



Australian Capital Territory

Work Health and Safety Legislation Amendment Act 2018

A2018-8

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J2017-280

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Australian Capital Territory

Work Health and Safety Legislation Amendment Act 2018

A2018-8

An Act to amend legislation about dangerous substances and work health and safety, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Part 1 Preliminary

1 Name of Act

This Act is the *Work Health and Safety Legislation Amendment Act 2018*.

2 Commencement

This Act commences on 29 March 2018.

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

3 Legislation amended

This Act amends the *Dangerous Substances Act 2004* and the *Work Health and Safety Act 2011*.

Note This Act also amends other legislation (see sch 1).

4 Legislation repealed

The following legislative instruments are repealed:

- *Dangerous Substances (Incorporated Document) Notice 2004 (No 1)* (NI2004-363)
- *Dangerous Substances (Incorporated Document) Notice 2005 (No 2)* (NI2005-317)
- *Dangerous Substances (Incorporated Document) Notice 2006 (No 1)* (NI2006-11)
- *Dangerous Substances (Incorporated Document) Notice 2009 (No 1)* (NI2009-331)
- *Dangerous Substances (National Code of Practice for the Labelling of Workplace Substances) Code of Practice Approval 2006* (DI2006-191)

- *Dangerous Substances (National Code of Practice for the Control of Workplace Hazardous Substances) Code of Practice Approval 2006 (DI2006-192)*
- *Dangerous Substances (National Model Regulations for the Control of Workplace Hazardous Substances) Code of Practice Approval 2006 (DI2006-193).*

Part 2 Dangerous Substances Act 2004

5 Exclusions from Act Section 7 (2)

omit

6 Relationship of regulations to approved codes of practice and incorporated documents Section 9 (2), notes 1 to 3

omit

7 Section 10

substitute

10 Meaning of *dangerous substance*

(1) In this Act:

dangerous substance means a substance that is—

- (a) classified—
 - (i) as an explosive under the Australian Explosives Code; or
 - (ii) in class 1 (Explosives) under the ADG Code; or
- (b) asbestos; or
- (c) a security sensitive substance; or
- (d) prescribed by regulation to be a dangerous substance; or
- (e) declared under subsection (2) to be a dangerous substance.

Note Asbestos is also dealt with under the [Work Health and Safety Act 2011](#).
See s 8 and s 8A for how these Acts interact.

(2) The Minister may declare a substance to be a dangerous substance.

- (3) A declaration under subsection (2) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

10A Meaning of *security sensitive substance*

- (1) In this Act:

security sensitive substance means a substance that is—

- (a) prescribed by regulation to be a security sensitive substance; or
(b) declared under subsection (2) to be a security sensitive substance.
- (2) The Minister may declare a substance (other than an explosive) to be a security sensitive substance.
- (3) A declaration under subsection (2) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

8 *Handle a dangerous substance* Section 11, examples 1 and 3

omit

Australian Dangerous Goods Code

substitute

ADG Code

9 Section 11, note 1

omit

10 *Non-commercial handling of a dangerous substance* Section 12, note

omit

11 **Correctly classified for a dangerous substance**
Section 13 (1), note 1

omit

12 **Correctly for packed, stored, labelled and placarded**
Section 14 (1), note 1

omit

13 **Incorporated documents and approved codes of practice**
may be considered
Section 22, note

omit

14 **New part 3.1A**

before part 3.1, insert

Part 3.1A Application—ch 3

22A Application

This chapter does not apply to asbestos or security sensitive substances.

Note Other duties may apply under the [Work Health and Safety Act 2011](#).

15 **Meaning of *close associate* for ch 4**
Section 48 (1), note

omit

16 **Review by internal reviewer**
Section 189 (2), note

omit

17 Section 206

substitute

206 Inspection of incorporated documents

The director-general must ensure that an incorporated document is made available for inspection free of charge to the public on business days at reasonable times at the office of an administrative unit administered by the director-general.

**18 Regulations may apply etc instruments
New section 213 (2)**

after the notes, insert

- (2) The [Legislation Act](#), section 47 (6) does not apply in relation to the ADG Code if applied, adopted or incorporated under subsection (1).

Note The ADG Code does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see [Legislation Act](#), s 47 (7)). The ADG Code is accessible at www.ntc.gov.au.

**19 Notification of certain incorporated documents
Section 220**

omit

20 Dictionary, new definition of ADG Code

insert

ADG Code (or **Australian Dangerous Goods Code**) means the Australian Code for the Transport of Dangerous Goods by Road and Rail, published by the Commonwealth, as in force from time to time.

21 Dictionary, definition of *Australian Dangerous Goods Code*

substitute

Australian Dangerous Goods Code—see *ADG Code*.

22 Dictionary, definition of *Australian Explosives Code*

substitute

Australian Explosives Code means the Australian Code for the Transport of Explosives by Road and Rail, published by the Commonwealth, as in force from time to time.

Note The Australian Explosives Code is accessible at www.safeworkaustralia.gov.au.

23 Dictionary, definition of *Australian Standard 1940*

omit

24 Dictionary, definition of *incorporated document*

substitute

incorporated document means any of the following documents:

- (a) the ADG Code;
- (b) the Australian Explosives Code;
- (c) an instrument applied, adopted or incorporated by regulation.

25 Dictionary, definitions of *NOHSC approved criteria* and *NOHSC List of Designated Hazardous Substances*

omit

26 Dictionary, new definition of *security sensitive substance*

insert

security sensitive substance—see section 10A.

Part 3 Work Health and Safety Act 2011

27 Long title

after

health and safety

insert

, and for other purposes

28 Scope Section 12 (1), notes

substitute

Note 1 A reference to an Act includes a reference to statutory instruments made or in force under the Act, including any regulation and any law or instrument applied, adopted or incorporated by the Act (see [Legislation Act](#), s 104).

Note 2 Other legislation in force in the ACT relating to hazardous chemicals includes the following:

- [Dangerous Goods \(Road Transport\) Act 2009](#)
- [Emergencies Act 2004](#)
- [Environment Protection Act 1997](#)
- [Medicines, Poisons and Therapeutic Goods Act 2008](#).

Note 3 See the [Emergencies Act 2004](#) for provisions relating to hazardous materials incidents (which may include dangerous occurrences).

Note 4 See the [Dangerous Goods \(Road Transport\) Act 2009](#) for the transport by road of certain hazardous chemicals that are classified as dangerous goods under that Act.

29 New section 12 (4)

insert

(4) In this section:

hazardous chemical—see the *Work Health and Safety Regulation 2011*, dictionary.

30 New section 12AA

before section 12A, insert

12AA Application of Act to dangerous goods and high risk plant—sch 1

Schedule 1 provides for the application of this Act to dangerous goods and high risk plant.

**31 Application of Act to dangerous goods and high risk plant
Schedule 1 heading, new reference**

insert

(see s 12AA)

32 Schedule 1, section 2

substitute

2 For the purposes of section 1, a reference in this Act to—

- (aa) a person conducting a business or undertaking includes a reference to a person in control of premises where the dangerous goods are stored or handled; and
- (ab) a business or undertaking, or the conduct of a business or undertaking, includes a reference to the storage or handling of dangerous goods; and

- (ac) a worker includes a reference to a person at the premises at or in which the dangerous goods are stored or handled; and
- (a) carrying out work includes a reference to the storage or handling of dangerous goods; and
- (b) a workplace includes a reference to the premises at or in which the dangerous goods are stored or handled; and
- (ba) a work environment includes a reference to the environment at the premises at or in which the dangerous goods are stored or handled; and
- (c) work health and safety (however expressed) includes a reference to public health and safety; and
- (d) a business address includes a reference to the address of the premises where the dangerous goods are stored or handled.

33 Schedule 1, section 6, new definition of *premises*

insert

premises includes a vehicle, vessel, aircraft or other mobile structure.

Schedule 1 Consequential amendments

(see s 3)

Part 1.1 Dangerous Goods (Road Transport) Act 2009

[1.1] Section 8 (3), new note

insert

Note *Dangerous goods law* does not include the *Dangerous Substances Act 2004* or the *Work Health and Safety Act 2011* because both of those Acts relate to the transport of dangerous goods by road. The interaction between this Act and the *Dangerous Substances Act 2004* is dealt with in that Act, s 8. The interaction between this Act and the *Work Health and Safety Act 2011* is dealt with in that Act, s 12.

Part 1.2 Dangerous Substances (Explosives) Regulation 2004

[1.2] Section 5

substitute

5 Disapplication of Legislation Act, s 47 (5)

The [Legislation Act](#), section 47 (5) does not apply in relation to the following instruments applied, adopted or incorporated under this regulation:

- (a) an Australian Standard;
- (b) Assessing Fitness to Drive;
- (c) the UN Test Manual.

[1.3] Section 112 (1) (h)

substitute

(h) meets the commercial vehicle driver medical standards required by Assessing Fitness to Drive; and

[1.4] New section 159 (2)

insert

(2) In this section:

class label—see the ADG Code.

Note 1 The ADG Code, s 7.1.1 (1) sets out the requirements for class labels for dangerous goods. Class labels are required to be attached to packages, containers and loads of dangerous goods and are used to identify the class of dangerous goods contained.

Note 2 The ADG Code does not need to be notified under the [Legislation Act](#) because s 47 (6) does not apply (see Act, s 213 and [Legislation Act](#), s 47 (7)). The ADG Code is accessible at www.ntc.gov.au.

[1.5] Dictionary, note 3

omit

- Australian Dangerous Goods Code (see s 10 (3))
- Australian Explosives Code (see s 10 (3))

[1.6] Dictionary, note 3

insert

- ADG Code
- Australian Explosives Code

[1.7] Dictionary, new definition of *Assessing Fitness to Drive*

insert

Assessing Fitness to Drive means *Assessing Fitness to Drive: for Commercial and Private Vehicle Drivers, 3rd Edition*, published by Austroads Inc., 2003, as in force on 15 September 2004.

Note *Assessing Fitness to Drive* does not need to be notified under the [Legislation Act](#) because s 47 (5) does not apply (see s 5 and [Legislation Act](#), s 47 (7)). *Assessing Fitness to Drive* is accessible at www.austroads.com.au.

[1.8] Dictionary, definitions of AS 2187.0 etc

substitute

AS 2187.0 means Australian Standard 2187.0 *Explosives—Storage, transport and use—Terminology* as in force on 15 September 2004.

Note AS 2187.0 does not need to be notified under the [Legislation Act](#) because s 47 (5) does not apply (see s 5 and [Legislation Act](#), s 47 (7)). The standard may be purchased at www.standards.org.au.

AS 2187.1 means Australian Standard 2187.1 *Explosives—Storage, transport and use—Storage* as in force on 15 September 2004.

Note AS 2187.1 does not need to be notified under the [Legislation Act](#) because s 47 (5) does not apply (see s 5 and [Legislation Act](#), s 47 (7)). The standard may be purchased at www.standards.org.au.

AS 2187.2 means Australian Standard 2187.2 *Explosives—Storage, transport and use—Use of explosives* as in force on 15 September 2004.

Note AS 2187.2 does not need to be notified under the [Legislation Act](#) because s 47 (5) does not apply (see s 5 and [Legislation Act](#), s 47 (7)). The standard may be purchased at www.standards.org.au.

AS 2187.4 means Australian Standard 2187.4 *Explosives—Storage, transport and use—Pyrotechnics—Outdoor displays* as in force on 15 September 2004.

Note AS 2187.4 does not need to be notified under the [Legislation Act](#) because s 47 (5) does not apply (see s 5 and [Legislation Act](#), s 47 (7)). The standard may be purchased at www.standards.org.au.

[1.9] Dictionary, definition of *class label*

omit

[1.10] Dictionary, definition of *UN Test Manual*

substitute

UN Test Manual means the *Recommendations on the transport of dangerous goods: Manual of tests and criteria*, 3rd revised edition, ISBN 92-1-139368-0, 1999, published by the United Nations, as in force on 15 September 2004.

Note The UN Test Manual does not need to be notified under the [Legislation Act](#) because s 47 (5) does not apply (see s 5 and [Legislation Act](#), s 47 (7)). The UN Test Manual is accessible at www.unece.org.

Part 1.3 Dangerous Substances (General) Regulation 2004

[1.11] Section 3, notes

substitute

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*asbestos-related work*—see the [Work Health and Safety Regulation 2011](#), dictionary.’ means that the term ‘asbestos-related work’ is defined in that dictionary and the definition applies to this regulation.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

[1.12] Section 5

omit

[1.13] Chapter 2

omit

[1.14] Sections 303 to 305 and part 3.2

omit

[1.15] Section 400

substitute

400 Security sensitive substance—Act, s 10A

A substance mentioned in schedule 4, table 4.1, is prescribed.

[1.16] Schedules 1 to 3

omit

[1.17] Schedule 4, new section 4.1 (4)

insert

(4) In this section:

UN number, for a dangerous substance of a particular kind, means the identification serial number listed in the ADG Code for dangerous goods of the same kind.

Note See the ADG Code, s 1.1.3 (def ***UN number***), appendix 1 and appendix 2.

[1.18] Dictionary, note 3

omit

- Australian Dangerous Goods Code (see s 10 (3))
- Australian Standard 1940
- dangerous substance (see s 10; see also this regulation, s 200)
- NOHSC approved criteria (see s 10 (3))
- NOHSC List of Designated Hazardous Substances (see s 10 (3))

[1.19] Dictionary, note 3

insert

- ADG Code
- dangerous substance (see s 10)

[1.20] Dictionary

omit the definitions of

C1 combustible liquid

C2 combustible liquid

capacity

class

class label

combustible liquid

compatible

container

dangerous substance

emergency plan

emergency service

fire risk dangerous substance

flashpoint

good too dangerous to be transported

hazchem code

health and safety representative

importer

intermediate bulk container

International Air Transport Association Regulations

International Civil Aviation Organization Standards

International Maritime Dangerous Goods Code

in transit

manifest quantity

manifest quantity registrable premises

manufacturer

National Exposure Standards

non-registrable premises

package

packaged

packaging

packing group

pipework

placard quantity

placard quantity notice

placard quantity register

proper shipping name

registrable premises

retailer

risk assessment

safety data sheet

SDS

subsidiary risk

subsidiary risk label

supplier

tank

total quantity

transfer

UN number

Part 1.4 **Magistrates Court (Dangerous
Substances Infringement
Notices) Regulation 2004**

[1.21] Schedule 1, part 1.3, items 1 to 11

omit

Part 1.5 Major Events Act 2014

[1.22] Section 12 (1), definition of *prohibited item*, paragraph (a) (iv)

substitute

(iv) a hazardous chemical or explosive;

[1.23] Section 12 (2), definition of *dangerous substance*

omit

[1.24] Section 12 (2), new definition of *hazardous chemical*

insert

hazardous chemical—see the *Work Health and Safety Regulation 2011*, dictionary.

Part 1.6 Medicines, Poisons and Therapeutic Goods Act 2008

[1.25] Section 34 (3), note

substitute

Note The *Dangerous Substances Act 2004*, *Environment Protection Act 1997* and *Work Health and Safety Act 2011* may also apply to the discarding of a regulated substance.

[1.26] Section 34 (5), note

substitute

Note The *Dangerous Substances Act 2004*, *Environment Protection Act 1997* and *Work Health and Safety Act 2011* may also apply to the discarding of a regulated substance.

Part 1.7 Planning and Development Act 2007

[1.27] Section 134 (3A) (a)

omit

dangerous substance

substitute

Schedule 11 hazardous chemical

[1.28] Section 134 (3A) (b)

omit

the land on which, or the building or structure in which, the dangerous substance is to be stored is not registered

substitute

the land, building or structure is not registered as premises

[1.29] New section 134 (3B) to (3D)

insert

(3B) The director-general must make a list of the premises registered in the placard quantity register immediately before the commencement day (the *placard quantity premises list*).

(3C) The placard quantity premises list is a notifiable instrument.

Note A notifiable instrument must be notified under the [Legislation Act](#).

(3D) In any legal proceeding, the inclusion, or non-inclusion, of premises in the placard quantity premises list is evidence that the premises were, or were not, registered in the placard quantity register immediately before the commencement day.

[1.30] Section 134 (8), new definition of *placard quantity register*

insert

placard quantity register has the meaning given by the *Dangerous Substances (General) Regulation 2004*, section 260 (Placard quantity register) as in force immediately before the commencement day.

Note The list of premises in the placard quantity register immediately before the commencement day is in the placard quantity premises list (see s (3B)).

[1.31] Schedule 4, section 4.1, new definitions

insert

commencement day—see section 134 (8).

placard quantity register—see section 134 (8).

Note The list of premises in the placard quantity register immediately before the commencement day is in the placard quantity premises list (see s 134 (3B)).

[1.32] Schedule 4, part 4.2, item 11, column 2

omit

dangerous substance on land, or in a building or structure on the land, that, immediately before the commencement day, was not registered

substitute

Schedule 11 hazardous chemical on land, or in a building or structure on the land, that, immediately before the commencement day, was not registered as premises

[1.33] Schedule 4, part 4.2, item 11, column 2, notes 1 and 2

omit

[1.34] Dictionary, definition of *commencement day*

insert

commencement day, for schedule 4 (Development proposals in impact track because of need for EIS)—see section 134 (8).

[1.35] Dictionary, definition of *dangerous substance*

omit

[1.36] Dictionary, definition of *placard quantity*

substitute

placard quantity—see the [Work Health and Safety Regulation 2011](#), dictionary.

[1.37] Dictionary, new definition of *placard quantity premises list*

insert

placard quantity premises list—see section 134 (3B).

[1.38] Dictionary, definition of *placard quantity register*

substitute

placard quantity register, for schedule 4 (Development proposals in impact track because of need for EIS)—see section 134 (8).

[1.39] Dictionary, new definition of *Schedule 11 hazardous chemical*

insert

Schedule 11 hazardous chemical—see the [Work Health and Safety Regulation 2011](#), dictionary.

Part 1.8 Road Transport (Alcohol and Drugs) Act 1977

[1.40] Section 4B (1) (h) (i) and note

substitute

- (i) a vehicle on which a sign, marking or placard is required to be displayed under the—
- (A) [Dangerous Goods \(Road Transport\) Act 2009](#); or
 - (B) [Dangerous Substances Act 2004](#); or
 - (C) [Work Health and Safety Act 2011](#); or

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 30 November 2017.

2 Notification

Notified under the [Legislation Act](#) on 5 March 2018.

3 Republications of amended laws

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

I certify that the above is a true copy of the Work Health and Safety Legislation Amendment Bill 2018, which originated in the Legislative Assembly as the Work Health and Safety Legislation Amendment Bill 2017 and was passed by the Assembly on 22 February 2018.

Clerk of the Legislative Assembly

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