new Division 4.6.

Division 4.6, Section 26

Section 26A - The new definition of use was included to put beyond doubt what use of a firework may mean and to extend its meaning to include the ignition of a firework that may not result in an explosion and the ignition of a model rocket propellant device that may not result in the firing of the device.

Section 26A - The definition of fireworks replicates the existing definition in the Dangerous Goods Regulations, dictionary and the definition of model rocket propellant device is partially based on the existing definition in the Regulations. A model rocket propellant device may be propelled by compressed air and so is not necessarily a firework.

Section 26A - The definition of exempt firework and exempt model rocket propellant device are to allow certain fireworks (eg. sparklers and low power model rocket propellant devices) to be sold without the purchaser needing a licence or permit to purchase the fireworks.

The maximum penalty for offences under the Dangerous Goods Regulations is 10 penalty units (see reg 31). Accordingly, the proposed new offence provisions above provide for substantially increased penalties. The suggested penalties are consistent with the existing penalty levels in the Act, part 4 (Special provisions relating to explosives) on the basis that fireworks are just one form of explosives.

New Sections 26B and 26D include defences. New Section 26C should be viewed as either a person did or did not use a firework in accordance with a public display fireworks permit. As with new Section 26E, the use of the firework is under the person's control.

The offences proposed in new Section 26D and Section 26E are based on the offences in the Dangerous Goods Regulations 63 and 64. the offences under the Regulations require a person to 'knowingly' use the firework. This element has been omitted and the offences have been made strict liability offences.

New Sections 26F and 26G have been included to assist the enforcement of the general ban on the use of fireworks.

Part 3, Regulation 36

New Regulation 36 restates existing Regulation 36 (a) (i) and (b) in clearer terms and extends existing Regulation 36 (a) (i) to all exempt fireworks and to exempt model rocket propellant devices.

New Regulation 36A restates existing Regulation 36 (a) (ii) in clearer terms and removes the existing exemption for fireworks, type D: see schedule 1, class 1.4, group S. Type D fireworks are essentially shopgoods fireworks.

Part 3, Regulations 41 and 41A

Most of the restrictions in existing Regulation 41 (1) relate to shopgoods fireworks and hence, the scope of new Regulation 41 (1) is narrower. Existing Regulation 41A has been omitted as it is specific to shopgoods fireworks.

There is no equivalent in the new provisions to existing Regulation 41 (2) as the importation and sale of fireworks (other than exempt fireworks) is controlled through conditions in licences.

New Regulation 41 (1) applies to a person who manufactures, imports or sells stated kinds of fireworks. The defence in Regulation 41 (3) is available only to an importer of fireworks, not to a manufacturer of fireworks. The defence reflects the consideration that a person who imports a manufactured product is not always in a position to know whether or not the product complies with particular requirements. However, the defence is of limited operation. It is not for the defendant to raise as a defence that they took reasonable care to avoid the contravention. Rather, it is for the defendant to prove, first, that the defendant took reasonable care to avoid the contravention of Regulation 41 (1) and, second, that either it was reasonable for the defendant to act on information supplied by someone else or that the contravention was caused by something beyond the defendant's control.

Existing Regulation 36 (a) (ii) excludes fireworks from the requirements under the Act for import, sale, supply, receipt or possession of fireworks to be licensed but existing Regulation 41 (2), in effect, reimposed those requirements. To remove this circular approach, new Regulation 36A (1), definition of exempt class 1.4, group S explosive, paragraph (a) operates to apply the provisions of the Act mentioned in new Regulations 36A (2) to fireworks.

Part 3, Division 4.4 – Purchase and use of fireworks

This has been omitted as the unauthorised receipt of explosives is dealt with under the Act, Section 25.

Part 3, Regulation 93 (2) (f), (g) and (h)

Regulations 93 (2) and 107 have been amended to require fireworks to be kept in an external magazine, except fireworks for public fireworks displays and exempt fireworks.