

2004

LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

DANGEROUS SUBSTANCES (GENERAL) REGULATIONS 2004

SL2004-9

EXPLANATORY STATEMENT

**Circulated by authority of the
Minister for Industrial Relations
Ms Katy Gallagher MLA**

DANGEROUS SUBSTANCES (GENERAL) REGULATIONS 2004

The *Dangerous Substances Act 2004* (the Dangerous Substances Act) establishes a modern duty-based framework for the regulation of dangerous goods and hazardous substances in the ACT. The objective of the Act is to protect the health and safety of people and to protect property and the environment from damage from the hazards associated with dangerous substances.

Part 1 Preliminary

This Part contains **regulations 1 to 5** dealing with formal matters such as the name of the regulations, the commencement day, the role of the dictionary, the role of notes and the application of the Criminal Code to offences under the regulations.

Part 2 Licences

Section 54 of the Act explains that licences can be granted for up to 3 years, or a shorter period specified by the regulations. It is appropriate that people who wish to handle dangerous substances be required to reapply for a licence at specified intervals. **Regulation 50** states that licences issued before 1 July 2005 will not be issued for a term longer than 1 year. The dangerous substances regulatory regime established through the Act and regulations is complex. Limiting the maximum term will enable close monitoring of the operation of the new regime and of industry compliance in the bedding down period following commencement. Section 224 of the Act requires that its operation be reviewed as soon as practical after 30 June 2005. The term of licences can be re-examined in that context.

Part 3 Asbestos and asbestos products

This Part contains **regulations 150 to 171** which effectively prohibit the import, manufacture, supply (including sale), storage, use, re-use and installation of all types of asbestos. On 18 May 2001, the Workplace Relations Ministers' Council agreed to a nationwide ban on the import and use of asbestos from 31 December 2003. The Dangerous Goods (Asbestos) Amendment Regulations 2003 gave effect to the nationally agreed ban. These regulations are repealed by the commencement of the Dangerous Substances Act.

New asbestos prohibition regulations are incorporated into Part 3 of the Dangerous Substances (General) Regulations 2004. Changes to the regulations reflect the regulatory regime established in the Dangerous Substances Act. Section 73 (b) of the Dangerous Substances Act defines a "prohibited dangerous substance" as a substance (other than a prohibited explosive) declared under the regulations to be a prohibited dangerous substance. Asbestos and asbestos products are declared prohibited dangerous substances in **regulation 155**.

The ban is not restricted to workplaces and all persons are required to comply. The ban does not apply to asbestos or asbestos products that were already fixed or installed ("in situ") as of 31 December 2003 (for example, in car brake linings). However, when they require replacement, an alternative which does not contain asbestos must be used.

The regulations provide for the nationally agreed exemptions for the use of chrysotile products as declared by the National Occupational Health and Safety Commission (NOHSC) and for the expiration date of the exemptions. The regulations also provide for the issuing of a certificate of exemption where an application is approved to import, supply, store or use a chrysotile product where the use is an exempt use as set out in the NOHSC exemptions. This certificate of exemption will also be relied upon by Customs to allow the import of asbestos or products containing asbestos into the country under the customs regulations. All references to chrysotile and chrysotile products will expire on 31 December 2007 which is the latest date at which the nationally agreed exemptions may end.

The regulations also prescribe activities which are authorised for all types of asbestos and asbestos products. These are: scientific research, sampling for identification and demonstrations, education and training. Strict conditions apply to these activities to protect the health of people handling or exposed to the asbestos or asbestos product.

The transport of asbestos is regulated by the *Road Transport Reform (Dangerous Goods) Act 1995* (Cth).

Part 4 Administrative review of decisions

Chapter 9 of the Act provides for the administrative review of decisions of the Minister, the Chief Executive or an inspector which are prescribed in the regulations. Section 187 provides that if the decision-maker makes a reviewable decision, the decision-maker must provide written notice to persons prescribed in the regulations for the decision. Section 188 provides for the internal review of prescribed decisions. Part 5 of the regulations establishes a schedule of decisions (**schedule 1**) which are reviewable, identifies the decision-maker and the persons to whom notice must be given. Sections 188 to 190 of the Act also provide for the internal review of prescribed decisions. Schedule 1 sets out which decisions of inspectors are internally reviewable. Decisions by an internal reviewer, or a reviewable decision other than an internally reviewable decision can be reviewed by the administrative appeals tribunal on the application of a person whose interests are affected by the decision.

Part 5 Modification of Act, ch 14

Part 5 modifies chapter 14 (Consequential and transitional matters) of the Act in relation to the termination of certain categories of licences and permits issued under the *Dangerous Goods Act 1975*, *Dangerous Goods Regulations 1978*, and the *Occupational Health and Safety Regulations 1991*. Specifically, existing prescribed former licences (not including former explosives licences) are not ended until 31 August 2004 or until the end of the term (whichever is the later); existing shotfirer's permits are not ended until 14 May 2004 at which time all permits are ended; existing general public display fireworks permits are not ended until 14 May 2004 at which time all permits are ended; existing blasting permits are not ended until 31 August 2004 at which time all permits are ended.

Existing shotfirer's, general public display fireworks (equivalent to display operator licence), and blasting permits are taken to be in force under the *Dangerous Substances (Explosives) Regulations 2004* during the transitional period between the commencement of the Act and regulations and the end of the prescribed period.

Schedule 1 Reviewable decisions

Part 1.1 sets out the decisions of the chief executive under the Act which are reviewable and the persons who must be notified of the decision. **Part 1.2** sets out the decisions of the inspectors which are internally reviewable and the persons who must be notified of the decision. **Part 1.3** sets out the decisions of the chief executive under these regulations which are reviewable and the persons who must be notified of the decision.

Dictionary

The dictionary contains further definitions of terms and concepts used in these regulations.

Date of effect

The regulations come into effect on 5 April 2004.