

**Occupational Health and Safety (Commonwealth Employment)  
(National Standards) Amendment Regulations 2004 (No. 1) 2004 No.  
227**

**EXPLANATORY STATEMENT**

**STATUTORY RULES 2004 No. 227**

Issued by the authority of the Minister for Employment and Workplace Relations

*Occupational Health and Safety (Commonwealth Employment) Act 1991*

***Occupational Health and Safety (Commonwealth Employment) (National Standards)  
Amendment Regulations 2004 (No. 1)***

The *Occupational Health and Safety (Commonwealth Employment) Act 1991* (OHS(CE) Act) establishes a statutory framework to secure the health and safety of Commonwealth Government employees while at work. The occupational health and safety framework complements the Commonwealth workers' compensation and rehabilitation legislation under the *Safety, Rehabilitation and Compensation Act 1988*. The OHS(CE) Act imposes duties on various parties at the workplace. This includes employers, employees, contractors, manufacturers and suppliers of plant and substances, and persons erecting or installing plant in a workplace.

Subsection 82(1) of the OHS(CE) Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the Regulations is to clarify provisions relating to the workplace use of specified forms of asbestos in Commonwealth employment.

Under section 38 of the *National Occupational Health and Safety Commission Act 1985*, the National Occupational Health and Safety Commission (NOHSC) declares National Standards and Codes of Practice. The *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994* (Commonwealth National Standards Regulations) seek to implement these, to the extent that they are capable of applying to Commonwealth employment.

On 21 November 2003 amendments to the Commonwealth National Standards Regulations were gazetted to prohibit the use of chrysotile, actinolite, anthophyllite and tremolite forms of asbestos except when used in permitted circumstances. The amendments also altered the permitted circumstances in the Commonwealth National Standards Regulations for the use of amosite and crocidolite asbestos.

The amendments to the Commonwealth National Standards Regulations were drafted so that the prohibition on the use of chrysotile asbestos did not extend to *in situ* chrysotile asbestos. The prohibition does not apply to chrysotile products that are in place as at 31 December 2003 and such products may remain in place until such time as removal or replacement is required.

The inclusion of the specific *in situ* chrysotile asbestos exception has created uncertainty about whether *in situ* amosite, actinolite, anthophyllite, crocidolite and tremolite forms of asbestos (non-chrysotile forms of asbestos) are prohibited.

The NOHSC National Model Regulations for the Control of Workplace Hazardous Substances, on which the Commonwealth National Standards Regulations are based, does not require the removal of existing *in situ* non-chrysotile forms of asbestos from workplaces.

The Regulations make minor amendments to the Commonwealth National Standards Regulations to:

- clarify that the prohibitions contained in the Commonwealth National Standards Regulations in relation to the workplace use of asbestos do not extend to non-chrysotile forms of *in situ* asbestos. That means the prohibitions do not apply to non-chrysotile asbestos products that are *in situ* as they do not pose a risk to users until the non-chrysotile product is replaced or disturbed. However, once the product has been disturbed or replaced, the prohibition applies; and
- ensure that an employer does not have an obligation to notify an employee of exposure to non-chrysotile forms of asbestos in relation to the use without disturbance of non-chrysotile in products that are *in situ*.

Comcare were consulted in the development of the Regulations. Comcare provides operational support for the Safety Rehabilitation and Compensation Commission.

Details of the Regulations are set out in the attachment.

The Regulations commence on gazettal.

## **ATTACHMENT**

### ***OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) (NATIONAL STANDARDS) AMENDMENT REGULATIONS 2004 (No. 1)***

#### **Regulation 1 - Name of Regulations**

This is a formal provision that provides for the name of the Regulations.

#### **Regulation 2 - Commencement**

This regulation provides that the Regulations commence on gazettal.

#### **Regulation 3 - Amendment of *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994***

Regulation 3 provides that the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994* are amended as set out in Schedule 1.

#### **Schedule 1 - Amendments**

##### **Item 1 - Regulation 6.03, definition of *in situ***

This item expands the definition of *in situ* to include products that contain amosite, crocidolite, actinolite, anthophyllite and tremolite forms of asbestos.

##### **Item 2 - Schedule 1A, item 4, column 3, paragraph (b)**

This item is consequential to the amendment in Item 3.

##### **Item 3 - Schedule 1A, item 4, column 3, paragraph (b)**

Regulation 6.17A imposes certain duties on an employer who suspects that an employee has been exposed to a carcinogenic substance mentioned in Schedule 1A.

If an employer suspects that an employee has been or likely to have been exposed to a scheduled substance, the employer is required to notify the employee of that exposure. On the termination of the employee's employment, the employer is required to provide a written statement to the employee of the exposure in all circumstances other than those listed in column 3 of Schedule 1A.

This item removes the duty to notify in relation to the use without disturbance of amosite in products that are *in situ*.

##### **Item 4 - Schedule 1A, item 8, column 3, after paragraph (b)**

This item is consequential to the amendment in Item 5.

##### **Item 5 - Schedule 1A, item 8, column 3, after paragraph (b)**

This item removes the duty of an employer to notify the employee of an exposure to crocidolite asbestos in relation to the use without disturbance of crocidolite in products that are *in situ*.

**Item 6 - Schedule 1A, item 26, column 3, paragraph (b)**

This item is consequential to the amendment in Item 7.

**Item 7 - Schedule 1A, item 26, column 3, after paragraph (b)**

This item removes the duty of an employer to notify the employee of an exposure to actinolite asbestos in relation to the use without disturbance of actinolite in products that are *in situ*.

**Item 8 - Schedule 1A, item 27, column 3, paragraph (b)**

This item is consequential to the amendment in Item 9.

**Item 9 - Schedule 1A, item 27, column 3, after paragraph (b)**

This item removes the duty of an employer to notify the employee of an exposure to anthophyllite asbestos in relation to the use without disturbance of anthophyllite in products that are *in situ*.

**Item 10 - Schedule 1A, item 28, column 3, paragraph (b)**

This item is consequential to the amendment in Item 11.

**Item 11 - Schedule 1A, item 28, column 3, after paragraph (b)**

This item removes the duty of an employer to notify the employee of an exposure to tremolite asbestos in relation to the use without disturbance of tremolite in products that are *in situ*.

**Item 12 - Schedule 1, item 204, column 3**

Regulation 6.16 contains a prohibition on the handling of the hazardous substances mentioned in Schedule 1, except in the circumstances specified in that Schedule.

This item includes in column 3 of Schedule 1 as a permitted circumstance the use without disturbance of amosite asbestos in products that are *in situ*. That means the prohibition on the use of amosite does not apply to amosite asbestos that is incorporated into the product in such a way that it does not constitute a risk to users until the amosite is disturbed.

**Item 13 - Schedule 1, item 208, column 3**

This item includes in column 3 of Schedule 1 as a permitted circumstance the use without disturbance of crocidolite asbestos in products that are *in situ*. That means the prohibition on the use of crocidolite does not apply to crocidolite asbestos that is incorporated into the product in such a way that it does not constitute a risk to users until the crocidolite is disturbed.

**Item 14 - Schedule 1, item 212, column 3**

This item includes in column 3 of Schedule 1 as a permitted circumstance the use without disturbance of actinolite asbestos in products that are *in situ*. That means the prohibition on the use of actinolite does not apply to actinolite asbestos that is incorporated into the product in such a way that it does not constitute a risk to users until the actinolite is disturbed.

This item also includes other permitted circumstances in column 3 of Schedule 1 to allow for the safe removal or disposal of actinolite asbestos.

**Item 15 - Schedule 1, item 213, column 3**

This item includes in column 3 of Schedule 1 as a permitted circumstance the use without disturbance of anthophyllite asbestos in products that are *in situ*. That means the prohibition on the use of anthophyllite does not apply to anthophyllite asbestos that is incorporated into the product in such a way that it does not constitute a risk to users until the anthophyllite is disturbed.

This item also includes other permitted circumstances in column 3 of Schedule 1 to allow for the safe removal or disposal of anthophyllite asbestos.

**Item 16 - Schedule 1, item 215, column 3**

This item includes in column 3 of Schedule 1 as a permitted circumstance the use without disturbance of tremolite asbestos in products that are *in situ*. That means the prohibition on the use of tremolite does not apply to tremolite asbestos that is incorporated into the product in such a way that it does not constitute a risk to users until the tremolite is disturbed.

This item also includes other permitted circumstances in column 3 of Schedule 1 to allow for the safe removal or disposal of tremolite asbestos.