

2009 Fireworks Reform

Regulatory Impact Statement

Executive Summary

This regulatory impact statement (RIS) is intended to guide policy formation on reforms to the consumer fireworks regime under the *Dangerous Substances Act 2004* (the Act). The reforms would be given effect through the Dangerous Substances (Explosives) Regulation 2004 (the Regulation).

The reforms considered in this RIS relate to the 2010 and subsequent fireworks seasons.

Many amendments to the consumer fireworks regulations have been made since 2002. In 2007 extensive public consultation was undertaken on further regulatory options. The outcomes of the consultations show that the Canberra community is fairly evenly divided about whether members of the public should be able to buy and discharge consumer fireworks.

The objective of Government intervention is to appropriately manage the sale and use of fireworks so as to protect the public, property and the environment. The RIS analyses three options:

- Option 1: Further amend the regulations
- Option 2: Ban consumer fireworks
- Option 3: Maintain the status quo

Conclusions and Recommendation

Further amending the regulations or maintaining the status quo will not address the negative impact of consumer fireworks on the community. Neither of these options resolves the issues associated with escalating complaints and incidents each firework season and the Government resources diverted to address them.

A ban on consumer fireworks is preferred over the other options because it enables the Government to address the concerns of many in the community. A ban will eliminate the diversion of resources from the Office of Regulatory Services, the Australian Federal Police, Domestic Animal Services in the Department of Territory and Municipal Services, the Minister's Office and the Office of Industrial Relations, caused by the current fireworks regime.

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A. Background to this Statement

This document is a regulatory impact statement (RIS) that is intended to guide policy formation on reforms to the consumer fireworks regime under the *Dangerous Substances Act 2004* (the Act). The reforms would be given effect through the Dangerous Substances (Explosives) Regulation 2004 (the Regulation).

The reforms considered in this RIS relate to the 2010 and subsequent fireworks seasons.

This RIS has been prepared in accordance with the *Legislation Act 2001* and the ACT Government *Best Practice Guide for Preparing Regulatory Impact Statements*, dated December 2003.

Relevant documents cited in this RIS include:

- Winston Sustainable Research Strategies, *Research on the ACT's Consumer Fireworks Regime, Final Report Conducted for The Office of Industrial Relations, ACT Chief Minister's Department*, 16 March 2008, available at http://www.psm.act.gov.au/oir_fireworks.html ;
- *Dangerous Substances Act 2004*, available at <http://www.legislation.act.gov.au/a/2004-7/default.asp> ;
- Dangerous Substances (Explosives) Regulation 2004, available at <http://www.legislation.act.gov.au/sl/2004-10/default.asp> ;
- *Review of the Dangerous Substances Act 2004, Discussion Paper*, available at http://www.psm.act.gov.au/oir_fireworks.html ; and
- *Report on the Review of the Dangerous Substances Act 2004*, February 2008, available at http://www.psm.act.gov.au/oir_fireworks.html .

B. Community Engagement on Consumer Fireworks

In light of the level of sensitivity and interest in the consumer fireworks, the Government engaged an independent consultant to undertake targeted consultation to ascertain public opinion and to ensure all views, concerns and ideas were heard. The purpose of the consultation was to inform the Government of the:

- level of support or opposition;
- reasons for support (for example, enjoyment or livelihood i.e. people whose business, or part of, relies on the sales of consumer fireworks);
- reasons for opposition (for example, concerns about illegal activity, public safety, national security, noise, animal welfare, antisocial behaviour);
- options and potential level of support for further regulation (for example, to ban consumer fireworks outright and limit the use of fireworks to licensed pyrotechnicians or to reduce the use of consumer fireworks from three nights over the June long weekend to a single night, and reduce the sale period from one week to one or two days); and
- the economic contribution of consumer fireworks.

The consultant conducted market research in 2007/08 which included an online community survey that was launched with the Discussion Paper, a random telephone survey of 1000

Canberreans and a series of focus group discussions and in depth interviews with the community and industry. The focus groups and interviews were designed to establish views on a series of options developed as a result of the consultations.

In addition, the Chief Minister's Department held two public meetings on consumer fireworks in November 2007. A telephone questionnaire was conducted following the fireworks in June 2008 along with further survey in August 2008.

C. Summary of the Consumer Fireworks Regime

The main features of the consumer fireworks regime under the Regulation are as follows:

Consumer fireworks are:

- fireworks such as roman candles that are a class of specified low hazard fireworks authorised for sale to the public for use over the Queen's Birthday Long Weekend; and
- contain a limited amount of explosive material, have a restricted discharge area, and do not contain explosive substances that create a loud bang.

Consumer fireworks can be sold to members of the general public only:

- by licensed sellers;
- from licensed premises;
- for a specified period of time each year; and
- with the issue of a receipt that includes evidence that the person is a resident of the ACT and at least 18 years old ("the consumer receipt").

Approved consumer fireworks can be discharged only:

- within the ACT;
- during the Queen's Birthday long weekend in the year in which they were purchased;
- between the hours of 5.00pm and 9.00pm on the Saturday and Sunday of that weekend;
- by the purchaser or someone under their supervision; and
- in places other than public streets and parks unless prior written approval has been obtained (i.e. generally only permitted in private backyards).

D. Problem with the Current Regulation

The regulation of consumer fireworks is clearly a contentious issue within the Canberra community. The outcomes of the consultations show that the Canberra community is fairly evenly divided about whether members of the public should be able to buy and discharge consumer fireworks.

Throughout the consultations, the most frequently mentioned positive aspects of fireworks are that they are "spectacular, great for children, professionally organised and bring the community and families together."¹ Whereas the most frequently mentioned negative

¹ Winston Sustainable Research Strategies, *Research on the ACT's Consumer Fireworks Regime, Final Report Conducted for The Office of Industrial Relations, ACT Chief Minister's Department*, 16 March 2008, page 4

aspects of fireworks are that they “upset or harm animals and wildlife, are disorganised and dangerous, are used at inappropriate times, are noisy and disturbing, are likely to cause fires and personal injury and teach children bad habits.”²

There is no one solution that will satisfy all members of the community. Industry is expected to oppose any level of change that is more restrictive than the present the regime.

Since 2002 multiple changes have been made to the regulations. The effectiveness of each season’s ever tightening regulatory changes may be measured by the statistics collected by the Office of Regulatory Services (ORS). The table below is a summary of these statistics from 2004 to 2008. In general the complaints relate to the discharge of fireworks outside the permitted times, noise and to the damage caused by fireworks.

Office of Regulatory Fireworks Season Statistics

	2004	2005	2006	2007	2008
Complaints	255	187	245	430	510
Dogs Lost/Found	123	122	54	183	92
Dogs Impounded / Returned Home	19	34	19	47	84
Dogs injured	1	4	0	9	5
Dogs deceased	1	4	1	4	6
Fires	1	1	0	14	17

The 2007 and 2008 fireworks seasons have had the strictest regulatory regimes. The statistics show a significant increase in complaints and dog and fire related incidents. This suggests that continuing to allow fireworks, while amending and tightening the regulations, has not had any impact on the distress caused by fireworks to the community and animals.

E. Mutual Recognition

The ACT is one of the few jurisdictions in Australia that allows for the private purchase and discharge of fireworks. In Tasmania fireworks are available to members of the public in limited circumstances all year round but this regime is currently under review. At present, ‘type 2 fireworks’ (shop goods or small retail fireworks) are permitted with a permit. Displays are restricted via the requirement for a display to occur at least 50 metres from a building, vehicle or roadway. The permit process requires the consent of police, the fire service and the local authority. ‘Type 3 fireworks’ (large retail fireworks such as rockets) are permitted by licensed shot firers only.

In the Northern Territory “shopgoods” fireworks (the equivalent of consumer fireworks in the ACT) are available to the public for Territory Day on 1 July each year. Fireworks can be sold by license holders to persons over 16 years of age. Fireworks are available for sale on 30 June and 1 July between 9:00 am and 9:00 pm. Fireworks may only be ignited on 1 July between 6.00 pm and 11.00 pm.

All other states have banned the use of fireworks by members of the public. A summary of the ‘Regulation of Consumer Fireworks in Australian Jurisdictions’ is at Attachment A.

² *ibid*, page 4

Of note, the consultant commented that “any argument aimed at banning or more heavily restricting consumer fireworks in the ACT based on the fact that most other States have already banned or heavily restricted them, is anathema to Canberrans, who generally dislike being compared with other jurisdictions”³.

F. Relevant stakeholders

There are a range of stakeholders that may be impacted by the adoption of the proposals outlined in this RIS. Stakeholders have been categories into four groups as follows:

Group No.	Stakeholder Group Name	Stakeholders included
1	Business/ Industry	<ul style="list-style-type: none"> ▪ importers of consumer fireworks ▪ wholesalers of consumer fireworks ▪ existing businesses that sell consumer fireworks ▪ businesses established to sell consumer fireworks only ▪ industry organisations including Fireworks Australia
2	Government	<ul style="list-style-type: none"> ▪ the Territory ▪ Ministerial Offices ▪ the Office of Industrial Relations (policy) ▪ the Office of Regulatory Services (regulator) ▪ ACT Policing (regulator) ▪ the Domestic Animal Service (TAMS)
3	Community	<ul style="list-style-type: none"> ▪ all individuals in the Territory, including those that support a ban or otherwise ▪ community organisations including the RSPCA
4	Environment	<ul style="list-style-type: none"> ▪ the natural environment in the Territory ▪ the built environment in the Territory ▪ native wildlife ▪ domestic animals

G. Implementation

Reforms will be enacted through amendments to the Regulation after the 2009 Queen’s Birthday long weekend.

Primary responsibility for implementation of the changes rests with the Department of Justice and Community Safety. The proposed implementation strategy is for general promotion: for example, public notices; stakeholder awareness raising.

³ *ibid*, page 19

H. Specific Proposals for Reform

1. Amendments to the regime – general

1.1 Background

The main features of the consumer fireworks regime are set out in Section D: *Summary of the Consumer Fireworks Regime* above.

1.2 The Problem

While it is possible to further limit the sales period and discharge nights and times this is unlikely to have any material impact on complaints and the stress experienced by pets and wildlife. Many amendments to the consumer fireworks regulations have been made since 2002. In 2007 extensive public consultation was undertaken on further regulatory options, leading to the amendments made for the 2008 season.

The follow up surveys showed that the changes had little impact on community support for consumer fireworks. Yet notably the complaints received by government agencies *increased*.

1.3 Objective of Government Intervention

The objective is to appropriately manage the sale and use of fireworks so as to protect the public, property and the environment.

1.4 Mutual Recognition

See Section E. *Mutual Recognition* above.

1.5 The Options

Option 1: Further amend the regulations

Option 2: Ban consumer fireworks

Option 3: Maintain the status quo

1.6 Impact Analysis

OPTION 1 – FURTHER AMEND THE REGULATIONS

Under this option further limits on the advertising, sale and discharge periods would be imposed.

	ADVANTAGES	DISADVANTGES
Business/ Industry	<ul style="list-style-type: none"> ▪ industry can continue importing and supplying consumer fireworks 	<ul style="list-style-type: none"> ▪ new requirements to comply with
Government	<ul style="list-style-type: none"> ▪ responding to community concerns 	<ul style="list-style-type: none"> ▪ Continued diversion of resources to firework licensing, compliance, complaints ▪ new implementation costs to the regulator ▪ requirement to update systems, forms, guidance materials ▪ adverse comment from members of the community who advocate a ban or reduction ▪ adverse comment from a range of stakeholders in relation to inaction on community consultation
Community	<ul style="list-style-type: none"> ▪ those in support of fireworks can continue to enjoy fireworks under the current regime 	<ul style="list-style-type: none"> ▪ those who advocate a ban or further restrictions will continue to encounter the same problems associated with fireworks (i.e. noise, anti-social behaviour etc)
Environment		<ul style="list-style-type: none"> ▪ continued problems with noise and pollution associated with fireworks under the current regime

OPTION 2 – BAN CONSUMER FIREWORKS

Under this option the provisions in the Regulation that allow for the purchase and discharge of consumer fireworks, would be repealed.

	ADVANTAGES	DISADVANTAGES
Business/ Industry	<ul style="list-style-type: none"> ▪ no damage to property from consumer fireworks 	<ul style="list-style-type: none"> ▪ industry cannot import or supply consumer fireworks ▪ loss of business income and opportunities. May be left with unsalable stock. ▪ penalties for non-compliance
Government	<ul style="list-style-type: none"> ▪ significant savings in resources diverted to firework licensing, compliance, complaints and effects. ▪ addressing some outcomes of community consultation – in relation to those who advocate a complete ban only ▪ consistent with other States, except Tasmania and NT 	<ul style="list-style-type: none"> ▪ adverse comment from members of the community who support the consumer fireworks regime
Community	<ul style="list-style-type: none"> ▪ a level of satisfaction for those in support of a total ban ▪ potential to eliminate (or minimise) problems associated with fireworks (i.e. noise, anti-social behaviour etc) ▪ strongly supported by RSPCA 	<ul style="list-style-type: none"> ▪ an outright ban may not eliminate problems associated with fireworks (i.e. noise, anti-social behaviour etc) ▪ may encourage persons to purchase fireworks on the ‘black-market’ and therefore expose the community to problems associated with fireworks (i.e. noise, anti-social behaviour etc) intermittently year round
Environment	<ul style="list-style-type: none"> ▪ would eliminate most problems associated with fireworks (i.e. noise, pollution, frightening native and domestic animals etc) 	<ul style="list-style-type: none"> ▪ an outright ban may not totally eliminate problems associated with fireworks (i.e. noise, pollution) ▪ may encourage persons to purchase fireworks on the ‘black-market’ and therefore expose the community to intermittent problems associated with fireworks (i.e. noise, pollution) year round

OPTION 3 – MAINTAIN THE STATUS QUO

Under this option the current regime under the Regulation would be retained. It would continue to regulate the sale, purchase and use of consumer fireworks.

	ADVANTAGES	DISADVANTAGES
Business/ Industry	<ul style="list-style-type: none"> ▪ no new requirements ▪ industry can continue importing and supplying consumer fireworks 	
Government	<ul style="list-style-type: none"> ▪ no new costs to the regulator ▪ no need to update systems, forms, guidance materials 	<ul style="list-style-type: none"> ▪ Continued diversion of resources to manage licensing, sale, complaints and incidents relating to consumer fireworks ▪ adverse comment from members of the community who advocate a ban or reduction ▪ adverse comment from a range of stakeholders in relation to inaction on community consultation
Community	<ul style="list-style-type: none"> ▪ those in support of fireworks can continue to enjoy fireworks under the current regime 	<ul style="list-style-type: none"> ▪ those who advocate a ban or further restrictions will continue to encounter the same problems associated with fireworks (i.e. noise, anti-social behaviour etc)
Environment		<ul style="list-style-type: none"> ▪ continued problems with noise and pollution associated with fireworks under the current regime

1.7 Conclusions and Recommended Option

PREFERRED OPTION:	OPTION 2 – BAN THE SALE TO THE PUBLIC OF CONSUMER FIREWORKS
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Option 1 and Option 3

Further amending the regulations or maintaining the status quo will not address the negative impact of consumer fireworks on the community. Neither of these options resolves the issues associated with escalating complaints and incidents each firework season and the government resources diverted to address them.

Option 2

Option 2 is preferred over the other options because it enables the Government to address the concerns of many in the community. A ban will eliminate the diversion of resources from the Office of Regulatory Services, the Australian Federal Police, Domestic Animal Services in the Department of Territory and Municipal Services, the Minister's Office and the Office of Industrial Relations, caused by the current fireworks regime.

1.8 Implementation

See discussion at Section *H. Implementation* above.

REGULATION OF CONSUMER FIREWORKS IN AUSTRALIAN JURISDICTIONS

A Jurisdictions which ban consumer use of fireworks

Western Australia: banned since 1967

Public access to fireworks and their use in Western Australia was banned in 1967 due to pressure from the medical fraternity and parents concerned about the number of injuries, particularly to children, that were occurring each year.

Explosives and Dangerous Goods (Explosives) Regulations 1963.

Queensland: banned since 1972

The Queensland government banned consumer fireworks in June 1972 because of the extensive number of injuries, the frequency of property damage, and the general disruption that was experienced on ‘cracker nights’. The use of fireworks is limited to public displays conducted by competent, licensed operators.

Explosives Act 1999; Explosives Regulation 2003.

Victoria: banned since 1985

Consumer fireworks were banned in 1985: “fireworks were banned for a purpose. They caused untold serious injuries, death and distress.” The use of fireworks is only legal under the control of a licensed pyrotechnician (e.g. for public displays etc). *Dangerous Goods (Explosives) Regulation 2000.*

New South Wales: banned since 1987

Fireworks cannot be used at a private function. It is illegal to obtain, possess or discharge fireworks unless a person holds a Pyrotechnician’s Licence or Fireworks (Single Use) Licence from WorkCover NSW. Licences will only authorise a display for a “legitimate reason” such as organised public displays, theatrical displays and technical, non-display purposes such as for industrial and agricultural purposes. *Explosives Act 2003; Explosives Regulation 2005.*

South Australia: banned since 2001

Fireworks displays can be conducted only by licensed pyrotechnicians who have been trained in the safe use of fireworks. Displays must be conducted between 4.00pm and 10.00pm on any day other than New Years Eve when a 12.30am (New Years Day) finish is permitted. Workplace Services must be notified of all fireworks displays at least 5 weekdays (excluding public holidays) before the display.

Explosives Act 1936; Explosives (Fireworks) Regulations 2001.

B Jurisdictions which allow the retail sale, and consumer purchase and use of fireworks.

Tasmania: available under certain limited circumstances <<note that the Tasmanian regime is currently under review>>.

Type 2 (shop goods or small retail fireworks) allowed with a permit – displays restricted via the requirement for a display to occur at least 50 metres from a building, vehicle or roadway. The permit process requires the consent of police, the fire service and the local authority.

Type 3 (large retail fireworks such as rockets) permitted by licensed shot firers only.

Dangerous Goods (General) Regulations 1998.

Permit regime currently under review.

Northern Territory: available for Territory Day (1 July).

Shop goods/consumer fireworks are available to the public for Territory Day on 1 July each year. Fireworks can be sold by licensed persons to persons over 16 years of age. Fireworks are available for sale on 30 June and 1 July between 9am and 9pm. Fireworks may only be ignited on 1 July between 6.00pm and 11.00pm.

Dangerous Goods Regulations.

Australian Capital Territory: available for the Queen's Birthday Public Holiday weekend (the three days that are the Saturday and Sunday before the Monday that is the second Monday in June and the Monday) only.

The availability of consumer fireworks is limited to the week leading up to and including the Queens Birthday Public Holiday weekend in June.

It is illegal to possess or discharge consumer fireworks in the ACT outside of this period.

The sale of fireworks to consumers is limited to ACT residents over the age of 18 who can provide evidence of residence and photographic ID.

The use of the fireworks is permitted only between the hours of 5:00pm and 9:00pm on the Saturday, Sunday and Monday of the Queen's Birthday Public Holiday weekend.

This regime has been in place since 2007 under the *Dangerous Substances Act 2004* (the Dangerous Substances (Explosives) Regulation 2004).