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**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

WORK HEALTH AND SAFETY LEGISLATION AMENDMENT BILL 2017

EXPLANATORY STATEMENT

**Presented by
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WORK HEALTH AND SAFETY LEGISLATION AMENDMENT BILL 2017

Outline of the Bill

The purpose of this Bill is to adopt chapter 7 and chapter 9 of the national model Work Health and Safety Regulation (the model regulation), which govern the use, storage and handling of hazardous chemicals.

The importance of harmonisation of work safety legislation has long been recognised as a critical area of regulatory reform, and is a key priority of the Council of Australian Governments' national reform agenda.

In July 2008, the Commonwealth and each of the states and territories signed the Inter-Governmental Agreement for Regulatory and Operational Reform in OHS (IGA), which commits jurisdictions to implement model laws which comprise a national model Work Health and Safety Act, model Regulations and model Codes of Practice.

On 29 September 2011, the Legislative Assembly passed the *Work Health and Safety Act 2011* (the WHS Act), which gave effect to the Territory's commitment under the IGA. On 1 January 2012, the WHS Act and the supporting *Work Health and Safety Regulation 2011* (the WHS Regulations) came into effect in the Territory.

At that time, the WHS Regulation did not adopt chapter 7 (Hazardous Chemicals), chapter 8 (Asbestos) or chapter 9 (Major Hazard Facilities) of the model regulation, and these matters continued to be regulated under the Territory's dangerous substances legislation.

Subsequently the Territory has incorporated the national model asbestos regulations into its work health and safety framework – this came into effect on 1 January 2015.

This Bill will now adopt remaining chapters of the model regulations into the Territory's WHS Regulations.

To facilitate the adoption of the model regulation, this Bill will also make consequential amendments to the:

- *Dangerous Substances Act 2004* (DS Act); and
- *Dangerous Substances (General) Regulation 2004* (DS Regulation).

Human Rights Considerations

This Bill is not considered to engage rights under the *Human Rights Act 2004*.

Application of schedule 1 to dangerous goods being stored or handled outside of the workplace may be interpreted as engaging the right to privacy as it applies to individuals. The application of schedule 1 of the WHS Act as amended (refer clauses 30 to 33 below) is

however justified in the context of securing personal and public health and safety in the storage and handling of hazardous chemicals.

All individuals currently have a duty to ensure public safety by minimising the risks resulting from handling a dangerous substance under the DS Act. As a consequence of shifting the regulation of dangerous substances to the WHS legislative framework, the equivalent obligation can be found in the application of schedule 1 to dangerous goods being stored and handled outside the workplace.

This will mean that the regulator has the power to enforce the WHS Act and WHS Regulation in circumstances where a duty in relation to a dangerous good has been contravened outside of the workplace. Importantly, there are a number of limitations to the application of schedule 1 outside of the workplace. These are:

- The application of schedule 1 does not apply to all parts of the WHS Act. In line with the model legislation, section 10 of the WHS Regulation already restricts the operation of schedule 1 of the Act by excluding a number of divisions and parts from its operation. These include those parts that largely relate to workplace consultation, representation and participation (e.g. duty to consult workers), those parts relating to discriminatory, coercive and misleading conduct (part 6) and WHS right of entry provisions (part 7).
- Not all duties under part 2 of the WHS Act will operate with respect to the application of schedule 1. This is because of the mechanism utilised under schedule 1 of substituting relevant terms in the WHS Act with non-workplace equivalent terms or phrases. For example, in applying schedule 1 there is no substitution for the term 'officer' and as such the duties specifically on officers under section 27 of the WHS Act will not apply outside of the workplace. The effect of this is that most of the duties under part 2 of the WHS Act, once translated for the non-workplace context, will simply establish a general duty on both the person in control of a premises where dangerous goods are stored or handled and persons that handle the dangerous goods at that premises. This is to ensure, so far as is reasonably practicable, the health and safety of persons at the premises and other persons at risk from the storage and handling of dangerous goods at the premises.

In light of the above the application of schedule 1 is considered to be justified in securing personal and public health and safety when hazardous chemicals (dangerous goods) are being stored or handled in the Territory.

DETAIL OF THE BILL

Part 1 Preliminary

Clause 1 — Name of the Act

This clause names the Act.

Clause 2 — Commencement

This clause provides for the commencement of the Act on 29 March 2018.

Clause 3 — Legislation amended

This clause provides that the Amendment Bill amends the following legislation:

- *Dangerous Substances Act 2004; and*
- *Work Health and Safety Act 2011.*

Clause 4 — Legislation repealed

Clause 4 sets out the instruments to be repealed under the Amendment Bill. The incorporated documents notifiable instruments are being repealed as the complex process of notifying incorporated documents is being removed from the dangerous substances legislation.

Secondly, the codes of practice relevant to the regulation of hazardous chemicals under the dangerous substances legislation are being repealed and will be replaced by national model codes of practice under the work health and safety legislation.

Part 2 Dangerous Substances Act 2004

Clause 5 — Exclusions from the Act Section 7(2)

Clause 5 omits section 7(2). This section is no longer necessary as the regulation of asbestos as a hazardous chemical will now be covered by the *Work Health and Safety Regulation 2011*, under chapter 7.

Clause 6 — Relationship of regulations to approved codes of practice and incorporated documents Section 9(2), notes 1 to 3

Clause 6 omits the notes from section 9 of the DS Act as they are not necessary.

Clause 7 — Section 10

The definition of dangerous substance is being substituted with an updated definition that reflects the remaining coverage of dangerous substances under the *Dangerous Substances Act 2004* (DS Act) once the regulation of hazardous chemicals moves to the *Work Health and Safety Act 2011*.

Asbestos and security sensitive substances have been expressly included as part of the definition of dangerous substances in order to maintain the application of certain parts of the DS Act.

This clause also inserts the definition of security sensitive substances under the definition of dangerous substances in the primary Act. The existing definition is currently found in the *Dangerous Substances (General) Regulation 2004* (DS Regulation).

Clause 8 — *Handle* a dangerous substance Section 11, examples 1 and 3

Clause 8 makes a technical amendment to the examples in section 11 of the DS Act to refer to the substitute term 'ADG Code' in place of the 'Australian Dangerous Goods Code'.

Clause 9 — Section 11, note 1

This note is being deleted as it is no longer drafting practice to include notes that refer to definitions in the dictionary.

Clause 10 — *Non-commercial* handling of a dangerous substance Section 12, note

This note is being deleted as it is no longer drafting practice to include notes that refer to definitions in the dictionary.

Clause 11 — *Correctly* classified for a dangerous substance Section 13(1), note 1

This note is being deleted as it is no longer drafting practice to include notes that refer to definitions in the dictionary.

Clause 12 — *Correctly* for packed, stored, labelled and placarded Section 14(1), note 1

This note is being deleted as it is no longer drafting practice to include notes that refer to definitions in the dictionary.

Clause 13 — Incorporate documents and approved codes of practice may be considered Section 22, note

This note is being deleted as it is no longer drafting practice to include notes that refer to definitions in the dictionary.

Clause 14 — New part 3.1A

Clause 14 amends the application of chapter 3 as a consequence of expressly maintaining asbestos and security sensitive substances as a ‘dangerous substance’ under the DS Act.

Chapter 3 will not apply to asbestos and security sensitive substances as the safety duties under the WHS Act will apply.

This amendment makes it clear that from commencement of the Act, the safety duties under the WHS Act are the duties to be applied to both asbestos and security sensitive substances as hazardous chemicals.

**Clause 15 — Meaning of *close associate* for ch 4
Section 48(1), note**

This note is being deleted as it is no longer drafting practice to include notes that refer to definitions in the dictionary.

**Clause 16 — Review by internal reviewer
Section 189(2), note**

This note is being deleted as it is no longer drafting practice to include notes that refer to definitions in the dictionary.

Clause 17 — Section 206

This clause inserts a new section 206 as a consequence of removing the procedure for notifying incorporated documents under clause 18.

**Clause 18 — Regulations may apply etc instruments
New section 213(2)**

Clause 18 inserts a new subsection to exempt the adoption of the ADG Code as in force from time to time from being a notifiable instrument under section 47(6) of the *Legislation Act 2001*.

The ADG Code is incorporated into the regulation (see dict, def of ADG Code). The Legislation Act, s 47 (6) provides that an incorporated document is taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (6) may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see s 47 (7)).

The Legislation Act, s 47 (6) is displaced here because the incorporated document is subject to copyright and is available over the Internet.

Clause 19 — Notification of certain incorporated documents

Section 220

Clause 19 removes the procedure for notifying incorporated documents as it is not necessary.

Clause 20 — Dictionary, new definition of *ADG Code*

Clause 20 amends the dictionary as a consequence of amending all references in the DS Act from 'Australian Dangerous Goods Code' to 'ADG Code'. The current code is to be applied.

Clause 21 — Dictionary, definition of *Australian Dangerous Goods Code*

Clause 21 defines the term Australian Dangerous Goods Code by reference to the definition of the ADG Code. The Code will generally be referred to in the DS Act as the ADG Code.

Clause 22 — Dictionary, definition of *Australian Explosives Code*

Clause 22 substitutes a new definition for the Australian Explosives Code as it is no longer defined under section 10, rather it will be defined in the dictionary in line with current drafting practice. The current code is to be applied.

Clause 23 — Dictionary, definition of *Australian Standard 1940*

Clause 23 omits this definition as it is no longer required as a consequence of amendments to section 10 of the DS Act under clause 7.

Clause 24 — Dictionary, definition of *incorporated document*

Clause 24 defines what an incorporated document is for the DS Act.

Clause 25 — Dictionary, definitions of *NOHSC approved criteria* and *NOHSC List of Designated Hazardous Substances*

Clause 25 omits this definition as it is no longer required as a consequence of amendments to section 10 of the DS Act under clause 7. As a consequence of this Bill, the WHS Regulation will be amended to insert chapter 7 of the model regulation which is where hazardous chemicals will now be regulated. As such, the NOHSC approved criteria will no longer be used.

Clause 26 — Dictionary, new definition of *security sensitive substance*

Clause 26 inserts a new definition for security sensitive substances as a consequence of it now being defined in section 10A by amendments in clause 7.

Part 3 Work Health and Safety Act 2011

Clause 27 — Long title

Clause 27 amends the long title in recognition that the WHS Act will apply to non-workplaces. Similar to the regulation of hazardous chemicals moving to the WHS Regulation, the regulation of dangerous goods in a non-workplace, which was previously regulated under the DS Act, will also be transferred to the WHS legislation.

Clause 28 — Scope

Section 12(1), new notes

Clause 28 inserts new notes under section 12(1).

Clause 29 — Scope

New section 12(4)

Clause 29 defines a ‘hazardous chemical’ by reference to the WHS Regulation dictionary. The definition of hazardous chemical is a new definition that will be inserted into the WHS Regulation following the adoption of chapter 7 of the model regulation.

Hazardous chemicals were previously regulated in the Territory as a dangerous substance under the DS Act. The amending regulation to the WHS Regulation will be made on passage of this Amendment Bill. The definition of a hazardous chemical is the same as is found in the model regulation, as extracted below:

hazardous chemical means a substance, mixture or article that satisfies the criteria for a hazard class in the GHS (including a classification referred to in schedule 6 (Classification of mixtures), but does not include a substance, mixture or article that satisfies the criteria solely for one of the following hazard classes:

- (a) acute toxicity—oral—category 5;
- (b) acute toxicity—dermal—category 5;
- (c) acute toxicity—inhalation—category 5;
- (d) skin corrosion/irritation—category 3;
- (e) serious eye damage/eye irritation—category 2B;
- (f) aspiration hazard—category 2;
- (g) flammable gas—category 2;
- (h) acute hazard to the aquatic environment—category 1, 2 or 3;

Clauses 30-33

These clauses make the amendments necessary to apply the WHS legislation to non-workplaces via schedule 1 of the WHS Act. Schedule 1 was already captured in the WHS Act, however, these amendments were necessary to ensure the operation of schedule 1 following the insertion of chapter 7 of the WHS Regulation.

The intention is to apply the same general duty when handling hazardous chemicals outside of the workplace to ensure public health and safety.

Schedule 1 Consequential amendments

Part 1.1 Dangerous Goods (Road Transport) Act 2009

Clause [1.1] — Section 8(3), new note

Clause [1.1] inserts a new note into the *Dangerous Goods (Road Transport) Act 2009* to assist readers in identifying the interaction of this Act with other legislation.

Part 1.2 Dangerous Substances (Explosives) Regulation 2004

Clause [1.2] — Section 5

Clause [1.2] disapplies section 47(5) of the Legislation Act to the stated instruments.

Australian Standards 2187.0, 2187.1, 2187.2 and 2187.4 are incorporated into the regulation (see dict, def of AS 2187.0). The Legislation Act, s 47 (5) provides that an incorporated document is taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (5) may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see s 47 (7)). The Legislation Act, s 47 (5) is displaced here because the incorporated standards are subject to copyright and may be purchased over the Internet.

Assessing Fitness to Drive is incorporated into the Regulation (see dict, def of Assessing Fitness to Drive). The Legislation Act, s 47 (5) provides that an incorporated document is taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (5) may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see s 47 (7)). The Legislation Act, s 47 (5) is displaced here because the incorporated document is subject to copyright and may be purchased over the Internet.

The UN Test Manual is incorporated into the regulation (see dict, def of UN Test Manual). The Legislation Act, s 47 (5) provides that an incorporated document is taken to be a notifiable instrument. A notifiable instrument must be notified on the legislation register under the Legislation Act. However, the Legislation Act, s 47 (5) may be displaced by the authorising law (the Act) or the incorporating instrument (this regulation) (see s 47 (7)). The Legislation Act, s 47 (5) is displaced here because the incorporated document is subject to copyright and may be downloaded over the Internet.

Clause [1.3] — Section 112(1)(h)

Clause [1.3] makes a technical amendment as a consequence of defining Assessing Fitness to Drive in the dictionary.

Clause [1.4] — New section 159(2)

Clause [1.4] makes a technical amendment as a consequence of amending all references to the Australian Dangerous Goods Code to the ADG Code.

Clause [1.5] — Dictionary, note 3

Clause [1.5] makes a technical amendment.

Clause [1.6] — Dictionary, note 3

Clause [1.5] makes a technical amendment to substitute this note with the updated Code references.

Clause [1.7] — Dictionary, new definition of *Assessing Fitness to Drive*

Clause [1.7] inserts a new definition for the Assessing Fitness to Drive publication. In substance, the publication referred to is the same as the one currently applied under the incorporated documents notification process.

Clause [1.8] — Dictionary, definitions of *AS 2187.0* etc

Clause [1.8] inserts a new definition for the standards applied under this Regulation. In substance, the standards referred to are the same as those being applied prior to commencement of these amendments.

Clause [1.9] — Dictionary, definition of *class label*

Clause [1.9] omits this definition as class label is now defined in subsection 159(2).

Clause [1.10] — Dictionary, definition of *UN Test Manual*

Clause [1.10] inserts a new definition for the UN Test Manual being applied under this Regulation. In substance, the publication of the Manual referred to is the same as the one being applied prior to commencement of these amendments.

Part 1.3 Dangerous Substances (General) Regulation 2004

Clause [1.11] — Section 3, notes

Clause [1.11] makes a technical amendment to the notes in section 3 of the DS Regulation as a result of deleting chapter 2 of the DS Regulation.

Clause [1.12] — Section 5

Clause [1.12] deletes section 5 of the DS Regulation as it is no longer necessary as a consequence of deleting chapter 2 of the DS Regulation.

Clause [1.13] — Chapter 2

Clause [1.13] deletes chapter 2 of the DS Regulation as the classification, labelling, packing, handling and storing of dangerous goods will now be regulated as hazardous chemicals under chapter 7 of the WHS Regulation.

Clause [1.14] — Sections 303 to 305 and part 3.2

Clause [1.14] deletes the parts of the DS Regulation relating to asbestos that will now be covered under the WHS Act.

Clause [1.15] — Section 400

Clause [1.15] prescribes security sensitive substances for the purposes of the new section 10A. The substances prescribed are the same as were previously prescribed as security sensitive substances under the DS Regulation.

Clause [1.16] — Schedules 1 to 3

Clause [1.16] omits Schedules 1 to 3 as they are no longer necessary as a consequence of deleting chapter 2 of the DS Regulation.

Clause [1.17] — Schedule 4, new section 4.1(4)

Clause [1.17] relocates the definition of UN number to section 4.1 of Schedule 4 in line with current drafting practice as this is where the term is used.

Clauses [1.18]-[1.19] — Dictionary, note 3

Clauses [1.18] and [1.19] is consequential on moving the definition of ADG Code to the dictionary and amending the definition of dangerous substance in the DS Act.

Clause [1.20] — Dictionary

Clause [1.20] omits unnecessary definitions following the amendments made to the DS Regulation.

Part 1.4 Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004

Clause [1.21] — Schedule 1, part 1.3, items 1 to 11

Clause [1.21] omits infringement notice offences for provisions under the DS Act and DS Regulation that will no longer exist. These will be replaced with infringement notice offences under the WHS Act and WHS Regulation.

Part 1.5 Major Events Act 2014

Clause [1.22] — Section 12(1), definition of *prohibited item*, paragraph (a)(iv)

Clause [1.22] makes changes to terminology under the *Major Events Act 2014* as a result of the WHS Act and WHS Regulation amendments.

Clause [1.23] — Section 12(2), definition of *dangerous substance*

Clause [1.23] makes changes to terminology under the *Major Events Act 2014* as a result of the WHS Act and WHS Regulation amendments.

Clause [1.24] — Section 12(2), new definition of *hazardous chemical*

Clause [1.24] makes changes to terminology under the *Major Events Act 2014* as a result of the WHS Act and WHS Regulation amendments.

Part 1.6 Medicines, Poisons and Therapeutic Goods Act 2008

Clause [1.25] — Section 34(3), note

Clause [1.25] incorporates the WHS Act into the notes as it will cover hazardous chemicals.

Clause [1.26] — Section 34(5), note

Clause [1.26] incorporates the WHS Act into the notes as it will cover hazardous chemicals.

Part 1.7 Planning and Development Act 2007

Part 1.7 of Schedule 1 makes amendments to the *Planning and Development Act 2007* (P & D Act) as a result of amendments made to that Act under the *Planning and Development Amendment Act 2017* that will commence on 28 March 2018.

The amendments are necessary and technical in nature as a consequence of changes in terminology in adopting chapter 7 of the model regulation. The adoption of chapter 7 means that materials and substances regulated as dangerous goods under the DS Act will

now be regulated as hazardous chemicals under the WHS Act. In light of this, the following amendments will be made to the P & D Act.

Clause [1.27] — Section 134(3A)(a)

Clause [1.27] replaces the term ‘dangerous substance’ with ‘Schedule 11 hazardous chemical’. This is the new term used under the WHS Regulation that defines the placard quantities for hazardous chemicals. All categories or classes of hazardous chemicals are listed in Schedule 11 along with their respective placard quantity. These quantities are substantially the same as the quantities that existed under the DS Act for placard quantities of dangerous substances.

Clause [1.28] — Section 134(3A)(b)

Clause [1.28] makes a consequential change as a result of the shift in terminology following the adoption of chapter 7 of the model regulation.

Clause [1.29] — New section 134 (3B) to (3D)

Under chapter 7 of the WHS Regulation, the placard quantity register will no longer exist. However, businesses will be required to notify the regulator if they store or handle hazardous chemicals exceeding manifest levels.

In order to maintain the substance of amendments made to the P & D Act, the WHS amendments will commence on 29 March 2018 and clause [1.29] will ensure that all businesses that have registered the premises where they store/handle dangerous substances on the placard quantity register under the DS Act by 28 March 2018 will be published and evidenced by a notifiable instrument under the P & D Act. This ensures that those businesses that have complied with their legislative obligations benefit from the exemption created to development approval process under section 134(3A) of the P & D Act.

Clause [1.30] — Section 134(8), new definition of *placard quantity register*

Clause [1.30] makes a consequential change as a result of the shift in terminology following the adoption of chapter 7 of the model regulation.

Clause [1.31] — Schedule 4, part 4.1, new definitions

Clause [1.31] makes a consequential change as a result of the shift in terminology following the adoption of chapter 7 of the model regulation.

Clause [1.32] — Schedule 4, part 4.2, item 11, column 2

Clause [1.32] makes a consequential change as a result of the shift in terminology following the adoption of chapter 7 of the model regulation.

Clause [1.33] — Schedule 4, part 4.2, item 11, column 2, notes 1 and 2

Clause [1.33] omits the notes from here and moves the relevant notes to Schedule 4, section 4.1.

Clause [1.35] — Dictionary, definition of *dangerous substance*

Clause [1.35] makes a consequential change as a result of the shift in terminology following the adoption of chapter 7 of the model regulation.

Clause [1.36] — Dictionary, definition of *placard quantity*

Clause [1.36] makes a consequential change as a result of the shift in terminology following the adoption of chapter 7 of the model regulation.

Clause [1.37] — Dictionary, new definition of *placard quantity premises list*

Clause [1.37] makes a consequential change as a result of the shift in terminology following the adoption of chapter 7 of the model regulation.

Clause [1.38] — Dictionary, definition of *placard quantity register*

Clause [1.38] makes a consequential change as a result of the shift in terminology following the adoption of chapter 7 of the model regulation.

Clause [1.39] — Dictionary, new definition of *Schedule 11 hazardous chemical*

Clause [1.39] makes a consequential change as a result of the shift in terminology following the adoption of chapter 7 of the model regulation.

Part 1.8 Road Transport (Alcohol and Drugs) Act 1977

Clause [1.40] — Section 4B(1)(h)(i) and note

Clause [1.40] makes a consequential change to include the WHS Act following the incorporation of chapter 7 in the WHS Regulation.