



# WORKSAFE ACT

Dangerous Substances Act 2004



## Disclaimer

This Guide provides general information about the obligations of persons conducting a business or undertaking and/or persons in control of premises and workers under the Work Safety Act 2008. The Guide gives some suggestions for complying with these obligations. However, this Guide is not intended to represent a comprehensive statement of the law as it applies to particular problems or to individuals or as a substitute for legal advice. Full details of legal obligations and responsibilities are set out in the Work Safety Act 2008 referred to in this Guide. If you refer to the legislation you should take care to ensure that you use the most up-to-date version, available from [www.legislation.act.gov.au](http://www.legislation.act.gov.au). You should seek legal advice if you need assistance on the application of the law to your situation.

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# WORKSAFE ACT

## Dangerous Substances Act 2004

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# A GUIDE TO THE DANGEROUS SUBSTANCES ACT 2004

The ACT Legislative Assembly has passed the *Dangerous Substances Act 2004* (the Act) to protect:

- people
- property
- the environment

from the hazards of dangerous substances.

The intention of the Act, together with the *Dangerous Substances (General) Regulation 2004* and the *Dangerous Substances (Explosives) Regulation 2004* is to:

- eliminate or minimise as far as possible the hazards associated with dangerous substances and
- regulate those who may bring into the ACT, and then subsequently store and use, dangerous substances.

This booklet is a guide to the main features of the legislation. However, it does not deal with the control and use of fireworks.

The law is as stated at 1 April 2005.

## Disclaimer

The information provided in this publication is designed to address the most commonly raised issues in the workplace relating to the Dangerous Substances Act 2004. This publication is intended to provide a summary of the subject matter covered. It does not purport to be comprehensive or to render legal advice. No reader should act on the basis of any matter contained in this publication without first obtaining specific professional advice.

## What Is A Dangerous Substance?

If you are selling or handling substances that carry the symbols on page 7, then you are dealing with dangerous substances and the Act applies to you.

Otherwise, substances<sup>1</sup> that:

- can be classified as an explosive substance or an explosive article under the Australian Explosives Code<sup>2</sup>
- are listed in either Appendix 1 or Appendix 2 of the Australian Explosives Code
- can be classified as a dangerous good under the Australian Dangerous Goods Code<sup>3</sup>
- are listed as a dangerous good, or too dangerous to be transported, in Appendices 1, 2 or 5 of the Australian Dangerous Substances Code
- are listed as a “combustible liquid” under the Australian Standard 1940
- can be classified under the Approved Criteria for Classifying Hazardous Substances, published by the National Occupational Health and Safety Commission
- are listed as a hazardous substance under the List of Designated Hazardous Substances approved by the National Occupational Health and Safety Commission or
- contain one or more solid or liquid substances (or a mixture of substances) that are capable of a chemical reaction producing gas at a temperature,

1 For the purposes of the Act, a “substance” includes a matter, material or thing, whether solid, liquid or gas or in a liquid.

2 Also known as the Australian Code for the Transport of Explosives by Road and Rail.

3 Also known as the Australian Code for the Transport of Dangerous Substances by Road and Rail.

pressure, and speed, that causes damage to the surroundings (including a pyrotechnic substance, even if it does not evolve gas)<sup>4</sup>,

are dangerous substances and are regulated under the Act.

However:

- infectious substances, as defined by the *Clinical Waste Act 1990* and
- radioactive substances, as defined by the *Radiation Act 1983* are not regulated by the Act. The Act also does not apply to:
  - the transmission, distribution and use of natural gas to which the *Gas Safety Act 2000* or *Utilities Act 2000* applies.
  - the transmission, distribution and use of LPG to which the *Gas Safety Act 2000* applies.

Finally, while the manufacture and transport of ammunition is regulated by the Act, other uses of ammunition are regulated by the Firearms Act 1996.

<sup>4</sup> Contained in the Dangerous Substances (Explosives) Regulations 2004.

## Hazardous Materials Symbols and Labels



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# SAFETY DUTIES

## Imposed on Everyone

The Dangerous Substances Act imposes a number of duties on people and organisations involved with the manufacture, importation and subsequent storage use and storage of dangerous substances in the ACT.

Everyone must take all reasonable steps to minimise the risk of handling dangerous substances. This duty applies everywhere in the ACT.

In addition a person must:

- comply with any requirement applying to the person under any safety management system for the handling of the substance at the premises
- comply with any instructions relating to the safe handling of the substance at the premises given to the person by a responsible person for the substance
- comply with, or otherwise act in accordance with, notices and signs (including placards and warning signs) at the premises relating to safety or the substance and
- not remove, alter, damage, deface or cover any current label, notice, sign or placard at the premises relating to safety or the substance and
- tell a responsible person for the substance about anything at the premises that the person believes is likely to cause a dangerous occurrence.

The law defines the meaning of risk, handling and all reasonable steps.

## What is a risk?

A risk is:

- the likelihood of death or harm to a person or
- damage to property or the environment from a hazard.

## What is a hazard?

A hazard is a thing or situation with potential to either cause death or harm to a person or damage to property or the environment.

## What does handling mean?

You are handling a dangerous substance if you are:

- importing or exporting a dangerous substance to or from the ACT
- manufacturing, processing or treating a dangerous substance
- supplying, receiving or dispensing with a dangerous substance
- marking containers or packages holding dangerous substances, or putting up signs in relation to the substances
- packing, consigning or carrying a dangerous substance
- storing a dangerous substance
- having custody or control over a dangerous substance
- using a dangerous substance or
- disposing or rendering harmless a dangerous substance.



## Have I taken all reasonable steps?

If you are to be taken to have taken all reasonable steps to minimise a risk, you *must* have taken account of all of these things:

- the seriousness of the risk
- the current state of knowledge about the hazard giving rise to the risk and the risk itself
- the current state of knowledge about ways of eliminating the hazard or minimising the risk
- the availability and suitability of ways to eliminate the hazard or minimise the risk and
- the cost of eliminating the hazard or minimising the risk.

## Imposed on People Handling Dangerous Substances Commercially

Everyone, other than those involved in the non-commercial handling of substances (which is where the dangerous substances do not take place in the course of trade or commerce) at premises where a dangerous substance is handled must:

- comply with any requirement under any Safety Management System for the handling of the substance at the premises
- comply with any instructions relating to the safe handling of the substance at the premises given to the person by a responsible person for the substance
- comply with, and not damage, alter or remove notices and signs (including placards and warning signs) relating to safety or the substance and
- tell a responsible person for the substance about anything that might cause a dangerous occurrence.

## Who is a responsible person?

A responsible person is someone in control of:

- the handling of the substance
- the premises where the substance is handled or
- is the person in control of plant or a system for handling the substance.

To remove doubt, more than one person may be responsible in respect to the management of a particular dangerous substance.

## Imposed on People in Control of Premises Where Dangerous Substances are Handled Commercially

A person in control of premises where dangerous substances are to be handled commercially must take all reasonable steps to ensure that:

- the premises (including any plant or systems at the premises for handling the substance) are safe to handle the substance
- if the premises, or anything at the premises, is to be disposed of—the premises or thing is, before its disposal, thoroughly cleaned so that it is free from the substance or is otherwise made safe and
- if the premises, or anything at the premises, is no longer to be used for handling the substance—the premises or thing is thoroughly cleaned so that it is free from the substance or is otherwise made safe.

## Dangerous occurrences

A person in control of premises must immediately tell WorkSafe ACT if the person thinks there is a likelihood, or there has been, an incident at the premises that has either caused, or may lead to a substantial risk of:

- death or serious harm to a person or
- substantial damage to property or the environment.

The person must tell WorkSafe ACT immediately if such an occurrence has already, or is likely to cause death or serious harm to a person or substantial damage to property or the environment and in all other cases as soon as possible.

If a dangerous occurrence has happened (or is happening), the Chief Executive of WorkSafe ACT can ask the person in control of premises to preserve the site where the activity happened (or is happening) for a period of time. This is called a site preservation period.

Not to do so is an offence. The maximum penalty for an individual is \$10,000 or \$50,000 for a corporation.

## Imposed on People Involved With Plant or Systems For Handling Dangerous Substances

You have responsibilities if you are involved with plant or systems and are handling dangerous substances in the ACT.

Everyone involved in the:

- design
- manufacture
- import
- supply
- installation
- commissioning • operation
- maintenance
- repair
- decommissioning
- dismantling or
- disposal

of a plant or a system for handling a dangerous substance located anywhere in the ACT must take all reasonable steps to minimise the risks resulting from the handling of the substance by the plant or system.

A person operating, maintaining or repairing a plant or system must tell the person in control of the plant or system or the person in control of the premises:

- where the plant or system is located
- anything in relation to the plant or system that the person believes is likely to cause a dangerous occurrence and
- anything else that the person believes is a defect in the plant or system.

## Who is a person in control?

Someone is a person in control of the handling of a dangerous substance, if they are responsible for a substance.

A person in control of plant or a system for handling a dangerous substance must:

- take all reasonable steps to ensure that the plant or system is safe to handle the substance and
- take all reasonable steps to ensure that the plant or system is installed and operated safely and appropriately maintained, repaired and tested

If the person becomes aware of a hazard or defect in relation to the plant or system they must:

- take all reasonable steps to ensure that the plant or system is operated, modified, maintained or repaired to eliminate the hazard, correct the defect or minimise the risks resulting from the hazard or defect
- ensure that the supplier or manufacturer of the plant or system is told about the hazard or defect
- if the person is not the owner of the plant or system—ensure that the owner of the plant or system is told about the hazard or defect and its significance if
  - the plant or system, or a part of the plant or system, is to be disposed of—take all reasonable steps to ensure the plant or system is thoroughly cleaned so that it is free from the dangerous substance or is otherwise made safe before it is disposed of and
  - the plant or system, or a part of the plant or system, is no longer to be used to handle the dangerous substance—take all reasonable steps to ensure that the plant or system is thoroughly

cleaned so that it is free from the substance or is otherwise made safe.

A person in control of the design, manufacture, import, installation or supply of plant or a system for handling a dangerous substance in commercial premises must:

- take all reasonable steps to ensure that the plant or a system is safe to handle the substance and
- if the person is a person in control of the supply of the plant or system – take all reasonable steps to ensure that appropriate information about the safe installation, operation, maintenance and repair of the plant or system is given to both a person in control of the plant or system and the owner.

If someone becomes aware of a hazard or defect in relation to the plant or system, they must ensure that the designated person is told:

- about the hazard or defect and its significance and
- how the plant or system may be operated, modified, maintained or repaired to eliminate the hazard, correct the defect or minimise the risks resulting from the hazard or defect.

### Who is a designated person?

A designated person is:

- a person in control of the manufacture of the plant or system
- a person in control of the design or import (if any) of the plant or system
- a person in control of the manufacture or import (if any) of the plant or system or
- the person to whom the plant or system was supplied.

### Of People in Control of Plant and Systems Installation

A person in control of the installation of plant or a system to handle a dangerous substance must take all reasonable steps to ensure:

- the plant or system is safe to handle the substance and
- appropriate information about the safe operation, maintenance and repair of the plant or system is given to a person in control of the plant or system and its owner.

If the installer becomes aware of a hazard or defect in relation to the plant or system, the person must:

- ensure that a person in control of the plant or system is told about the hazard or defect and its significance and
- inform relevant people how the plant or system may be operated, modified, maintained or repaired to:
  - eliminate the hazard
  - correct the defect or minimise the risks resulting from the hazard or defect.



## Of Manufacturers, Importers or Suppliers of Dangerous Substances

The Act imposes some general duties on a person in control of the manufacture, importation or supply of dangerous substances.

A person in control of the:

- manufacture of a dangerous substance
- importation of a dangerous substance into the ACT or
- supply of a dangerous substance in the ACT must:
  - ensure that the substance is correctly classified as soon as practicable after its manufacture, importation or supply, but before it is supplied to anyone after its manufacture (or importation or supply)
  - take all reasonable steps to ensure that the substance is in a condition that is safe for handling by anyone after its manufacture (or importation)
  - ensure that the substance is correctly packed and labelled before the manufacturer or importer supplies it to anyone, if the substance is packed by the manufacturer
  - ensure that the manufacturer correctly stores and placards the substance, if the substance is stored by the manufacturer (or importer) and
  - ensure that safety information is prepared, as required by the law.

## What Happens If Someone Does Not Follow A Safety Duty

The Act sets out severe penalties on people who do not discharge their safety duties.

Someone who fails to comply with a safety duty they are required to comply with faces a maximum penalty for an individual is \$10,000 or \$50,000 for a corporation. If the failure to comply with a safety duty:

- exposes someone to a substantial risk of death or serious harm and
- the person with the safety duty was either reckless or negligent about exposing people to that risk

the person faces a maximum penalty of \$150,000 and/or imprisonment for 5 years or \$750,000 for a corporation.

If the failure to comply with a safety duty:

- led to the death or serious injury of someone and
- the person with the safety duty was either reckless or negligent about exposing people to that risk

the person faces a maximum penalty of \$200,000 and/or imprisonment for 7 years or \$1,000,000 for a corporation.

If the failure to comply with a safety duty:

- exposes property or the environment to a substantial risk of substantial damage and
- the person with the safety duty was either reckless or negligent about exposing property or the environment to that risk

that person faces a maximum penalty of \$100,000 and/or imprisonment for 3 years or \$500,000 for a corporation.

If the failure to comply with a safety duty:

- caused substantial damage to property or the environment and
- the person with the safety duty was either reckless or negligent about exposing property or the environment to that risk

the person faces a maximum penalty of \$150,000 and/or imprisonment for 5 years or \$750,000 for a corporation.

# REQUIREMENT TO PREPARE A SAFETY MANAGEMENT SYSTEM

One of the important features of the Act's regulation of dangerous substance is the requirement to prepare a Safety Management System.

## Who must prepare a Safety Management System?

You must ensure a Safety Management System is up to date and followed if you are:

- a person in control of premises where dangerous substances are handled
- a person in control of plant or a system for handling a dangerous substance
- a manufacturer of dangerous substances
- people who import dangerous substances into the ACT
- a supplier of dangerous substances
- licensed to carry explosives in the ACT
- licensed to be a shotfirer or
- someone granted a blasting permit.

The people mentioned above must ensure that a Safety Management System for handling the dangerous substance is:

- prepared and documented and
- all reasonable steps are taken, so that:
  - f it is implemented and kept up to date f everyone to whom the Safety Management System applies complies with their duties under the system and f people's compliance with their duties under the Safety Management System is documented under the system.

## What must be in a Safety Management System?

The following must be in a Safety Management System:

1. After having regards to the current state of knowledge, an identification of the hazards associated with the substance, such as:
  - the physical properties of the dangerous substance
  - any chemical and physical reactions that may happen if the substance comes into contact with other substances and
  - the premises or plant and systems for handling the substance.
2. After having regards to the current state of knowledge, an identification and assessment of the risks resulting from the identified hazards at premises where the dangerous substance is to be handled and elsewhere.
3. Ways of controlling risks by eliminating the hazards such as:
  - implementing, operation, maintenance and repairing systems to ensure the dangerous substance is handled safely
  - allocating responsibilities to people involved in the handling of the substance to ensure the substance is handled safely
  - appropriately inducting or supervising people handling the substance and

- provisions of appropriate information, education and training to people handling the substance about the hazards associated with the substance and the risks resulting from them or, if this is not reasonably practicable, minimising the risks as far as reasonably practicable.
4. Details on how compliance with the system is to be documented.

## Rules for certain types of dangerous substances

The person in control of premises containing dangerous substances marked with the following symbols has additional obligations:



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When preparing a Safety Management System for the handling of dangerous substance you must also consider:

- information in the Safety Data Sheet for the substance and
- any other information known to the person about the hazardous properties of the substance.

You must also take all reasonable steps to find out the hazardous properties of the substance. It is an offence not to do so. The maximum penalty for an individual is \$1500 or \$7500 for a corporation.

This means that the Safety Data Sheet for the dangerous substance you are controlling is very important. It should be retained and not thrown away.

## Safety Data Sheets

You must:

- obtain a current Safety Data Sheet for the substance on or before the first occasion the substance is supplied to the premises and



- ensure that a current Safety Data Sheet for the substance is readily accessible to anyone handling the substance at the premises, and to the emergency services.

This requirement does not apply if the goods are:

- in transit or
- handled (or to be handled) at a retail outlet or warehouse in its packaged form. However, in this case information about the substance that is:
  - consistent with the information contained in the Safety Data Sheet and
  - clearly identified as information provided by the person in control of the substance must be available.

It is an offence not to do these things. The maximum penalty for an individual is \$1500 or \$7500 for a corporation.

## Additional requirement on people in control of registrable premises

The person in control of registrable premises (a concept discussed later on in this booklet) must consider these things when developing a safety management system:

- the information in the Safety Data Sheet for the substance and any other information known to the person about the hazardous properties of the substance
- any structures, plant, and systems that are not used to handle the substance, but that could interact with the substance at the premises
- any manufacturing and transport processes involving the substance at the premises

- the physical location and arrangement of areas, structures and safety and health systems at the premises and
- any incidents involving the substance that may have happened at the premises the person should have known about.

The person in control of registrable premises must take all reasonable steps to find out about the hazardous properties of the substances.

It is an offence not to do so. The maximum penalty for an individual is \$1500 or \$7500 for a corporation.

## Risk assessments of hazards must be made

Where a hazard is identified, a person in control of registrable premises must keep at the premises a dated copy of a risk assessment, which is available to anyone who could be exposed to the hazard, setting out:

- the methods considered and
- those used

to control the risks associated with the hazard.

In this context, the person is also obliged to consider:

- substituting a dangerous substance with an alternative substance (whether or not the substance is a dangerous substance) that has a lower risk associated with its handling and
- reducing the quantity of the substance that is handled at the premises.

The system must be updated:

- where there is a significant change to a process, system or procedure in relation to the handling of the substance at the premises or
- where there is evidence to indicate that the risk assessment no longer adequately assesses the risk associated with the hazard and
- every 5 years after the last review of the system.

## Employee consultation

A person in control of registrable premises must also consult with their employees, and the employee's health and safety representative about:

- induction, training, information provision, hazard identification risk assessment and risk control in relation to substances and
- any proposed changes to structures, plants, processes or systems that are likely to increase the risk to the employees consulted.

# ASBESTOS

Because of its inherent dangers, asbestos and asbestos products are tightly regulated by the Act.

## What is asbestos?

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

- actinolite
- amosite (brown asbestos)
- anthophyllite
- chrysotile (white asbestos)
- crocidolite (blue asbestos) or
- tremolite.

Anything containing asbestos (an asbestos product) is also regulated by the Act. An example of an asbestos product is a material formed by mixing asbestos fibres with plaster, cellulose, clay or an adhesive product.

Special obligations are imposed to reduce the risk of asbestos dangers arising from asbestos already in the environment. For further details, refer to these documents prepared by the ACT Government's

Asbestos Task Force at:

[www.asbestos.act.gov.au/](http://www.asbestos.act.gov.au/)

## RULES FOR CERTAIN DANGEROUS SUBSTANCES

Special rules apply to substances that are classified by the Australian Dangerous Goods Code as:

- gases
- flammable liquids
- flammable solids
- oxidising substances
- organic peroxides
- toxic substances
- corrosive substances or
- miscellaneous substances and articles.<sup>5</sup>

They are goods carrying these symbols:



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Unless you are handling goods in placard or manifest quantities (terms discussed later in this booklet) you do not have to register with WorkSafe ACT. However, these rules apply to you.

If you are a person in control of handling these sorts of dangerous substances, then, unless you are controlling these sorts of substances in placard or manifest quantities, these rules apply to you.

This could include businesses such as motor mechanic workshops, joineries and shops selling things like pool chemicals.

As discussed earlier, the person must prepare a Safety Management System.

They must also:

- Keep on hand suitable, undamaged, effective and well maintained personal protective or safety equipment<sup>6</sup> and
- ensure someone who could be exposed to a risk from dangerous substances, actually uses the personal protective or safety equipment.

Appropriate induction and training, information about the substances and supervision must also be given.

In particular, instruction must be given about:

<sup>5</sup> Although these rules do not apply to non-commercial handling of substances, or vehicles located on premises, in transit, and are made up following either the International Air Transport Association Regulations, International Civil Aviation Organisation Standards or the International Maritime Dangerous Substances Code.



- the nature of the hazards and properties of the dangerous substance and the processes used for identifying, assessing and eliminating or reducing the risks associated with the hazards that are relevant to the handling task
- the purpose, use and maintenance of measures for eliminating or reducing the risks and
- the proper use and fitting of personal protective or safety equipment.

It is an offence not to do these things. The maximum penalty for an individual is \$3000 or \$15,000 for a corporation.

Anyone who damages or makes ineffective protective or safety equipment commits an offence. The maximum penalty for an individual is \$3000.

There are other responsibilities. A person in control of non-registrable premises must ensure:

- unauthorised people do not have access to dangerous substances
- there are spill containment practices that:
  - eliminate the risk from any spill or leak of the substance or, if it is not practicable to eliminate the risk, minimises the risk and
  - would contain within the premises any part of the substance that spills or leaks, as well as any effluent arising from a spill or leak
- equipment and materials that can be used to contain and clean up spills and leaks of dangerous substances is maintained and accessible
- if there is a leak, ensure that immediate action is taken to eliminate (or minimise) any risk, and that the substance (and its remains) is cleaned up and disposed of (or made safe)

- incompatible dangerous substances are stored separately
- dangerous substances are not handled in a way that contaminates food, food packaging or personal use products
- unless the package is not large enough to require marking under the Australian Dangerous Goods Code (or in transit), keep and have accessible a register of dangerous substances, and their respective Safety Data Sheets
- containers to be disposed of are thoroughly cleaned and the contents of the container are neutralised, cured or chemically deactivated
- ignition sources in hazardous areas are eliminated (or the risk of ignitions are minimised)
- risk associated with atmospheric conditions that are flammable, explosive or asphyxiant is eliminated (or minimised)
- a person responsible for plant of the premises that is to handle dangerous substances has enough information to operate the plant with no (or minimal) risk
- visitors have been given sufficient information, safety instructions and supervision to ensure that risk to visitors is eliminated (or minimised)
- dangerous substances the person knows (or ought to know) are incorrectly labelled are correctly labelled
- information placards for tanks are correctly displayed and
- transfers of dangerous substances are made in a way that eliminates (or minimises) risk. Requirements include that any:
  - spills, leaks and overflows because of the transfer must be avoided

- static electricity because of the transfer must be minimised
- vapour generation because of the transfer must be minimised
- ignition source to which the substance may be exposed because of the transfer must be eliminated or controlled and
- pipework used in the transfer must be appropriate for the substance and adequate for the transfer.

It is an offence not to do any of these things. The maximum penalty for an individual is \$1500 or \$7500 for a corporation.

Finally, a person in control of non-registrable premises must ensure there is:

- safe access to and suitable sufficient lighting for areas where dangerous substances are handled
- if a register has to be kept, it remains at the premises where the dangerous substances are to be handled.

It is an offence not to do any of these things. The maximum penalty for an individual is \$1500 or \$7500 for a corporation.

## Placard And Manifest Quantities

Particular rules apply if the goods are imported in what are known as placard quantities or manifest quantities.

This table sets out the dangerous substances regulated and placard and manifest quantities.

Dangerous substances	Packing group	Placard quantity	Manifest quantity
Class 2			
class 2.1	not applicable	500L	5 000L
class 2.2 subsidiary risk 5.1	not applicable	2 000L	10 000L
class 2.2 other than subsidiary risk 5.1	not applicable	5 000L	10 000L
class 2.3	not applicable	50L	500L
aerosols	not applicable	5 000L	10 000L
cryogenic fluids	not applicable	1 000L	10 000L
class 3, 4.1, 4.2,4.3, 5.1, 5.2, 6.1 or 8	I II III	50kg or L 250kg or L 1 000kg or L	500kg or L 2 500kg or L 10 000kg or L
	Mixed packing groups in a single class with the quantity of each packing group below the quantity specified for the packing group	1 000kg or L	10 000kg or L
class 9	II	1 000 kg or L	10 000kg or L
	III	5 000 kg or L	10 000kg or L
	Mixed packing groups in class 9 with the quantity of each packing group below the quantity specified for the packing group	5 000 kg or L	10 000kg or L
Mixed classes of dangerous substances	not applicable	if the quantity stated in this schedule for each class present is 2 000kg or L or less — 2 000kg or L	10 000kg or L
		if the quantity stated in this schedule for 1 or more classes present is 5 000kg or L — 5 000kg or L	10 000kg or L
goods too dangerous to be transported	not applicable	any quantity	any quantity
combustible liquids handled with fire risk dangerous substances	not applicable	1 000kg or L	10 000kg or L
C1 combustible liquids	not applicable	10 000L in a tank 50 000L packaged 50 000L in tanks and packaged combined if the quantity of C1 in the tanks is not more than 10 000L	100 000L in tanks or packaged

## People In Control Of Registrable Premises Duties

People in control of premises containing placard and manifest quantities of the dangerous substances contained in the previous table must register with WorkSafe ACT.

A person in control of the registrable premises carries the onus to do this by using the appropriate form and supplying the required documents. The form can be found on the WorkSafe ACT website at:

[http://www.workcover.act.gov.au/pdfs/DS\\_DangSubsPremises.pdf](http://www.workcover.act.gov.au/pdfs/DS_DangSubsPremises.pdf)

In particular, they must tell WorkSafe ACT the types and quantities of substances they expect in the premises. It is an offence not to do so.

If at least the manifest quantity of the substance is, or is likely to be, present at the premises, the maximum penalty for an individual is \$3000 or \$15,000 for a corporation

If less than the manifest quantity is or may be present, the maximum penalty for an individual is \$2000 or \$10,000 for a corporation.

Once told, WorkSafe ACT will register the premises. A registration lasts for 2 years and can be renewed by the person in charge of the registrable premises.

### Changes in risk

The person in charge of registrable premises must tell WorkSafe ACT within 14 days when there has been a significant change in the risk associated with handling dangerous substances.

This includes not only telling WorkSafe ACT whether the risk has gone up, but also whether it has gone down. For example, if dangerous substances are no longer stored on the premises.

It is an offence not to do so. The maximum penalty for an individual is:

- \$3000 or \$15,000 for a corporation, if there is to be dangerous substances in at least the manifest quantity
- \$2000 or \$10,000 for a corporation if there are goods in at least the placard quantity or
- otherwise, \$1000 or \$5000 for a corporation.

WorkSafe ACT may ask the person for further information. They must provide the requested information within 14 days.

It is an offence not to do so. The maximum penalty for an individual is \$3000 or \$15,000 for a corporation if there is to be dangerous substances in at least the manifest quantity, \$2000 or \$10,000 for a corporation, if there are goods in at least the placard quantity or otherwise \$1000 or \$5,000 for a corporation.

People in control of registrable premises have other responsibilities. They must ensure:

- the risk to people or property outside the premises are reduced as far as possible
- dangerous substances are not handled in a way which make the substance unstable, decompose or change
- incompatible dangerous substances are stored separately
- dangerous substances do not contaminate food, food packaging or personal use products
- tanks storing dangerous substances have:
  - stable foundations and supports

- an installation that prevents excessive stress on the tank, pipework or equipment
- protection from corrosion and
- inspections occur often to ensure integrity and serviceability.
- decommissioned containers are so thoroughly cleaned it is as if the container had never contained the substance
- if the dangerous substance is a gas or volatile liquid – the concentration in the container (calculated as the time-weighted average over 8 hours) is less than the concentration listed in the National Exposures Standards for the substance
- if a flammable gas of class 2.1 or a flammable liquid of class 3 - the concentration in the atmosphere of the container is less than 5% of the lower explosive limit for the substance when sampled at ambient temperature
- dangerous substances are protected from impacts
- personal protective or safety equipment is suitable for use, undamaged and effective, maintained in a suitable condition for use and is used
- unauthorised people do not have access to dangerous substances
- there is a spill containment system which either eliminates or minimises the risk, or at least contains it within the premises where the dangerous substance is stored
- that a spill containment system for a tank does not bring together incompatible dangerous substances in a way that will create a hazard
- immediate action is taken to clean up and make safe from risk a spill or a leak from a dangerous substance
- when transferring dangerous substances within registrable premises that any spills, leaks and overflows are avoided, static electricity and vapour generation as a result of the transfer is minimised, ignition sources near the transfer is eliminated or controlled, and that any pipework used is adequate for the transfer
- equipment used to contain and clean up spills and leaks are accessible and in good condition
- risk associated with atmospheric conditions that are flammable, explosive or asphyxiant are eliminated or minimised
- there is a properly installed, tested, maintained<sup>6</sup> and effective fire protection system that is:
  - accessible to everyone at the premises and the emergency services
  - is designed for the substance and
  - suitable for use by the fire brigade or the rural fire service
- they consider the implications where the system becomes unserviceable or inoperative, and to take alternative fire protection measures, which could include stopping work. Should the fire system break down, the person must ensure it is returned to full operation as soon as possible
- people handling goods are given:
  - induction, introduction and supervision about the nature of the hazards and risks involved with handling goods (including how to avoid risks)
- people are made aware of any work practices that may effect the safe handling of dangerous substances

<sup>6</sup> The records of the testing must be maintained.

- people are told how to safely operate any plant handling dangerous substances
- people using or testing plant have information available to ensure the safe operation of the plant
- visitors are given sufficient information and supervision so that risks are avoided
- a current Safety Data Sheet for the substance is accessible to:
  - anyone, the first time they handle the substance
  - the emergency services
- Safety Data Sheets are only amended as required by law, or, if the sheet is from overseas, the amendments made are easily understood by people at the premises<sup>7</sup>
- there is a register listing the dangerous substances kept or handled at the premises, as well as the substances Safety Data Sheets
- there is a HAZCHEM outer warning placard as well as an information placard where more than a placard quantity of dangerous substances are present and
- incorrectly labelled dangerous substances are labelled.

Breaching any of these duties is an offence. The maximum penalty for an individual is \$3000 or \$15,000 for a corporation.

A person in control of registrable premises must also ensure:

- there is suitable lighting and safe access in areas where dangerous substances are handled

<sup>7</sup> If the goods are in a retail outlet, or unopened in a warehouse, there must be information available prepared by the responsible person, consistent with the safety sheet.

- packages in registrable premises is correctly labelled, and that the label is not removed and remains legible and
- package labelling indicating that it contains a dangerous substance of a particular kind is not used to contain a dangerous substance of a different kind or any other substance.

It is an offence not to do so. The maximum penalty for an individual is \$2000 or \$10,000 for a corporation.

A person must also ensure:

- ignition sources are eliminated or minimised
- any portable container is clearly labelled with the class label, subsidiary risk label and product name of the substance, or otherwise, that the substance is otherwise clearly identified<sup>8</sup> and
- the HAZCHEM outer warning placard and an information placard complies with the example contained in the Schedule to the Dangerous Substances (General) Regulation 2004.

It is an offence not to do so. The maximum penalty for an individual is \$2500 or \$12,500 for a corporation.

The person must also prepare, and maintain, a safety management system.

If a dangerous occurrence has occurred in registrable premises, the person in control must keep a dated version of the report for 10 years, and have it available for inspection by an Inspector.

It is an offence not to do so. The maximum penalty for an individual is \$1500 or \$7000 for a corporation.

A report must contain:

<sup>8</sup> This does not apply if either the dangerous substance is used immediately and the container used is thoroughly cleaned so the container is in the condition it would be if it had never contained the substance.



- the date, time and location of the incident
- the type, quantity and containment or handling method for the dangerous substances involved in the incident
- a description of events before, during and after the incident
- details of any injury, death, hospitalisation or evacuation
- details of damage to equipment, property or the environment
- an assessment of the cause of the incident and
- specific actions that the person intends to take to prevent a recurrence of the incident or similar incidents.

It is an offence not to make and keep reports. The maximum penalty for an individual is \$1500 or \$7000 for a corporation.

## Goods In Manifest Quantities In Registrable Premises

There are further rules to be followed by a person in control of manifest quantity registrable premises.

## Need to keep manifest of dangerous substances

A Schedule to the Dangerous Substances (General) Regulation 2004 sets out what must be in a manifest for that quantity of dangerous substances and must keep it up to date. Any revisions to it must be made within 7 days.

Manifests must be kept in a red waterproof container, in a readily accessible place as close as possible to the main entry to the premises.

It is an offence not to do any of these things. The maximum penalty for an individual is \$3000 or \$15,000 for a corporation.

## Need to formulate an emergency plan

A person in control of manifest quantity registrable premises must formulate an emergency plan every five years.

The plan must be:

- kept at the premises and
- given to:
  - any health and safety representative of employees who handle dangerous substances at the premises
  - the emergency services and
  - anyone in control of any neighbouring premises that might be affected by a dangerous occurrence at the manifest quantity registrable premises.

Health and safety representatives, the emergency services and neighbours who could be affected by dangerous occurrences must be:

- instructed on how the emergency plan works and
- be involved when it is reviewed (and given any updates).

It is an offence not to do any of these things. The maximum penalty for an individual is \$3000 or \$15,000 for a corporation.

## People Supplying Dangerous Substances In Containers Provided By Consumers

Sometimes consumers provide their own containers to take away dangerous substances. Where the consumer:

- wants a Class 2 gas and
- provides a container of up to 500 litres or
- seeks some other dangerous substance and
- provides a container that can contain 450 litres or bear a net mass of up to 300kg. The customer's container must:
  - for a Class 2 gas, meet the requirements of the Australian Dangerous Goods Code and be designed to carry the gas or
  - for other dangerous substances, must:
    - be of a type and in a condition that will hold the substance and not react adversely with it
    - have the name of the substance clearly marked on the container
    - not ordinarily be used to hold foodstuffs and
    - not be mistakenly identified as containing foodstuffs.

## EXPLOSIVES IN THE ACT

An explosive<sup>9</sup> is prohibited in the ACT unless it is:

- authorised by the Minister for Industrial Relations or WorkSafe ACT
- a general use firework or
- ammonium nitrate and fuel oil (ANFO), manufactured by a shotfirer in accordance with a licence.

A person can ask WorkSafe ACT to authorise an explosive.

To apply for an authorisation, a person must fill out an application form as well as provide any documents and other requirements required by the form. The form can be found on the WorkSafe ACT website at:

[http://www.workcover.act.gov.au/pdfs/DS\\_ReqForAuthorisation.pdf](http://www.workcover.act.gov.au/pdfs/DS_ReqForAuthorisation.pdf)

A decision not to approve an explosive can be reviewed on its merit by ACAT.

### General Duties For People Handling Explosives

Someone not authorised to use an explosive commits an offence if they use an explosive in a way that:

- produces an explosive effect or
- modifies an explosive so it produces an explosive effect different to that for which it was designed.

The maximum penalty for an individual is \$3000 or \$15,000 for a corporation.

WorkSafe ACT can issue an infringement notice if an Inspector thinks that someone has broken this law. The amount payable under an infringement notice for an individual is \$600 or \$3000 for a corporation.

If:

- someone is injured or dies or
- property is damaged as a direct or indirect result of an explosive (including a firework) a responsible person must:
  - immediately tell the Chief Officer, Fire Brigade or Chief Officer, Rural Fire Service, about the incident, if there is a fire
  - tell WorkSafe ACT and a police officer about the incident without delay and
  - provide a report about the incident, setting out the details of the incident and the injury or damage, within 48 hours of asked by an Inspector.

A responsible person for an explosive must tell WorkSafe ACT and a police officer about the theft or loss of explosives<sup>10</sup> from premises without delay. The person must also provide a report to an Inspector setting out details of the loss and setting out what is missing within 48 hours.

<sup>9</sup> The technical definition of an “explosive” has three meanings.

An explosive includes an explosive substance, or an explosive article within the meaning of the UN Test Manual.

It also includes an explosive substance or article, or as having a subsidiary risk of class 1 in Appendix 2 of the Australian Explosives Code.

It finally includes a solid or liquid substance (or mixture of substances) that is itself capable by chemical reaction of producing gas at such a temperature and pressure, and at such a speed, as to cause damage to the surroundings (including a pyrotechnic substance, even it does not evolve gas.

<sup>10</sup> This includes reporting a break-in or an attempt to break-in or steal explosives.

Not to do so is an offence. The maximum penalty for an individual is \$3000 or \$15,000 for a corporation.

## Licencing Explosives

You must have a licence if you want to:

- manufacture (which includes making, remaking, alter, breaking up, processing, reconditioning or treating)
- import into the ACT
- supply (including selling and transferring ownership of, or taking responsibility for substances)
- possess
- use or
- carry

an authorised explosive.

Usually, you must also have a shotfirer's licence to use explosives in the Territory.

In general, a decision relating to a licence that is adverse can be reviewed on merit in ACAT.

Different rules relate to fireworks. The rules relating to fireworks are not discussed in this booklet.

## How To Apply For A Licence

WorkSafe ACT<sup>11</sup> can only licence people if the Commissioner thinks the person is a suitable person and can comply with the Act.

To apply for a licence you must use the form available from WorkSafe ACT.

You must include with the form all the documents requested. If you do not, the application may not be considered.

## Who is suitable to hold a licence?

In considering whether a person should be licensed, WorkSafe ACT must consider whether a person (or a close associate of the person):

- has the knowledge, experience and training of the person in relation to the kinds of dangerous substances for which a licence is sought
- has as an individual or as an executive officer of a corporation supplied information or a document that is false or misleading in a material particular in relation to the Act
- has supplied information or a document that is false or misleading in a material particular in relation to the law
- has as an individual or as an executive officer of a corporation been disqualified under the Act or a corresponding law from holding a licence
- either as an individual or as an executive officer of a corporation:
  - has contravened this Act (or a corresponding law elsewhere), whether or not the person, associate

11 Or delegate

- or corporation has been convicted or found guilty of an offence for the contravention
- has failed to comply with a condition of a licence under this Act or a licence or other authority (however described) under this law (or a corresponding law, whether or not the person, associate or corporation has been convicted or found guilty of an offence for the failure
- is subject to any WorkSafe ACT disciplinary action or
- has been convicted or found guilty in the ACT or elsewhere, within the 5-year period before the day the application is made, of an offence involving a dangerous substance
- either as an individual or as an executive officer of a corporation has been convicted, or found guilty in the ACT or elsewhere of an offence involving:
  - a firearm
  - actual or threatened violence
  - fraud or dishonesty
 in the previous 5 years or
- has been subject to a protection order made in the ACT, another Australian State or Territory or New Zealand (other than an order that has been revoked or for which an appeal against the making of the order has been upheld) in the previous 5 years.
- WorkSafe ACT thinks is (or will be able to) exercise a significant influence in relation to the related person's business, because the person holds (or will hold) a share in the capital of the applicant's business
- has an entitlement to receive income derived from the applicant's business or
- is entitled to take part in a directoral, managerial or executive decision for the business, or elect or appoint a person to an executive office in the applicant's business.

A licence can be made subject to conditions and can be issued for up to 3 years.

A licence is not transferable.

## WorkSafe ACT can add conditions

WorkSafe ACT can impose, amend or revoke a licence condition on the Commissioner's own initiative.

If such a decision is made, the Commissioner must give the licensee a written notice:

- setting out what the Commissioner is proposing to do and why and
- telling the person they can respond to the Commissioner within 14 days.

WorkSafe ACT must then consider any response and make a final decision that will operate at least 14 days after the notice is given to the licensee.

Someone with a licence must tell Act WorkCover in writing of any change of anything contained in a licence (eg. a structural change in premises relevant to handling a dangerous substance), or an application at least 7 days before the change happens.

## Who is a close associate?

A close associate is someone who:

- holds (or will hold) an executive position in the management of the applicant's business

### Other matters relating to licences

A licence must be returned to WorkSafe ACT so it can be changed.

A person can also apply to have a licence amended. Someone would do this if, for example, they wanted to amend or revoke a condition contained in the licence or to change premises where licensed activities may take place.

A licence can be replaced if it is lost, stolen or destroyed. Although WorkSafe ACT may require verification in a statutory declaration as to what has happened.

Finally, someone can also surrender a licence.

### Other Powers Of The ACT Workcover Commissioner

When considering a licence application (or an application to amend a licence), or after a licensee has advised WorkSafe ACT of something that is relevant to the licence WorkSafe ACT can ask an applicant for a licence or a licensee to:

- provide information (including information in the possession of or under the control of a third party)
- produce documents (including documents in the possession of or under the control of a third party) so either extracts or copies can be taken
- authorise a third party to provide information or documents or
- give WorkSafe ACT the authority to seek information from other people (including financial and other confidential information) that is:
  - about the person or a close associate of the person or

- relevant to the consideration of the designated matter in relation to the person.

### Who is a third party?

A third party is someone WorkSafe ACT thinks has an association or connection with the applicant or licensee that is relevant to the consideration of one of the matters referred to above.

### Disciplinary Action ACT Workcover Can Take

WorkSafe ACT can take disciplinary action against licensed people (or those who have recently been licensed).

It can be commenced if WorkSafe ACT has reasonable grounds to believe that a licensed person is:

- no longer a suitable person or
- has or is contravening the Act.

Action can also be taken against former licensees who are thought to have breached the Act, irrespective of whether the person was found guilty of an offence.

### How the disciplinary process operates

WorkSafe ACT must provide a written statement to the person indicating:

- what WorkSafe ACT proposes to do
- why the proposed action is to be taken and
- that the person has 14 days from the day they receive the notice to provide a written response.



If, after considering any written response, WorkSafe ACT thinks the person is no longer a suitable person to hold a licence, or is contravening the Act, the Commissioner can:

- reprimand the licensee
- require the licensee to complete a specified course of training
- amend the person's licence (including by imposing or amending a condition)
- suspend the licence for a stated period or until a stated event happens
- cancel the licence, or a particular handling authority under the licence or
- cancel the licence and disqualify the licensee from applying for a licence, or a particular kind of licence for a stated period or until a stated event happens.

If the person is a former licensee, WorkSafe ACT can:

- reprimand the former licensee or
- disqualify the former licensee from applying for a licence (or a particular kind of licence) for:
  - a stated period
  - until the former licensee completes a course specified by WorkSafe ACT or
  - until a stated event happens.

A licence can be suspended immediately if WorkSafe ACT thinks it is in the public interest.

WorkSafe ACT can also publish the fact that a person has been suspended and why, by way of, for example, a press release or an advertisement, after the time for all appeals has passed.

## ACAT review

In general, disciplinary decisions that are adverse to people can be reviewed on merit in ACAT.

## Offences

There are a number of offences for breaching the Act's licensing provisions.

A licensee who fails to comply with a condition faces a maximum penalty of \$10,000 for an individual or \$50,000 for a corporation.

A licensee, who fails to return a licence for amendment, or a suspended or cancelled licence, faces a maximum penalty of \$10,000 for an individual or \$50,000 for a corporation.

Someone who pretends to either hold a licence or be authorised to do something under a licence faces a maximum penalty of \$10,000 for an individual or \$50,000 for a corporation.

A licensee who allows someone else to use the licensee's licence faces a maximum penalty of \$10,000 for an individual or \$50,000 for a corporation.

A person commits an offence if they are not authorised to:

- manufacture
- import
- supply or

possess a prohibited explosive.

The maximum penalty is for an individual is \$200,000 or \$1million for a corporation or imprisonment for 7 years (or both). A person commits an offence if they are not authorised to:

- manufacture
- import
- supply or
- possess

an authorised explosive.

The maximum penalty for an individual is \$100,000 or \$500,000 for a corporation or imprisonment for 4 years (or both).

The regulations specify in some detail how dangerous substances should be stored. A person who fails to store a substance in accordance with the regulation, commits an offence. The maximum penalty for an individual is \$10,000 or \$50,000 for a corporation.

A person who uses a prohibited explosive without authority commits an offence. The maximum penalty for an individual is \$250,000 or \$1million for a corporation or imprisonment for 10 years (or both).

A person who uses an authorised explosive without authority commits an offence.

The maximum penalty for an individual is \$75,000 or \$375,000 for a corporation or imprisonment for 3 years (or both).

The regulation specifies in some detail how dangerous substances should be carried and disposed of.

A person who fails to carry a substance in accordance with the regulation commits an offence. The maximum penalty for an individual is \$10,000 or \$50,000 for a corporation.

A person also commits an offence if they do not dispose of plant or system used for handling a dangerous substance in the way set out in the regulations.

The maximum penalty for an individual is \$10,000 or \$50,000 for a corporation.

Finally, an offence is committed if a person does not have a licence to handle goods where the law requires it.

The maximum penalty for an individual is \$10,000 or \$50,000 for a corporation.

## Types Of Licences

### Manufacturing explosives

A person must be licensed to manufacture explosives in the ACT.

To apply for an authorisation, a person must fill out an application form, as well as provide any documents and other requirements required by the form. The form can be found on the WorkSafe ACT website at:

[http://www.workcover.act.gov.au/pdfs/DS\\_Lic2Manufacture.pdf](http://www.workcover.act.gov.au/pdfs/DS_Lic2Manufacture.pdf)

The Dangerous Substances (Explosives) Regulation 2004, set out comprehensive requirements that must be included for a licence to manufacture.

This includes applications to manufacture explosives at a:

- central mixing point or
- mobile manufacturing unit.

As a general rule, explosives must be manufactured in accordance with:

- Australian Standard 2187.1 Explosives – Storage, Transport and Use, Part 1: Storage and
- Australian Standard 2187.4 Explosives – Storage, Transport and Use, Part 4: Use of Explosives.

The Regulation also set out:

- the conditions under which a licence is granted

- the record keeping and Safety Management System requirements that are specific to the control of explosives and
- how manufactured explosives should be packaged, labelled and placarded.

As a general rule, the packaging, labelling and placarding rules of the Australian Explosives Code, apply.

Finally, the Regulation specifies rules to be followed when filling or capping safety cartridges.

## Importing Explosives

Unless listed below, you require a licence to import authorised explosives in the ACT. These explosives do not require a licence:

- distress signals, if they are imported as part of the necessary safety equipment of a vehicle
- safety cartridges
- safety fuse
- starting pistol caps
- general use fireworks and
- black powder, if the person: is an individual who both holds a licence under the Firearms Act 1996 and is a member of a hunting or shooting club approved under the Firearms Act 1996 who:
  - is importing less than 1 kg of black powder for personal use in a competition (or training for a competition) conducted by an approved hunting or shooting club and
  - keeps a written record of the amount of black powder brought into the ACT, the amount used

and any amount exported from the ACT at the end of the competition or training.

To apply for a licence, a person must fill out an application form, as well as any documents and other requirements required by the form. The form can be found on the WorkSafe ACT website at:

[http://www.workcover.act.gov.au/pdfs/DS\\_Lic2ImportApplic.pdf](http://www.workcover.act.gov.au/pdfs/DS_Lic2ImportApplic.pdf)

A licensee must:

- ensure only authorised explosives may be imported under the licence
- establish and maintain a safety management system for the import of explosives under the licence that are specific to the control of explosives and
- provide anyone with a Safety Data Sheet for any explosives imported under licence.

Usually, the holder of an import licence must give WorkSafe ACT 2 business days notice of an intention to import explosives.

However, it only needs to be told if more than the quantities of explosives listed in the following table are imported:

Explosive	Minimum amount requiring notice
propellant gunpowder of classification code 1.1D	5kg
propellants of classification code 1.3C	20kg
<b>distress signals</b>	
classification code 1.3G	5kg
classification code 1.4G	10kg
classification code 1.3G and 1.4G	10kg in total, not more than 5kg of which can be classification code 1.3G
fuse lighters of classification code 1.4G	10kg
primers or percussion caps of classification code 1.4S	10 000 in number

airbag inflators, airbag modules, 10kg or seat belt pretensioners, of hazard division 1.4 that are not installed in vehicles or in completed vehicle components.

WorkSafe ACT should be told:

- if the explosives are in a package containing only a single kind of explosive—the weight of each individual package and the number of packages
- if the import is in bulk—the quantity of the explosive
- if the import is in a package containing different kinds of explosive—the quantity of each kind of explosives (by weight or numbers of articles, or both)
- the name of the intended recipient of the explosives (if different from that of the licensee) and
- the address of the place where the explosives are to be stored in the ACT (if different from that stated in the licence).

Reporting is also only required if more than the minimum amount requiring notice of the explosives listed in the table is imported into the ACT.

An import licensee must keep a record of all explosives imported into the ACT for 3 years. It is an offence not to do so. The maximum penalty for an individual is \$2000 or \$10,000 for a corporation.

## Carrying Explosives

A person must not engage anyone else to carry an explosive, unless:

- the person has an ACT or interstate explosive licence or
- is otherwise approved. A person must not engage anyone else to carry an explosive by road or rail.

It is an offence to do so. The maximum penalty for an individual is \$3000 or \$15,000

for a corporation. Someone can carry an explosive by road in the ACT if the person is authorised to do so under an ACT or interstate explosives carrying licence and either:

- holds an explosives driving licence or an interstate explosives driving licence authorising the person to do so or
- is carrying a category 1 load of explosives (as defined by the Australian Explosives Code) and is permitted to handle the explosives under the law.

It is an offence to allow someone other than an authorised driver to drive a vehicle carrying explosives. The maximum penalty for an individual is \$3000 or \$15,000 for a corporation.

To obtain an ACT carrying licence, a person must fill out an application form, as well as any documents and other requirements required by the form. A copy of the form is available from WorkSafe ACT on 6207 3000.

A licensee must:

- ensure only authorised explosives may be carried under the licence
- establish and maintain a safety management system (including an emergency plan) for the carrying of explosives under the licence
- ensure anyone who handles an explosive or another dangerous substance under the licence has the appropriate skills and training for doing so, including training in the requirements of the Australian Explosives Code and

- ensure vehicles carrying explosives under the licence meet the requirements of the Australian Explosives Code in relation to the category of load carried by the vehicle.

## Applying for a driver's licence to carry an explosive

To apply for a licence a person must fill out an application form, as well as any documents and other requirements required by the form. A copy of the form is available from WorkSafe ACT on 6207 3000.

To obtain and retain a licence, WorkSafe ACT must regard the person as being suitable to hold a licence.

When deciding whether a person is suitable, the Commissioner must consider whether the person:

- is at least 21 years old
- has held a driver's licence for at least twelve months before the licence is issued, and continues to hold the licence (ie. it has not been suspended or cancelled)
- continues to hold a driver's licence after the licence is issued, without the licence being suspended or cancelled
- has not, after the explosives driving licence is issued—be convicted or found guilty in the ACT or elsewhere of an offence involving a dangerous substance
- has been convicted or found guilty within the previous five years of an offence under Part 3 of the Road Transport (Alcohol and Drugs) Act 1977, or a driving offence such as:
  - negligent driving
  - furious, reckless or dangerous driving or

- menacing driving<sup>12</sup>

and otherwise has a regular history over the previous 5 years in relation to offences relating to driving vehicles

- has at least twelve months experience driving a vehicle or vehicles of the kind or kinds in which the explosives will be carried
- meets the commercial vehicle driver medical standards set out in the document *Assessing Fitness to Drive*
- has demonstrated adequate knowledge of:
  - the requirements of these regulations and the Australian Explosives Code which relate to the carrying of explosives by road
  - the characteristics of explosives of the various hazard divisions
  - the precautions to be taken for the prevention of accidents in the carrying and associated handling of explosives and
  - the actions to be taken if an emergency happens to involve explosives.<sup>13</sup>

Unless exempted, a person who drives a vehicle carrying an explosive must:

- have on them the driver's licence and a carrying licence (or a blasting permit or a fireworks display permit) and
- produce the required authorisation for inspection if asked by an inspector or a police officer.

Generally, explosives must be carried in accordance with the Australian Explosives Code.

<sup>12</sup> Or similar offences anywhere else in Australia.

<sup>13</sup> Someone can show they have this knowledge if they have passed a training course approved by WorkSafe ACT.

It should also be noted WorkSafe ACT may make a declaration setting out the routes and quantity of explosives that can be carried, and the times such explosives can be carried.

## Storing Explosives

A person<sup>14</sup> generally requires a licence to store explosives.

However, a licence is not required if the following goods are stored up in the quantities set out in the table below

<sup>14</sup> Other than an WorkSafe ACT Inspector or police officer.

A licensee can store explosives owned or controlled by the licensee, or if the licensee gives written permission, explosives owned and controlled by someone else.

To apply for a licence, a person must fill out an application form, and must also provide any documents and other requirements required by the form. The form can be found on the WorkSafe ACT website at:

[http://www.workcover.act.gov.au/pdfs/DS\\_Lic2StoreApplic.pdf](http://www.workcover.act.gov.au/pdfs/DS_Lic2StoreApplic.pdf)

A licensee must:

- only store authorised explosives and

Explosives	Storage Licence Exemption Conditions	Maximum Quantity
propellant gunpowder of classification code 1.1D	storage for personal use	2kg
propellants of classification code 1.3C	storage for personal use	10kg
distress signals of classification code 1.3G, if unaccompanied by distress signals of classification code 1.4G	storage for emergency use	2kg
distress signals of classification code 1.4G, if unaccompanied by distress signals of classification code 1.3G, and if stored for emergency use	storage for emergency use	5kg
distress signals of classification code 1.4G and 1.3G, stored together, and if stored for emergency use	storage for emergency use	5kg in total, including not more than 2kg of classification code 1.3G
safety cartridges of classification code 1.4S, other than ammunition	storage for personal use	10 000 in number
primers or percussion caps of classification code 1.4S	storage for personal use	10 000 in number
safety fuse of classification code 1.4S	storage for personal use	350m
airbag inflators, airbag modules and seat belt pretensioners, of hazard division 1.4	if incorporated into completed vehicle components	unlimited
model rocket motors of hazard division 1.4 that each— (a) contain less than 62.5g of propellant (b) have a capacity for generating a total impulse of no more than 80N	storage for personal use	5kg
Sparklers	storage for personal use	10kg
general use fireworks other than sparklers	storage for personal use	unlimited



- prepare a Safety Management System for the premises.

The Dangerous Substances (Explosives) Regulation 2004, sets out at length the requirements that must be met by those wishing to store explosives in the ACT. These rules should be referred to. Other more specific rules relate to fireworks. They are not dealt with in this booklet.

## Supplying Explosives

A person must be licensed<sup>15</sup> to supply explosives authorised by WorkSafe ACT.

To apply for a licence, a person must fill out an application form, as well as any documents and other requirements required by the form. The form can be found on the WorkSafe ACT website at:

[http://www.workcover.act.gov.au/pdfs/DS\\_LicenceToSupply.pdf](http://www.workcover.act.gov.au/pdfs/DS_LicenceToSupply.pdf)

A licensee must:

- ensure that only authorised explosives may be supplied under the licence
- ensure explosives are only supplied from premises where the explosives are authorised to be stored
- establish and maintain a Safety Management System for the supply of explosives under the licence and
- at anyone's request, provide the person with a Safety Data Sheet for any explosives supplied under the licence.

These rules apply to all explosives other than fireworks, which is regulated by other rules.

The Dangerous Substances (Explosives) Regulation 2004 set out a number of rules dealing with:

- the sorts of explosives that can be supplied

- how explosives should be delivered and
- the records that must be kept by a licensee. These rules should be followed.

## Using Explosives – Shotfirer's And Blast Permits

The law sets out who may use explosives and when. They do not apply to the use of:

- a general use firework
- model rocket motor
- a safety cartridge
- an explosive power tool cartridge
- a distress signal in an emergency or for a test to prepare for an emergency or
- an explosive by an inspector exercising a function under the Act. Other rules also relate to fireworks.

## Who may use an explosive?

Someone with a shotfirer's licence, or who is authorised by a blasting permit to manufacture explosives or manufacture ANFO for immediate use (or an employee or contractor of the licensee who is under the direct supervision of the licensee) may use explosives (or manufacture ANFO for immediate use).

An occupier or premises must not allow a person (other than an inspector) to use an explosive either:

- without a shotfirer's licence or a blasting permit or
- contrary to a blasting permit.

To do so is an offence. The maximum penalty for an individual is \$1000 or \$5000 for a corporation. A person who holds a shotfirer's licence or a blasting permit must:

<sup>15</sup> Or be an employee or contractor of the licensee.

- carry the licence or permit at all times when using, or preparing to use, the explosives authorised to be used by the licence or permit and
- produce the licence or permit when asked to do so by an inspector, police officer or firefighter.

### How do I apply for a shotfirer's licence?

Only an individual can apply for a shotfirer's licence.

The applicant must fill out an application form and provide the documentation required by the form. The application is available by contacting WorkSafe ACT on 6207 3000.

The Chief Executive of the Chief Minister's Department must decide whether someone is suitable to hold a shotfirer's licence.

Someone is suitable if they can demonstrate adequate knowledge and experience in relation to safety in the use of explosives using the method set out in the application as well as the requirements of the law that relate to explosives and that method of use.

Someone will be taken to have adequate knowledge and experience if they have either:

- passed an examination, or otherwise holds a qualification issued outside the ACT that has been approved by the Chief Executive
- passed a training course (or some other applicable standard of competency) approved by the Chief Executive and has displayed to the satisfaction of the Chief Executive practical experience in using the explosives intended to be used or
- demonstrated to the satisfaction of the Chief Executive suitable practical experience in the use of the explosives intended to be used under the licence.

Shotfirer licences are issued with the following conditions:

- only authorised explosives may be used under the licence
- the licensee must establish and maintain a Safety Management System for the use of explosives under the licence
- if the licence authorises the manufacture of ANFO for the personal use of the licensee:
  - the quantity authorised to be manufactured must be no more than 50kg at any single time
  - the ANFO may only be manufactured using ammonium nitrate as the oxidising agent and clean oil, fuel oil or another oil having a flash point of 60.5 degrees celsius or higher as the fuel component and
  - a colouring agent must be used to differentiate mixed ANFO from unmixed components

### Blasting permits

A person applying for a blasting permit must fill out a form, and provide the documentation required by the form. The form is available from WorkSafe ACT on 6207 3000.

In deciding whether someone should hold a blasting permit, Chief Executive of the Chief Minister's Department must decide whether:

- the applicant for the operation has demonstrated practical experience in the use of explosives as proposed in the application
- the applicant's safety management system (including the blast plan) for any relevant blasting operation is suitable for the operation.

During the process, the applicant may be required to undertake a practical or oral examination, so as to display the shotfirer's competence to use explosives in accordance with the blast plan.

These conditions apply to each blasting permit:

- only authorised explosives may be used for a blasting operation authorised by the permit
- the permit-holder must establish and maintain a Safety Management System (including a blast plan) for the blasting operation authorised by the permit
- the shotfirer for the operation must hold a shotfirer's licence authorising the use of the explosives stated in the blast plan for the purpose stated in the blast plan and
- the exclusion zone as set out in the blast plan must be maintained for the blasting site.

In particular, the permit holder must ensure that this part is complied with in relation to the use of explosives for any blasting operation conducted under the authority of the permit.

After completion of a blasting operation, a permit holder must make a written evaluation of the operation. If asked, this must be given to WorkSafe ACT.

It is an offence not to do so. The maximum penalty for an individual is \$1000 or \$5000 for a corporation.

The Dangerous Substances (Explosives) Regulation 2004 set out:

- the method of storing explosives at a blasting site
- how far ignition sources should be kept from a blasting site
- how to dispose of defective explosives
- the blasting equipment to be used in a blasting operation

- the equipment to be used to initiate explosives
- how exploders are to be labelled, identified and tested
- the fact that a firing switch, short circuit switch or switchbox used for mains firing in a mine must be of a kind approved by an Inspector
- the precautions and warnings to be given prior to a blast
- a prohibition on blasting that may give out flames during days where a total fire ban has been declared
- how firing explosives at night should be conducted
- how cap fuses and prepare primers
- how a person must lower a primer into a blast hole
- the rules to apply if a storm is approaching
- how to prepare a site for blasting
- what to do when preparing a blast
- how to deal with obstructions in blast holes
- what to do when charging blast holes using pumpable or free-flowing explosives
- the precautions taken after a blast
- what must be reported at the end of each shift to the person responsible for control of the blasting during the next shift
- the method of how to explode using electric firing operations, or using fuses
- the procedure to be followed if there is a misfire and
- how to undertake blasting operations underwater.

A shotfirer should refer to the Regulation. The Dangerous Goods (Explosives) Regulation set out specific rules as to how a blast should be conducted. A shotfirer should refer to them prior to conducting a blast.

## Disposal Of Explosives (other than by way of supply)

An explosive<sup>16</sup> can only be disposed of by somebody with a licence issued under the Act to handle explosives.

As a general rule, explosives must be disposed of in accordance with Australian Standard 2187.2 and not merely discarded.

In addition, the person must:

- ensure that the method of disposal used provides the greatest degree of safety possible
- ensure that the method of disposal is appropriate to the kind of explosives and the condition of the explosives and
- take adequate precautions against causing injury to anyone or damage to any property.

They must also follow any instructions given by an Inspector as to how to dispose of an explosive.

It is an offence to discard an explosive. The maximum penalty for an individual is \$3000 or \$15,000 for a corporation.

When an explosive is disposed of by a licensee, the licensee must keep for 3 years a record indicating the:

- name and licence number • owner of the explosive
- type and quantity of explosive
- date of disposal and

<sup>16</sup> Other than general use fireworks. However, more than 10kg of sparklers must be disposed of under these rules.

- reason for disposal.

Failure to do so is an offence. The maximum penalty for an individual is \$2000 or \$10,000 for a corporation.

## Special Rules For Ammonium Nitrate

Because of its ability to be used as an explosive, ammonium nitrate<sup>17</sup> is regarded as being a security sensitive product.

Ammonium nitrate can only be used in:

- mining
- quarrying
- the manufacture of explosives and fertilisers
- genuine scientific research in relation to explosives or fertilisers
- sampling the substance for identifying the kind of quantities of ingredients in the substance
- carrying out demonstrations, education or practical training in relation to explosives or fertilisers
- commercial agricultural use by primary producers or distribution service agencies, or
- in services for carrying the substance.

You must have a licence to use ammonium nitrate.

<sup>17</sup> The law defines ammonium nitrate as a substance that has the Australian Dangerous Substances Code identification serial numbers 1942, 2067, 2968, 2069, 2070 or 207, as an ammonium nitrate emulsion containing greater than 45% ammonium nitrate or an ammonium nitrate mixture containing greater than 45% ammonium nitrate, (a substance with UN Number 3139) if the substance is in the form of ammonium nitrate, but does not include an ammonium nitrate solution or ammonium nitrate that is an explosive.

To apply for a licence, a person must fill out an application form, as well as provide any other documents required by the form. The form is available from WorkSafe ACT on 6207 3000.

When considering whether someone should have a licence, WorkSafe ACT must consider whether ASIO has made either an adverse security assessment or a qualified security assessment of:

- the person (or a close associate of the person)
- whether the person is a corporation, an officer of the corporation (or a close associate of an officer of the corporation)
- if the applicant is a person, WorkSafe ACT must also consider whether the person is an adult.

A licensee must:

- ensure that the substance is used only for the purpose indicated in the licence
- ensure that no-one other than a security cleared responsible person named in the licence has unsupervised access to the substance
- apply to WorkSafe ACT to amend the licence if the licensee proposes to:
  - add someone to, or remove someone from, the licence as a security cleared responsible person or
  - change the name stated in the licence of a security cleared responsible person.

## Who is a security cleared responsible person?

A security cleared responsible person is an adult who:

- is not themselves (nor is a close associate of the person) subject to either an adverse security assessment or a qualified security assessment from ASIO and
- has not been convicted, or found guilty in the previous 5 years of an offence involving:
  - a dangerous substance
  - a firearm
  - actual or threatened violence or
  - fraud or dishonesty. The person in control of the use of ammonium nitrate must ensure that only authorised people use the substance.

It is an offence if someone else does. The maximum penalty for an individual is \$1000 or \$5000 for a corporation. A licensee must keep a record for 3 years that indicates:

- the name and classification of the substance
- the quantity of the substance used and
- the purpose for which the substance was used.

Ammonium nitrate must not be discarded. This means for example, the substance should not be thrown away or dumped in a waterway.

Rather, it must be disposed of in a method that is appropriate, and provides the greatest degree of security possible.

In particular, if an Inspector tells someone to dispose of ammonium nitrate in a particular way, it must be disposed of in that way.

It is an offence not to do so. The maximum penalty for an individual is \$3000 or \$15,000 for a corporation.

If a licence permits a person to dispose of ammonium nitrate, the person must keep a record for 3 years which details the:

- name and licence detail of the owner

- quantity of ammonium nitrate disposed of
- date and method of disposal and
- reason for the disposal.

It is an offence not to do so. The maximum penalty for an individual is \$2000 or \$10,000 for a corporation.

### When ammonium nitrate is stolen

If ammonium nitrate is stolen, you must tell WorkSafe ACT and the police without delay.

You must also provide WorkSafe ACT with a written report, setting out what happened and how much ammonium nitrate was stolen as soon as practicable.

It is an offence not to do these things. The maximum penalty for an individual is \$3000 or \$15,000 for a corporation.

### Other circumstances (other than use) where a licence is needed to handle ammonium nitrate

A licence is also needed if you intend to:

- manufacture
- import into the ACT
- carry or
- supply

ammonium nitrate.

The Act sets out particular rules that relate to these functions. For further information, contact WorkSafe ACT.



## EMERGENCY POWERS

Where there is a risk to people, property or the environment posed by a dangerous substance, the Minister for Industrial Relations may issue an emergency order. An order can be issued to particular people or to the general public. The Minister can:

- Require the publication of warnings indicating that a substance is unsafe
- Prohibit anyone from handling a dangerous substance
- Prohibit the advertising of a substance
- Require a substance to be recalled or disposed of
- Prevent the carrying on of any activity in relation to the substance or only allowing an activity to be carried on in accordance with conditions or
- Require samples to be taken of the environment in which a dangerous substance has been used.

Someone ordered to recall a dangerous substance must tell the public about a recall in anyway specified by the Minister and must tell the Minister when the recall has been completed.

Someone subject to an emergency order can seek to have an emergency order stopped or varied in the Supreme Court and may seek compensation from the Minister if the person thinks there were insufficient grounds to make the order. If the Minister agrees that there were insufficient grounds, compensation can be paid.<sup>18</sup>

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<sup>18</sup> Compensation is not payable if someone suffered damage because of something they did (or did not) do or failed to do something or where someone contributed to the creation of the risk that led to the emergency order to be made.

## THE ROLE AND POWERS OF INSPECTORS

WorkSafe ACT Inspectors play an important role in ensuring the law is complied with. The functions of an Inspector include:

- inspecting and monitoring places in which dangerous substances are located and
- investigating compliance with this Act and incidents adversely affecting the safe handling of dangerous substance.

### Who is an Inspector?

WorkSafe ACT Inspectors and police officers are Inspectors.

This means that the police have the same powers as WorkSafe ACT Inspectors to enforce the law.

### Where can Inspectors go?

During business hours, or while a business is operating, an Inspector can enter:

- workplaces (other than areas used only as residential premises) and
- premises the public can either use, or that are open to the public.

An Inspector can also stop and detain vehicles that the Inspector thinks is a mobile workplace or contains documents relating to dangerous substances at a workplace. An Inspector can enter any premises with:

- the occupier's consent or
- in accordance with a search warrant.

Finally, an Inspector can enter premises where the circumstances are of such seriousness and urgency as to require immediate entry to the premises without the authority of a search warrant.

### How must an Inspector enter premises?

An Inspector must show an occupier of premises their identity card when entering premises. If they do not, they must leave.

### Entering premises with a person's consent

Some special rules apply where an Inspector is seeking to enter premises with the occupier's consent (other than workplaces or public premises).

An Inspector must produce his or her identity card and tell the occupier:

the purpose of the entry

that anything found and seized under this part may be used in evidence in court and

that consent may be refused.

If the occupier consents, the Inspector must ask the occupier to sign a written acknowledgment that the occupier was told all of the above points and:

that the occupier consented to the entry and the time and date when consent was given.

### Rules relating to search warrants

In most circumstances, when entering under a search warrant, an Inspector must:

- announce that the Inspector is authorised to enter the premises
- give anyone at the premises an opportunity to allow entry to the premises
- if the occupier of the premises, or someone else who apparently represents the occupier, is present at the premises—identify himself or

herself to the person, and give them a copy of the warrant and a document setting out the rights and obligations of the person and

- provide a document setting out the rights and obligations of the person.

In most circumstances, a representative of the occupier is entitled to observe the search.<sup>19</sup>

## What else can an Inspector do?

Inspectors can also:

- examine anything
- copy or take extracts from documents relating to a contravention or possible contravention of the Act
- take measurements, conduct tests, take drawings, photographs, videos or other kind of recordings
- open or operate (or require to be opened or operated) plant or a system
- take samples, or otherwise carry out any other examination to find out whether the Act has, or is being complied with
- take onto the premises any people, equipment or material the Inspector needs to assist them in exercising their power under dangerous substances legislation
- seize or control things thought to be connected with an offence under dangerous substances legislation<sup>20</sup>

<sup>19</sup> A person cannot observe a search if that would impede it or the person is under arrest and allowing the person to observe the search would interfere with the search's objectives.

<sup>20</sup> A decision to seize these sorts of things can be reviewed by the Magistrates' Court.

- require the occupier or anyone at the premises, to give information, answer questions or produce documents or anything else reasonably needed to exercise the Inspector's functions under this part
- require anyone suspected of breaking the Act to provide their name and address<sup>21</sup>
- require someone who has, or may have done something, to show they are allowed to do it eg. driving a forklift<sup>22</sup> and
- require the occupier, or anyone at the premises, to give the Inspector reasonable assistance to exercise a function under this part.

Someone who claims they have suffered loss or expense because of the way an Inspector has exercised a power can seek compensation in either the Magistrates' Court or the Supreme Court (depending on the amount claimed). The court can order compensation where it is just to do so.

## In emergencies

If an Inspector thinks that:

- there is an imminent risk of serious harm to a person at or near the premises and
- it is necessary for the Inspector to take action without delay to prevent or minimise the risk

<sup>21</sup> Not doing so is an offence. The maximum penalty for an individual is \$1000 (or, if an Infringement Notice is issued, \$200 for an individual, or \$1000 for a corporation).

<sup>22</sup> Not doing so is an offence. The maximum penalty for an individual is \$500 (or, if an Infringement Notice is issued, \$100 for an individual, or \$1000 for a corporation).

the Inspector may (with someone with appropriate knowledge and experience to help, if necessary) enter premises to prevent or minimise the risk.

However, when deciding what to do the Inspector must do all things reasonably practicable to consult with the occupier of the premises and WorkSafe ACT.

Where this occurs, costs may be recovered from employers, the owner or lessee of the premises or the person who caused the risk.

## Where a Dangerous Occurrence has, or may be happening

Where an Inspector thinks:

- an uncontrolled fire, explosion, or escape of gas, a dangerous substance or steam, or another occurrence involving imminent risk of:
  - fire, explosion, or an escape of gas, a dangerous substance or steam
  - death of, or serious personal injury to, anyone or
  - substantial damage to property has happened, is happening or is about to happen at premises, an Inspector may enter the premises (with force, if necessary) to:
    - investigate
    - ensure the premises are safe and
    - prevent the concealment, loss or destruction of anything reasonably relevant to the investigation of the occurrence.

If an Inspector acts under this section in the absence of the occupier of the premises, the Inspector must leave a notice setting out:

- the Inspector's name
- the time and date of the entry
- the purpose of the entry and

- how to contact the Inspector.

However, the most important enforcement powers conferred on Inspectors by dangerous substances legislation are:

- Compliance Agreements
- Improvement Notices and
- Prohibition Notices.

## Compliance Agreements

An Inspector can ask someone they think has broken dangerous substances legislation to enter into a Compliance Agreement.<sup>23</sup>

The agreement must indicate:

- that it is a compliance agreement under dangerous substances legislation
- what the contravention of dangerous substances legislation that led to the making of the agreement was
- the period for which the agreement is to operate and
- the measures to be taken to ensure dangerous substances legislation is complied with
- the times within which the measures must be taken (eg. repairing or replacing particular plant)
- signatures by the Inspector and the person.

A compliance agreement must be prominently displayed at the workplace. It is an offence not to do so.

An Inspector can extend the period a Compliance Agreement is to operate. However, that decision can be reviewed

<sup>23</sup> Entering into the compliance agreement is not an admission of fault and is not relevant to deciding fault or liability in relation to any contravention of dangerous law. Evidence of a compliance agreement is not admissible in civil or criminal proceedings as evidence of the fault or liability of a person in relation to the contravention.

internally and then subsequently by ACAT. A person can have a decision relating to an improvement notice reviewed internally and then ACAT.

## Improvement Notices

An Inspector can give a notice to a person responsible for a dangerous substance if the Inspector thinks a person has contravened, or may contravene, dangerous substances legislation.

An Improvement Notice may require the relevant responsible person to do one or more of the following:

- put stated premises, plant or a system for handling the dangerous substance into a safe condition, including, for example, repairing or replacing the premises, plant or system
- comply with a particular provision of dangerous substances legislation in relation to the handling of the substance or
- do anything else to ensure that dangerous substances legislation is complied with in relation to the substance

within a period of time set out in the notice.<sup>24</sup>

WorkSafe ACT can review decisions relating to an Improvement Notice and subsequently by ACAT. Contact WorkSafe ACT for more details.

## What must the person given an Improvement Notice do?

A person given an Improvement Notice must:

- take all reasonable steps to comply with a requirement of the notice

- tell everyone affected by anything required to be done under the notice about the notice, including the things required to be done under it
- give a copy of the notice to each person in control of each workplace where an affected person works and
- display the notice in a prominent place at each premises affected by the contravention of dangerous substances legislation in relation to which the notice was given.

It is an offence not to comply with an Improvement Notice. The maximum penalty for an individual is \$10,000 or \$50,000 for a corporation.

## Prohibition Notices

An Inspector can issue a Prohibition Notice if the Inspector thinks:

- someone at the premises has contravened, is contravening or is likely to contravene the Act and giving the notice is necessary to prevent or minimise risk of serious harm or damage to people, property or environment.
- giving the notice is necessary:
  - to prevent or minimise risk of serious harm to the health or safety of people from a hazard at the premises
  - to allow the inspection, testing or monitoring of anything at the workplace or
  - to allow the investigation of an accident or other incident (including a dangerous occurrence) at the premises.<sup>25</sup>

<sup>24</sup> The period of time to comply can be extended by an Inspector, but only if the period hasn't expired. This decision can be reviewed by WorkSafe ACT and subsequently by ACAT.

<sup>25</sup> The person receiving the notice can ask WorkSafe ACT to have another Inspector consider whether or not the notice should have been given.

A prohibition notice in relation to premises may require a responsible person for the premise not to do one or more of the following until the notice specified in the notice ends:

- not to use stated premises, plant, systems, substances or things
- not to disturb stated premises, plant, systems, substances or things or
- not to do something else at or in relation to the workplace.

Decisions relating to Prohibition Notices can be reviewed internally and then subsequently by ACAT. Contact WorkSafe ACT for more details.

### What happens if a Prohibition Notice is issued?

The person given the prohibition notice must:

- take all reasonable steps to ensure the notice is not contravened
- display the notice at each premises to which the notice relates and tell everyone who works at the workplace to which the notice relates about the notice, including anything required not to be done under it or
- give a copy of the notice to each person (or each other person) in control of the workplace to which the notice relates.

Someone who:

- suffers loss or expense because a Prohibition Notice has been issued and
- thinks there was insufficient reason for giving the notice

can apply to the Minister for Industrial Relations for compensation. See WorkSafe ACT for further details.

It is an offence not to comply with a Prohibition Notice. The maximum penalty for an individual is \$20,000 or \$100,000 for a corporation.

In general, original decisions of this class can be internally reviewed by WorkSafe ACT. For further information contact WorkSafe ACT.

## OTHER COMPLIANCE MEASURES

WorkSafe ACT has other powers to ensure that dangerous substances legislation is being complied with.

### Attending WorkSafe ACT to produce documents and answer questions

WorkSafe ACT can ask someone who the Commissioner thinks has or might be contravening dangerous substances legislation, to attend the Commissioner to:

- answer questions that the chief executive considers necessary to decide whether the relevant person has contravened or is contravening this Act or
- produce the documents asked for by the Commissioner.

Any documents requested must be provided, and any questions answered.

It is an offence not to provide requested documents or answer questions.

However, anything obtained cannot be used against the person in a civil or criminal proceeding, other than an offence of providing false or misleading statements, information and documents.

### Enforceable Safety Undertakings

WorkSafe ACT may accept an Enforceable Safety Undertaking from someone the Commissioner alleges has contravened a provision of this Act in which the person promises to rectify something.<sup>26</sup>

<sup>26</sup> Giving the safety undertaking is not an express or implied admission of fault or liability by the person in relation to the alleged contravention and is not relevant to deciding fault or liability in relation to a contravention of the Act.

This allows the person to design ways of ensuring dangerous substances legislation compliance in a manner that suits their business.

An example of an Enforceable Safety Undertaking would be a promise to stop doing something, or implement an educational program.

A decision not to accept an Enforceable Safety Undertaking can be reviewed internally and then subsequently ACAT.

The undertaking will last until the Commissioner thinks that the undertaking is no longer necessary or desirable. This is another decision that can also be reviewed internally by ACAT.

### What happens if an Enforceable Safety Undertaking is breached?

If an undertaking is being breached, the Commissioner may seek an order from the Magistrates' Court for an order:

- that the undertaking not be breached
- requiring the person making the undertaking to pay to the Territory the value of any benefits anyone derived, directly or indirectly, from the breach of the undertaking
- compensating someone who has suffered loss or damage because of the breach of the undertaking or
- any other order that the court considers appropriate.

It is an offence if a person fails to take all reasonable steps to comply with an order from a Magistrates' Court to honour an enforceable undertaking.

The maximum penalty for an individual is \$20,000 or \$100,000 for a corporation.



## Injunctions

Finally, WorkSafe ACT or any other interested person can seek an injunction from the Magistrates' Court against someone who has committed, is committing or is likely to commit offence against dangerous substances legislation.

For further information please contact WorkSafe ACT.





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