



Australian Capital Territory

Dangerous Goods (Asbestos) Amendment Regulations 2003 (No 1)

Subordinate Law SL2003-50

The Australian Capital Territory Executive makes the following regulations under the *Dangerous Goods Act 1975*.

Dated 19 December 2003.

KATY GALLAGHER
Minister

SIMON CORBELL
Minister



Australian Capital Territory

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1 Name of regulations

These regulations are the *Dangerous Goods (Asbestos) Amendment Regulations 2003 (No 1)*.

2 Commencement

These regulations commence on 31 December 2003.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

These regulations amend the *Dangerous Goods Regulations 1978*.

4 New part 11

insert

Part 11 Asbestos and asbestos products

Division 11.1 Preliminary

295 Object of pt 11

The object of this part is to protect people against the risk of asbestos-related disease resulting from exposure to airborne asbestos fibres.

296 Definitions for pt 11

In this part:

asbestos means the fibrous form of the mineral silicates belonging to the serpentine and amphibole groups of rock-forming minerals, including the following:

- (a) actinolite;
- (b) amosite (brown asbestos);
- (c) anthophyllite;
- (d) crocidolite (blue asbestos);
- (e) chrysotile (white asbestos);
- (f) tremolite.

asbestos product means anything that contains asbestos.

authorised activity, for asbestos or an asbestos product—see regulation 297 (1).

authorised activity condition, for an authorised activity for asbestos or an asbestos product—see regulation 297 (2).

chrysotile product means the chrysotile form of asbestos, and includes anything that contains chrysotile.

correctly packed and labelled—asbestos or an asbestos product is **correctly packed and labelled** if—

- (a) it is packed in a way that minimises the possibility of the release into the environment of airborne asbestos fibres; and
- (b) the package is clearly labelled to identify that the package contains asbestos or an asbestos product.

exemption means an exemption under regulation 306.

hazard means a thing (including an intrinsic property of a thing), or a situation, with potential to—

- (a) kill or cause harm to a person; or
- (b) damage property or the environment.

risk means the likelihood of death or harm to a person, or damage to property or the environment, from a hazard.

substance includes a matter, material or thing, whether solid, liquid or gas or in a mixture.

vehicle includes an aircraft.

297 Meaning of *authorised activity* and *authorised activity condition*

- (1) For this part, each of the following is an ***authorised activity*** for asbestos or an asbestos product:
 - (a) genuine scientific research in relation to the asbestos or asbestos product;
 - (b) the sampling of a substance for identifying the kind or quantities of ingredients in the substance;
 - (c) carrying out demonstrations, education or practical training in relation to the asbestos or asbestos product.
- (2) For this part, each of the following is an ***authorised activity condition*** for an authorised activity for asbestos or an asbestos product:
 - (a) the asbestos or asbestos product must be the minimum quantity practicable for the activity;
 - (b) the asbestos or asbestos product must be correctly packed and labelled;

- (c) the asbestos or asbestos product must be used in a way that minimises the possibility of the release into the environment of airborne asbestos fibres.

Division 11.2 Prohibitions relating to asbestos and asbestos products

Note 1 A breach of these regulations is an offence (see reg 31).

Note 2 The Criminal Code, ch 2 applies to an offence against part 11 of these regulations (see Code, pt 2.1).

298 Prohibition on import of asbestos and asbestos products

- (1) A person must not import asbestos or an asbestos product.
- (2) Subregulation (1) does not apply to a person if—
 - (a) the person imports asbestos or an asbestos product for an authorised activity; and
 - (b) the person complies with the authorised activity conditions.
- (3) Also, subregulation (1) does not apply to a person in relation to a chrysotile product if—
 - (a) the person imports the chrysotile product under an exemption; and
 - (b) the chrysotile product is correctly packed and labelled.
- (4) In this regulation:

import means import into the ACT.

299 Prohibition on manufacture of asbestos products

A person must not manufacture an asbestos product.

300 Prohibition on supply of asbestos and asbestos products

- (1) A person must not supply asbestos or an asbestos product to someone else.
- (2) Subregulation (1) does not apply to a person if—
 - (a) the person supplies to someone else a building, structure, plant or vehicle with asbestos or an asbestos product fixed in place; and
 - (b) the asbestos or asbestos product was fixed in place before 31 December 2003; and
 - (c) the asbestos or asbestos product is fixed in a way that does not cause a risk unless it is disturbed.
- (3) Also, subregulation (1) does not apply to a person if—
 - (a) the person supplies asbestos or an asbestos product to someone else for disposal and the asbestos or asbestos product is correctly packed and labelled; or
 - (b) the person (the *supplier*) supplies asbestos or an asbestos product to someone else for an authorised activity and the supplier complies with the authorised activity conditions; or
 - (c) the person supplies asbestos in its natural form in minimal quantities in another mineral to someone else and the presence of the asbestos is incidental to the purpose of disturbing or extracting the other mineral.
- (4) Further, subregulation (1) does not apply to a person (the *supplier*) if the supplier supplies a chrysotile product to someone else under an exemption and the chrysotile product is correctly packed and labelled.
- (5) Subregulation (4), and this subregulation, expire on 31 December 2007.

(6) In this regulation:

supply includes sell.

Note For the meaning of *sell*, see the Act, dictionary.

301 Prohibition on storage of asbestos and asbestos products

- (1) A person must not store asbestos or an asbestos product.
- (2) Subregulation (1) does not apply to a person if—
 - (a) the person stores asbestos or an asbestos product that has been removed from a building, structure, plant or vehicle (the *waste*); and
 - (b) the waste is correctly packed and labelled; and
 - (c) the person disposes of the waste as soon as practicable after the person comes into possession of the waste.
- (3) Also, subregulation (1) does not apply to a person if—
 - (a) the person stores asbestos or an asbestos product for an authorised activity and the person complies with the authorised activity conditions; or
 - (b) the person stores asbestos in its natural form in minimal quantities in another mineral and the presence of the asbestos is incidental to the purpose of disturbing or extracting the other mineral.
- (4) Further, subregulation (1) does not apply to a person if the person stores a chrysotile product under an exemption and the chrysotile product is correctly packed and labelled.
- (5) Subregulation (4), and this subregulation, expire on 31 December 2007.

302 Prohibition on the use of asbestos and asbestos products

- (1) A person must not use asbestos or an asbestos product.
- (2) Subregulation (1) does not apply to a person if—
 - (a) the person uses a building, structure, plant or vehicle with asbestos or an asbestos product fixed in place; and
 - (b) the asbestos or asbestos product was fixed in place before 31 December 2003; and
 - (c) the asbestos or asbestos product is fixed in a way that does not cause a risk unless it is disturbed.
- (3) Also, subregulation (1) does not apply to a person if—
 - (a) the person uses asbestos or an asbestos product for an authorised activity and the person complies with the authorised activity conditions; or
 - (b) the person uses asbestos in its natural form in minimal quantities in another mineral and the presence of the asbestos is incidental to the purpose of disturbing or extracting the other mineral.
- (4) Further, subregulation (1) does not apply to a person if the person uses a chrysotile product under an exemption and the chrysotile product is used in a way that minimises the possibility of the release into the environment of airborne asbestos fibres.
- (5) Subregulation (3), and this subregulation, expire on 31 December 2007.

303 Prohibition on the re-use of asbestos and asbestos products

- (1) A person must not re-use asbestos or an asbestos product.
- (2) Subregulation (1) does not apply to a person if the person re-uses a chrysotile product under an exemption and the chrysotile product is re-used in a way that minimises the possibility of the release into the environment of airborne asbestos fibres.
- (3) Subregulation (2), and this subregulation, expire on 31 December 2007.
- (4) In this regulation:

re-use, for asbestos or an asbestos product, means using the asbestos or asbestos product after the asbestos or asbestos product has been removed from a building, structure, plant or vehicle, whether the re-use is for the same or a different purpose.

Note When a fixed or installed asbestos product needs to be replaced, a non-asbestos containing material alternative must be used (unless the person holds an exemption for the use).

304 Prohibition on the installation of asbestos and asbestos products

- (1) A person must not install asbestos or an asbestos product into a building, structure, plant or vehicle.
- (2) To remove any doubt, a person must not replace part of a building, structure, plant or vehicle with asbestos or an asbestos product, whether the part replaced is asbestos or an asbestos product.

Note When a fixed or installed asbestos product needs to be replaced, a non-asbestos containing material alternative must be used (unless the person holds a chrysotile exemption for the use).

- (3) Subregulations (1) and (2) do not apply to a person if the person installs a chrysotile product under an exemption and the chrysotile product is installed in a way that minimises the possibility of the release into the environment of airborne asbestos fibres.
- (4) Subregulation (3), and this subregulation, expire on 31 December 2007.

Division 11.3 Chrysotile product exemptions

305 Applications for exemptions for chrysotile products

- (1) A person may apply in writing to the chief executive for an exemption that authorises the person to import, supply, store, use, re-use or install (the *proposed activity*) a chrysotile product for a use mentioned in table 26, column 2.

Note 1 If a form is approved under the Act, s 45 for an application, the form must be used.

Note 2 A fee may be determined under the Act, s 46 for this regulation.

- (2) An application for an exemption must state—
 - (a) the applicant's name and any business name used by the applicant; and
 - (b) the applicant's address and telephone number; and
 - (c) the proposed activity to which the application relates; and
 - (d) the category of chrysotile product to which the application relates; and
 - (e) the amount of chrysotile product to which the application relates; and
 - (f) the address of the premises where the applicant will, if the exemption is granted, carry out activities under the exemption; and

- (g) if a person other than the applicant will be the person immediately involved in the activity authorised by the exemption—the name, address and telephone number of that person; and
 - (h) the measures that the applicant will take, if the exemption is granted, to control the risks resulting from the use of the chrysotile product; and
 - (i) if the proposed activity is the use, re-use or installation of a chrysotile product—the name, address and telephone number of anyone who the applicant proposes will import, supply or store the chrysotile product for the applicant.
- (3) The chief executive need not decide the application if it does not include the required information and documents.
- (4) This subregulation, and table 26, item 2, expire on 31 December 2004.
- (5) This subregulation, and table 26, items 1 and 4, expire on 31 December 2006.
- (6) In this regulation:

Australian code means the *Australian Code for the Transport of Dangerous Goods by Road and Rail*, published by the Commonwealth, 6th edition as in force on 31 December 2003.

Note The Australian code is mentioned in table 26, item 2.

category of chrysotile product means the category mentioned table 26, column 3.

Table 26 Exempt chrysotile product uses

column 1 item	column 2 uses for which exemption may be granted	column 3 category	column 4 latest date exemption may end
1	Use of chrysotile product in a compressed asbestos fibre gasket that is for use with chlorine in a plant used in liquid chlorine service with design process conditions of— 45°C and 1 500kPa	1	31 December 2006
2	Use of chrysotile product in a compressed asbestos fibre gasket that is for use with— (a) saturated steam; or (b) superheated steam; or (c) substances that are classified as dangerous goods (as defined in the Australian code)	1	31 December 2004
3	Use of chrysotile product in a product that consists of a mixture of asbestos with a phenol formaldehyde resin or with a cresylic formaldehyde resin used in: (a) a vane for rotary vacuum pumps; or (b) a vane for rotary compressors; or (c) a split face seal of at least 150mm in diameter used to prevent leakage of water from cooling water pumps in fossil fuel electricity generating stations	2	31 December 2007

Regulation 4

column 1 item	column 2 uses for which exemption may be granted	column 3 category	column 4 latest date exemption may end
4	Use of chrysotile product in a diaphragm for use in an electrolytic cell in an existing electrolysis plant for chlor-alkali manufacture	3	31 December 2006
5	Use of chrysotile product in relation to which an exemption under the <i>Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994</i> (Cwlth) has been granted to the Department of Defence or the Australian Defence Force for mission-critical parts or components of plant	4	31 December 2007

Note The categories in the table, column 3 reflect the exemption numbering in the NOHSC model regulations, schedule 2 mentioned in reg 306 (5).

306 Decision on application for exemption

- (1) The chief executive must grant an exemption authorising a person to use, re-use or installation a chrysotile product if the chief executive is satisfied that—
- (a) the use, re-use or installation is for a use (the *authorised use*) mentioned in table 26, column 2; and
 - (b) the authorised use is essential to the applicant's activities; and
 - (c) the person has in place appropriate measures to control the risks resulting from the use of the chrysotile product; and
 - (d) the person will be able to comply with the condition mentioned in regulation 307 (3); and

- (e) the giving of the exemption is consistent with the object of this part.
- (2) The chief executive must refuse to grant an exemption authorising a person to use, re-use or install a chrysotile product if the chief executive is not satisfied about the matters mentioned in subregulation (1).
- (3) The chief executive must grant an exemption authorising a person to import, supply or store a chrysotile product if the chief executive is satisfied that—
 - (a) the import, supply or storage of the chrysotile product is for a use mentioned in table 26, column 2; and
 - (b) the use has been, or will be, authorised under an exemption; and
 - (c) the person has in place appropriate measures to control the risks resulting from the import, storage or supply of the chrysotile product; and
 - (d) the giving of the exemption is consistent with the object of this part.
- (4) The chief executive must refuse to grant an exemption authorising a person to import, supply or store a chrysotile product if the chief executive is not satisfied about the matters mentioned in subregulation (3).
- (5) In making a decision under this regulation, the chief executive may have regard to the notes mentioned in the *National Model Regulations for the Control of Workplace Hazardous Substances*, schedule 2, approved by the National Occupational Health and Safety Commission under the *National Occupational Health and Safety Commission Act 1985* (Cwlth), as in force on 31 December 2003.

307 Conditions of exemptions

- (1) The chief executive may include conditions in an exemption to protect people against the risk of asbestos-related disease resulting from exposure to airborne asbestos fibres.
- (2) An exemption is subject to—
 - (a) any conditions included in the exemption by the chief executive; and
 - (b) for an exemption that authorises a person to use a chrysotile product—the exemption stated in subregulation (3).
- (3) An exemption that authorises an exemption-holder to use a chrysotile product is subject to the condition that the exemption-holder tells the chief executive, in writing, as soon as the person becomes aware that the use authorised by the exemption is no longer essential to the person's activities.

308 Term of exemption

The chief executive may only grant an exemption for a period that ends on or before the day stated in table 26, column 4 that relates to the exemption.

309 Exemption not transferable

An exemption is not transferable.

310 Form of exemption

- (1) An exemption must show the following information:
 - (a) the full name of the exemption-holder;
 - (b) the premises where the holder is authorised to carry out activities under the exemption;
 - (c) the activities authorised by the exemption;

- (d) any conditions included in the exemption by the chief executive;
 - (e) a unique identifying number;
 - (f) when the exemption ends.
- (2) If the exemption authorises a person to use a chrysotile product, the exemption must state the conditions mentioned in regulation 307 (3).
- (3) An exemption may also include any other information the chief executive considers appropriate.

311 Operation of an exemption

- (1) An exemption begins on—
- (a) the day on which it is granted; or
 - (b) if a later date is stated in the exemption—the later date.
- (2) The chief executive must cancel an exemption if—
- (a) satisfied that continuing the exemption would be inconsistent with the object of this part; or
 - (b) the person to which the exemption relates asks the chief executive to cancel it.
- (3) An exemption is in force until the end of the term stated in the exemption under regulation 308 (Term of exemption) unless cancelled before the end of the term.

312 Compliance with exemptions

A person to whom an exemption has been granted must comply with the exemption (including any conditions to which the exemption is subject).

313 Exemption—application to amend by exemption-holder

- (1) An exemption-holder may apply to the chief executive to amend the exemption.

Examples of amendments

- 1 to amend or revoke a condition included in the exemption by the chief executive
- 2 to change the premises where activities may be carried out under the exemption

Note 1 If a form is approved under the Act, s 45 for an application, the form must be used.

Note 2 A fee may be determined under the Act, s 46 for this regulation.

Note 3 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) The chief executive must amend the exemption if, assuming that the application to amend were an application under regulation 306 (Decision on application for exemption) for an exemption that included the proposed amendment, the chief executive would be required to grant the exemption.
- (3) If subsection (2) does not apply, the chief executive must refuse the application to amend the exemption.

314 Cancellation of exemption or imposition etc of conditions on chief executive's initiative

- (1) This section applies to an exemption-holder if the chief executive proposes, on the chief executive's own initiative, to do any of the following (the *proposed action*):
- (a) cancel the exemption;
 - (b) amend the exemption to impose a condition;

- (c) amend or revoke a condition included in the exemption by the chief executive.
- (2) The chief executive must give the exemption-holder a written notice stating—
 - (a) the proposed action; and
 - (b) if the proposed action is to cancel the exemption—any action that the exemption-holder may take to avoid the cancellation of the exemption; and
 - (c) if the proposed action is to impose a condition—the proposed condition; and
 - (d) if the proposed action is to amend a condition—the condition as proposed to be amended; and
 - (e) an explanation for the proposed action; and
 - (f) that the exemption-holder may, within 14 days after the day the exemption-holder receives the notice, give a written response to the chief executive about the notice.
 - (3) In deciding whether to take the proposed action, the chief executive must consider any response given to the chief executive in accordance with the notice.
 - (4) If the chief executive is satisfied that a reasonable ground exists for taking the proposed action, the chief executive may take the proposed action.
 - (5) The chief executive must give the exemption-holder written notice of the chief executive's decision.
 - (6) If the chief executive decides to take the proposed action, the chief executive's decision takes effect 14 days after the day when notice of the decision is given to the exemption-holder or, if the notice states a later date of effect, that date.

- (7) If the exemption is amended, the chief executive must, as soon as practicable after the exemption has been returned to the chief executive, amend the exemption or give the exemption-holder a replacement exemption showing the amendment.

315 Expiry of div 11.3

- (1) This division expires on 31 December 2007.
- (2) Also, regulation 296, definitions of *chrysotile product* and *exemption*, and the dictionary definitions of these terms, expire on 31 December 2007.

5 Review Regulation 374 (1) (j)

substitute

- (j) issuing a shopgoods fireworks purchasers permit subject to conditions under regulation 57 (3); and
- (k) refusing to issue an exemption under regulation 306 (2) or (4); and
- (l) issuing an exemption under regulation 306 (1) or (3) subject to a condition imposed by the chief executive; and
- (m) refusing to amend an exemption under regulation 313 (2); and
- (n) cancelling an exemption under regulation 314 (4); and
- (o) imposing, amending or revoking a condition for an exemption under regulation 314 (4).

6 Dictionary, new definitions

insert

asbestos, for part 11 (Asbestos and asbestos products)—see regulation 296.

asbestos product, for part 11 (Asbestos and asbestos products)—see regulation 296.

7 Dictionary, definition of *Australian code*

substitute

Australian code means—

- (a) for regulation 305 (Applications for exemptions for chrysotile products)—see regulation 305 (6); and
- (b) in any other case—the Australian code for the *Transport of Dangerous Goods by Road and Rail* as published in the *Commonwealth of Australia Gazette* No P 15 of 7 April 1987.

8 Dictionary, new definitions

insert

authorised activity, for asbestos or an asbestos product, for part 11 (Asbestos and asbestos products)—see regulation 297 (1).

authorised activity condition, for an authorised activity for asbestos or an asbestos product, for part 11 (Asbestos and asbestos products)—see regulation 297 (2).

chrysotile product, for part 11 (Asbestos and asbestos products)—see regulation 296.

correctly packed and labelled, for asbestos or an asbestos product, for part 11 (Asbestos and asbestos products)—see regulation 296.

exemption, for part 11 (Asbestos and asbestos products)—see regulation 296.

hazard, for part 11 (Asbestos and asbestos products)—see regulation 296.

risk, for part 11 (Asbestos and asbestos products)—see regulation 296.

substance, for part 11 (Asbestos and asbestos products)—see regulation 296.

vehicle, for part 11 (Asbestos and asbestos products)—see regulation 296.

Endnotes

1 Notification

Notified under the Legislation Act on 22 December 2003.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.
