

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

**DANGEROUS SUBSTANCES (EXPLOSIVES) AMENDMENT REGULATION
2009 (No. 2)**

Subordinate Law No SL2009-43

EXPLANATORY STATEMENT

Circulated by the authority of
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Background

The Dangerous Substances (Explosives) Amendment Regulation 2009 (No 2) (The Regulation) amends the Dangerous Substances (Explosives) Regulation 2004 to ban the use of fireworks by members of the public. The use of fireworks by the public on the Queen's birthday weekend will no longer be permitted. Retailers will no longer be able to sell fireworks to the public.

The amendments mean that fireworks may now only be brought into the ACT and used by licensed operators for authorised displays.

However, this amendment does not affect the public's use of a class of fireworks called general use fireworks. These are items containing very small quantities of explosives or pyrotechnic substances. They include sparklers, bon bons (Christmas crackers) and party poppers.

The Regulation repeals infringement notice offences in the Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004 that are associated with the repealed Queen's birthday firework use provisions. It also introduces an infringement notice offence for an unlicensed person to use certain fireworks.

Notes on Specific Provisions

Clause 1 Name of regulation

This clause provides that the name of the Regulation is the Dangerous Substances (Explosives) Amendment Regulation 2009 (No 2).

Clause 2 Commencement

This clause provides for commencement of this Regulation to be on the day after the notification day of this Regulation.

Clause 3 Legislation amended

This clause provides that this Regulation amends the Dangerous Substances (Explosives) Regulation 2004.

Clause 4 Section 25 (2)

This clause removes the reference to 'consumer fireworks' and is redrafted to retain "general use fireworks".

Clause 5 Section 28

This clause omits the section, which defines 'Queen's birthday supply'.

Clause 6 and 7 Section 34 (2) (g) and 34 (5)

These clauses omit provisions about the packaging and labelling of consumer fireworks registered for Queen's birthday supply and retain as section 34(5) the present section 34(5)(a).

Clause 8 Division 2.2.4

This clause omits the division (sections 37-40) which deals with the registration of fireworks for supply during the Queen's birthday weekend.

Clause 9 Section 43 (b)

This clause omits a provision about packaging, labelling and safety instructions.

Clause 10 Section 100 example

This clause omits an example referring to consumer fireworks.

Clause 11 Section 123, table 123, items 8 and 9

This clause omits items from Table 123 about the storage of consumer fireworks.

Clause 12 Section 125 (1), note

This clause omits from the note references to storage of consumer fireworks.

Clause 13 Section 166 (b)

This clause omits a provision about the retail supply of consumer fireworks.

Clause 14 Section 171

This clause omits references to the retail supply of consumer fireworks but retains a provision about general use fireworks.

Clause 15 Section 178 (2) (c)

This clause omits a reference to consumer fireworks.

Clause 16 Part 3.1, note

This clause amends the note to substitute 'controlled fireworks' for 'consumer fireworks'.

Clause 17 and 18 Section 260 and table 260 heading

These clauses omit 'consumer fireworks' and bring in a class of 'controlled fireworks', having similar explosive qualities to consumer fireworks.

Clause 19 Part 3.3

This clause omits sections 264-297, including 19 strict liability offences, relating to the advertising, supply, storage and use of consumer fireworks for the Queen's birthday weekend period.

This clause omits section 295, a strict liability offence prohibiting the use of consumer fireworks outside the Queen's birthday weekend period, but preserves it in the new section 264. This makes it a strict liability offence for an unlicensed person to use controlled fireworks at any time with a penalty of 30 penalty units (\$3,000 for an individual), with the option of an infringement notice of \$600.

This permits law enforcement bodies the discretion to charge a person with a much lower-level offence, or to issue an infringement notice, where an unlicensed individual is apprehended using relatively low intensity fireworks. Currently it is an offence under section 79 of the *Dangerous Substances Act 2004* for an unauthorized person to use a dangerous substance. The penalties are 2,500 penalty units (\$250,000 for an individual) and 10 years imprisonment for a prohibited dangerous substance or 750 units (\$75,000 for an individual) and 3 years imprisonment for a controlled dangerous substance.

The penalties under the new section 264 are the same as those that previously applied to the use of consumer fireworks outside the Queen's birthday period. The offence meets the criteria for a strict liability offence as:

- The circumstances in which this offence will apply are very narrow.
- The offence does not attract a penalty of imprisonment.
- Explosives, including fireworks, are subject to a strict licensing regime.
- There is high community awareness that the possession and use of fireworks without a permit or licence is illegal.
- The lack of availability for public sale and the risk engendered by fireworks use would generally alert a reasonable person to the probability that firework use would be regulated.

Clause 20 Section 298(2) except note

This clause is redrafted to omit a reference to the use of a consumer firework.

Clause 21 Section 302 heading

This clause omits "consumer" from the heading. It has no substantive effect.

Clause 22 Schedule 1

This clause omits the schedule setting out standards for consumer fireworks.

Clauses 23 Dictionary, note 3

This clause omits a reference to section 265, which is about the supply of consumer fireworks.

Clauses 24-26 Dictionary, definitions including new definition of *controlled firework*

These clauses omit definitions relating to consumer fireworks licensing, use and supply and insert a new definition of '*controlled firework*'.

Clause 27 Magistrates Court (Dangerous Substances Infringement Notices) Regulation 2004, schedule 1, part 1.2, items 48 to 87.

This clause omits infringement notice offences relating to the sale, use and storage of consumer fireworks over the Queen's birthday weekend period. It also introduces an infringement notice offence for the unlicensed use of a controlled firework. That offence replaces an offence of using a consumer firework outside the Queen's birthday period (see clause 19).