

2008

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

REPORT ON THE REVIEW OF THE *DANGEROUS SUBSTANCES ACT 2004*

February 2008

Presented by
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**Report to the Legislative Assembly for the Australian Capital Territory on the
review of the *Dangerous Substances Act 2004***

Introduction

Section 224 of the *Dangerous Substances Act 2004* (the Act) requires the Minister to review the operation of the Act as soon as practicable after 30 June 2007 and to present a report of the outcome of the review to the Legislative Assembly on or before the Assembly's 3rd sitting day of 2008.

I am presenting this Report, as is required by the Act, as the Minister responsible for legislative policy in this area. Operational aspects of the Dangerous Substances legislation are within the Attorney-General's portfolio as a role undertaken by the Office of Regulatory Services in the Department of Justice and Community Safety.

The review of the Act encompasses the primary legislation, the Dangerous Substances (General) Regulation 2004 and the Dangerous Substances (Explosives) Regulation 2004. Notably, the Explosives Regulation contains the provisions in relation to consumer fireworks.

The object of the Act is to regulate the handling of dangerous substances in the Australian Capital Territory to ensure that the health and safety of people are protected, and to ensure that property and the environment are kept safe from damage from the hazards associated with dangerous substances. While the legislation is quite prescriptive, it is worth emphasizing that the review has not been initiated as a vehicle to necessarily lessen the rigour with which dangerous substances is regulated.

In September 2007, I commenced the review of the Act with the release of a Discussion Paper to invite relevant agencies, stakeholders and interested individuals and organisations to make submissions on the operation and effectiveness of the Act. A copy of the Discussion Paper is provided as an appendix to the Report.

I thank all those people who made submissions, responded to the surveys and attended the public meetings about the regulation of consumer fireworks. As a follow-up to this public consultation, focus groups will be brought together early this year to discuss the options for future regulation of the use of consumer fireworks. The outcomes of the review report and the discussion from the focus groups will be considered by the Government in deciding any changes to the consumer fireworks regime in the future.

This report provides information on the recent status of national projects which impact on the Australian Capital Territory and may occasion the need for future legislative amendments.

I present this Report to the Legislative Assembly.

Andrew Barr MLA
Minister for Industrial Relations
14 February 2008

The *Dangerous Substances Act 2004*

The main basis for the review of the ACT's dangerous substances regime was a comprehensive Discussion Paper released in September 2007 (Attachment 1) that addressed all aspects of the legislation. While the Paper invited views on any aspect, questions were inserted throughout the text to indicate possible issues on the basis that they raised interest or discussion during the initial drafting process and/or during the operation of the legislation.

There was a three month response period for submissions. In total, 45 submissions were received.

Two of these submissions addressed the questions raised in the Discussion Paper about the general operation of the provisions of the *Dangerous Substances Act 2004* (the Act), the Dangerous Substances (General) Regulation 2004 or the Dangerous Substances (Explosives) Regulation 2004 (the Explosives Regulation).

The Office of Regulatory Services suggested improvements to operational aspects of the Dangerous Substances (Explosives) Regulation 2004, including-

- adjusting fees and charges to reflect real costs to the regulator, in particular, the costs for fireworks display permits and in relation to consumer fireworks licences;
- reconsidering the application requirements for blast permits;
- reconsidering timeframes requirements for licence applications; and
- reconsidering limits of explosives permitted to be stored on premises.

The AFP provided statistics relating to the regulation of the legislation particularly as it relates to the use of fireworks. These are reproduced in Attachment 2.

All other submissions were regarding the operation of the Explosives Regulation. These submissions are publicly available; to obtain a copy of a submission, visit the Chief Minister's website at <http://www.cmd.act.gov.au/>

The Act was also reviewed by the Office of Industrial Relations for any needed legislative corrections. The Act is already the subject of on-going review as changes in national standards and codes occur.

The following national projects impact on the Act and may occasion the need for future legislative amendments.

1. *The national regulation of the land transport of dangerous goods*
In the early 1990s Transport Ministers agreed that a national process should be established to develop nationally uniform dangerous goods transport legislation. Although the Dangerous Goods Code was adopted under each State and Territory's dangerous goods legislation, this legislation varied widely in the duties and obligations placed on persons handling dangerous goods. There was also no mechanism for mutual recognition of decisions made by the State and Territory Competent Authorities.

The reform of dangerous goods legislation was placed on the Road Transport Reform agenda and included in the key reforms of the National Competition Policy. The National Road Transport Commission, in consultation with the States and Territories, the regulatory authorities and industry, produced model legislation which could be adopted into State and Territory law. The ACT adopted the model law into the Act, which is under constant review.

2. *National harmonisation of occupational health and safety laws*

In other Australian jurisdictions the regulation of dangerous substances is provided for within occupational health and safety legislation. The ACT provides for these matters in two separate Acts, the *Occupational Health and Safety Act 1989* and the *Dangerous Substances Act 2004*.

As a consequence, the national project to harmonise occupational health and safety laws will impact on the Act.

The effect of the inconsistent application of occupational health and safety regulation across jurisdictions is regularly identified by business as an area of concern (including in the Commonwealth Government's *Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business* (April 2006), and the Independent Pricing and Regulatory Tribunal Final Report – *Burden of Regulation in NSW and Improving Regulatory Efficiency* (October 2006)). In order to reduce the compliance costs on businesses operating across borders, the Council of Australian Governments (COAG) tasked the Workplace Relations Ministerial Council (WRMC) with developing strategies to improve implementation and uptake of national occupational health and safety (OHS) standards.

To address its concerns in relation to the slow take-up of national standards, COAG agreed that the national OHS standards framework be recast to comprise the following components:

- (a) national standards focussed on safety requirements (specified as outcomes where possible) as the basis for jurisdictional regulations;
- (b) a core document containing the key principles found in OHS Acts to be used as the common framework for developing and reviewing national standards;
- (c) national codes of practice that provide more focussed practical guidance on how to meet an outcome;
- (d) guidance material;
- (e) regulatory interpretative documents; and
- (f) a handbook that documents the principles and processes of the national standards framework.

COAG reaffirmed that there be no reduction or compromise in standards for legitimate safety concerns in current OHS standards. COAG noted that the following four principles, which will not be used to alter what COAG agreed for OHS harmonisation or to delay implementation of the agreed reforms, are intrinsic to WRMC's work on OHS harmonisation-

- (a) a tripartite approach;

- (b) compliance;
- (c) resources; and
- (d) ensuring protections are not reduced.

COAG agreed that the priority areas for the harmonisation of OHS legislation will be, in the first instance, those matters essential for the consistent development, uptake and implementation of national standards into each jurisdiction's regulatory regime, and that the Australian Safety and Compensation Council (ASCC) may also identify and agree on other priority areas for harmonisation that are considered necessary to improve safety outcomes.

The ASCC has completed a sizeable amount of work reviewing the occupational health and safety regimes of each jurisdiction. It has identified points of similarity and departure between the regimes and has put together a list of key elements across the States and Territories, with a view to compiling core principles to be implemented by all jurisdictions.

Despite the change of federal government in 2007, the issue of achieving uniformity of OHS laws across the Australian jurisdictions continues to be a matter of active consideration for intergovernmental discussion and agreement through COAG. However, there is likely to be a revised approach, with model legislation mooted as the preferred vehicle, and an independent body to replace the ASCC in completing this work.

3. *A national system of control for chemicals and plastics*

At its meeting of 10 February 2006, COAG decided that it would-

‘... establish a ministerial taskforce, with each jurisdiction nominating one responsible Minister, to develop measures to achieve a streamlined and harmonised system of national chemicals and plastics regulation, and reporting progress to COAG by mid 2006 (Decision 5.8, Attachment B, 10 February 2006 COAG communiqué).’

The Australian Government provided the Productivity Commission with terms of reference on 27 June 2007. The Productivity Commission will-

- investigate the degree to which Australian regulations diverge from overseas standards;
- examine the existing regulatory arrangements for security sensitive ammonium nitrate;
- examine the interrelationships between the different tiers of government in Australia - Australian, state and territory and local - and identify any inconsistencies and duplication;
- make recommendations for reforms to regulations and regulatory arrangements to enhance national uniformity and consistency,

streamline data requirements and assessment processes; and consider alternatives to regulation.

The Productivity Commission has been asked to recommend reforms to the current system of the regulation of chemicals and plastics, including options to enhance national uniformity and consistency, streamline data requirements and assessment processes, and use alternatives to regulation.

The Dangerous Substances (General) Regulation 2004

The Dangerous Substances (General) Regulation 2004 (the General Regulation) establishes a performance-based approach to the management of the control of substances that pose a risk to the health of people or of harm to property or the environment through the principles of hazard identification, risk assessment and risk control.

Chapter 2 applies to dangerous goods classes 2, 3, 4, 5, 6.1, 8 and 9, C1 and C2 combustible liquids and 'goods too dangerous to be transported'. Radioactive substances (class 7) and infectious substances (class 6.2) are covered by other ACT laws.

The transport of dangerous goods in the ACT is regulated through the *Road Transport Reform (Dangerous Goods) Act 1995* (Cwlth). The requirements apply to manufacturers, importers and suppliers of dangerous substances where these activities are carried out in a business or commercial context.

There are specific duties with which each of these groups must comply. These duties include-

- correctly classifying the substance;
- ensuring that it is in a safe condition for handling, and properly packed and labelled;
- storing the substance safely with proper signage; and
- keeping proper records and safety information.

In addition to the requirement for a formal review specified in section 224 of the Act, the General Regulation has been and is subject to on-going review. Recent outcomes of this process are described below.

Asbestos

Chapter 3 deals with the management of asbestos and asbestos products. In 2007 the General Regulation was amended to require that non-residential premises must have an asbestos management plan that identifies asbestos, if any, on the premises, the risks posed by the asbestos present, and the measures adopted to control any such risks.

Adoption and enforcement of National Standards

Currently the General Regulation is directed at regulating the transport of dangerous goods and substances. The policy intention is to amend the General Regulation to provide also for measures for the minimization of the risk to the health of people due to exposure to dangerous substances handled in workplaces.

The General Regulation will implement the NOHSC Hazardous Substances Regulatory Framework as it applies to the control of substances which are scheduled carcinogenic substances, inorganic lead, synthetic mineral fibres or generally hazardous at premises where they are handled in trade or commerce.

The National Occupational Health and Safety Commission (which has been replaced by the Australian Safety and Compensation Council (ASCC)) issued the following list, model regulations, standards and codes that will form the basis of the amending regulation.

- *List of Hazardous Substances* [NOHSC: 10005 (1999)];
- the *National Model Regulations for the Control of Workplace Hazardous Substances* [NOHSC: 1005(1994)] (currently an approved code of practice, see DI2006-193) and
- Part 2 of the HS Standard, the *National Model Regulations for the Control of Workplace Hazardous Substances - Scheduled Carcinogenic Substances* [NOHSC:1011(1995)];
- the *National Code of Practice to Control Workplace Hazardous Substances* [HOHSC: 2007) 1994)];
- the *National Standard for the Control of Inorganic Lead at Work* [NOHSC:1012 (1994)];
- the *National Code of Practice for the Control and Safe Use of Inorganic Lead at Work* [NOSSC:2015 (1994)];
- the *National Standard for Synthetic Mineral Fibres* [NOHSC:1004 (1990)];
- the *National Code of Practice for the Safe Use of Synthetic Mineral Fibres* [NOHSC:2006 (1990)]; and
- the *National Code of Practice for the Preparation of Material Safety Data Sheets* {NOHSC: 2012 (1994)}.

Currently these Standards apply in the ACT as codes of practice. By transferring the content of the Standards to the General Regulation, compliance by manufacturers, suppliers, persons in control of premises and employers will become enforceable under the Act.

The ASCC has issued the *Draft National Standard and Code of Practice for the Control of Workplace Hazardous Chemicals* which, in due course, is intended to replace the HS Standard and the *National Standard for the Storage and Handling of Workplace Dangerous Goods* [NOHSC: 1015(2001)].

It is intended that the aspects of the *National Model Regulations for the Control of Workplace Hazardous Substances* (other than those aspects that should be given effect in codes of practice) suitable for application in the ACT be provided for and made enforceable in regulations under the Act. The criteria for suitability of application in the ACT would be whether a workplace in the ACT might handle a dangerous substance and the seriousness of the possible risk arising from that handling.

It is intended that the Regulation will apply to all hazardous substances, to all workplaces in which hazardous substances are handled and to all persons who might be exposed to hazardous substances in their places of work.

Substances that are exempt from the national model regulations where their use is not related to work activity are:

- (a) food and beverages within the meaning of the Food Standards;
- (b) therapeutic agents;
- (c) cosmetics;
- (d) tobacco or products made of tobacco; and
- (e) toiletries and toilet products.

The General Regulation will continue to be reviewed as national projects progress.

The Dangerous Substance (Explosives) Regulation 2004

The Dangerous Substance (Explosives) Regulation 2004 (the Explosives Regulation) incorporates the Australian Explosives Code, and regulates all activities in the ACT associated with the import, manufacture, supply, use, transport and disposal of explosives, including fireworks.

The Australian Code for the Transport of Explosives by Road and Rail is a nationally agreed document that provides a uniform basis for Commonwealth, State and Territory legislation governing the transport of explosives. It complements the Australian Code for the Transport of Dangerous Goods by Road and Rail. The latter Code is incorporated into the *Road Transport Reform (Dangerous Goods) Act 1995* (Cth) which currently applies to the transport of dangerous goods in the Territory.

The Explosives Regulation establishes a system of explosives-related licensing. Licences are required to manufacture, import, transport (drivers and vehicles), store (persons who store and storage facilities), supply, and use (shotfirers and fireworks display operators). Permits are required to use blasting explosives or to mount a fireworks display.

The Explosives Regulation includes provisions for the authorisation and management of fireworks displays and for theatrical productions and other events such as sporting events or events of a cultural nature. The Explosives Regulation also regulates the supply, storage, sale, possession and discharge of *consumer* fireworks.

The sale and use of 'consumer fireworks'

Part 3.3 of Chapter 3 of the Explosives Regulation provides for the regulation of 'consumer fireworks'. The sale and discharge of these fireworks is limited to the week leading up to and including the Queen's Birthday Public Holiday weekend in June. It is illegal to possess consumer fireworks outside 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 10:00pm on the Saturday, Sunday and Monday of the Queen's Birthday weekend. This regime has been in place since 2004. The current regulation allowing for the sale and discharge of consumer fireworks by members of the public is discussed at pages 23 to 29 of the Discussion Paper at Attachment 1.

A majority of the 38 submissions received in relation to this matter were against the sale to, and discharge of fireworks by, members of the public. The reasons given included the noises accompanying the discharge of fireworks, the effect of the noises on animals, the danger to people and animals of the uncontrolled use of explosives in residential areas, the damage to property and the antisocial and illegal conduct in the misuse of fireworks that occurs, including the apparent inability of the authorities to control this conduct.

Two public meetings were held in November 2007 to discuss the issues around the use of consumer fireworks, 58 members of the community attended the first meeting and 56 attended the second meeting. At both meetings, a panel of representatives from agencies and industry led a discussion of the issues for and against the availability to the public of consumer fireworks. At both meetings a wide range of issues was raised that were consistent with the findings of the telephone and on-line surveys. These are outlined below under the *Community engagement* heading. Importantly, there was no majority view that dominated the discussion.

The review was highlighted as a 'Hot Topic' on the ACT's website, and was signposted on the ACT WorkCover website. These notices advised of the availability of the Discussion Paper electronically and, in hard copy, from the Office of Industrial Relations. The Discussion Paper was also mailed to 35 agencies and stakeholders. A dedicated email address was created to enable submissions to be sent electronically.

Community engagement

Coinciding with the release of the discussion paper, and given the community interest in the consumer fireworks regime regulated under the Act, a separate extensive consultation process was undertaken to ascertain community opinion on fireworks. An independent market research consultant was engaged to develop and deliver an appropriate community engagement strategy. The following community engagement tools were undertaken during September - December 2007 to gauge public opinion and to ensure all views, concerns and ideas were heard.

- An on-line survey featuring a number of questions on consumer fireworks allowing any member of the community to ‘have their say’ in a straight forward and efficient manner; and
- A quantitative telephone survey involving a representative 1,000 sample of the Canberra population (18+ years).

In summary the main findings of the consultant’s report are as follows.

- Responses were about evenly divided as to whether the public should or should not be able to buy and use consumer fireworks.
- The most common arguments in support of fireworks were that they are spectacular, great for children, professionally organised and bring community/families together.
- The most common arguments against fireworks were that they upset/harm animals and wildlife, are disorganised and dangerous, are used at inappropriate times and are noisy and disturbing.
- Both surveys revealed three in 10 people have used fireworks themselves and/or attended a gathering involving fireworks.
- Just over half the number of respondents (51% of phone survey respondents and 56% of internet respondents) do not support the continued sale of consumer fireworks to the public over the 8-day period for use over the Queen’s Birthday weekend.
- A higher number of respondents (59% of phone survey respondents and 57% of internet respondents) do not support the continued use of consumer fireworks by the public over the 3 nights of the Queen’s Birthday weekend.
- The main other conditions or restrictions that people would place on the sale of fireworks in the ACT include enforcing the age limit more strictly, restricting sale only to professionals, licensed operators and permit holders, limiting the quantity each person can buy and limiting the size, power and explosive content of the fireworks.

A full copy of the consultant’s report - *Research on the ACT’s Consumer Fireworks Regime* is at Attachment 3. Note that the consultant’s report is in draft form, even though the data presented on outcomes from the surveys are final and complete. This is because, following the review, the same consultant is engaged to conduct focus groups on possible changes to the consumer fireworks regime. The outcomes will be added to the Consultant’s draft Report for the Government to consider in deciding any future legislative amendments.

The focus groups will consist of randomly selected members of the ACT community with various views. There will also be one focus group convened of members of the fireworks industry only.