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Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2003 (No. 1)¹

Statutory Rules 2003 No. 1²

286

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Occupational Health and Safety (Commonwealth Employment) Act 1991*.

Dated 20 NOV 2003 2003

PM Jeffery
Governor-General

By His Excellency's Command

KEVIN ANDREWS
Minister for Employment and Workplace Relations

1 Name of Regulations

These Regulations are the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2003 (No. 1)*.

2 Commencement

These Regulations commence on 31 December 2003.

Note See section 4 of the *Acts Interpretation Act 1901* in relation to the exercise, before 31 December 2003, of powers conferred by the principal Regulations as amended by these Regulations.

3 Amendment of Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994

Schedule 1 amends the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994*.

4 Transitional

- (1) Regulations 6.16B to 6.16D of the principal Regulations, as in force immediately before 31 December 2003, continue to apply to an exemption granted under regulation 6.16A of the principal Regulations before 31 December 2003.
- (2) Paragraph 6.16D (a) of the principal Regulations, as in force immediately before 31 December 2003, continues to apply to a decision made under paragraph 6.16A (4) (b) of the principal Regulations before 31 December 2003 to refuse to grant an exemption.
- (3) An old application is taken to be an application made under clause 2.01 of Schedule 1B of the principal Regulations as amended by these Regulations.

(4) In this regulation:

old application means an application:

- (a) that was made under subregulation 6.16A (3) of the principal Regulations before 31 December 2003 in relation to a hazardous substance referred to in column 2 of Schedule 1 of the principal Regulations as in force immediately before 31 December 2003; and
- (b) in relation to which the Commission has not made a decision under subregulation 6.16A (4) of the principal Regulations before 31 December 2003 whether to grant or refuse the exemption.

principal Regulations means the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994*.

Schedule 1 Amendments

(regulation 3)

[1] After paragraph 6.01 (b)

insert

- (ba) by limiting the circumstances under which the use of chrysotile may be exempted; and
- (bc) by encouraging research into, and development of, alternatives to the use of chrysotile; and

[2] Regulation 6.01, notes

omit

Worksafe Australia

insert

NOHSC

2003, /

*Occupational Health and Safety (Commonwealth
Employment) (National Standards) Amendment
Regulations 2003 (No. /)*

3

286

1

[3] Paragraph 6.02 (1) (b)*omit*

used or produced;

insert

used;

[4] Paragraph 6.02 (4) (b)*omit*

International Maritime Organisation;

insert

International Maritime Organization;

[5] Regulation 6.03, after definition of *article**insert*

asbestos means any of the following fibrous forms of mineral silicates belonging to the serpentine and amphibole groups of rock-forming minerals:

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

[6] Regulation 6.03, definition of *bona fide research**substitute****bona fide research:***

- (a) means a systematic, investigative or experimental activity conducted for the purpose of:
 - (i) acquiring new knowledge; or
 - (ii) creating new or improved materials, products, devices, processes or services; or

-
- (iii) analysis to identify the kind or quantities of ingredients in a substance; and
 - (b) in relation to asbestos — includes an activity conducted for the purpose of preparing an item containing asbestos for display in a museum or other historical displays.

[7] Regulation 6.03, after definition of *inorganic lead substance*

insert

in situ, in relation to a chrysotile product, means that, at the time the use of chrysotile is prohibited under regulation 6.16, the product is fixed or installed:

- (a) in:
 - (i) a building or any other structure that forms a workplace; or
 - (ii) a plant, a vehicle or any other thing that is for use at a workplace; and
- (b) in a way that does not constitute a risk to users until the chrysotile contained in the product is disturbed.

[8] Regulation 6.03, definition of *substance*, paragraph (b)

substitute

- (b) other than in relation to an article that contains asbestos — does not include an article.

[9] Regulation 6.03, definition of *substance name*, paragraph (c)

substitute

- (c) for any other substance — the chemical name of the substance.

[10] Subparagraph 6.05 (2) (b) (iv)

omit

regulation 6.07;

insert

regulation 6.08;

[11] Subregulation 6.13 (2)

omit

the name of the substance

insert

the substance's product name

[12] Subregulation 6.14 (1)

omit

or produced

[13] Paragraph 6.14 (2) (a)

omit

or produced

[14] Regulation 6.16, heading

substitute

6.16 Prohibition on uses of certain hazardous substances

[15] Regulation 6.16

omit

handled

insert

used

[16] Regulation 6.16, at the foot

insert

Penalty: 10 penalty units.

[17] Subregulation 6.16A (1)

after

Schedule 1

insert

(other than chrysotile)

[18] Subregulations 6.16A (2) to (6)

substitute

- (2) Regulation 6.16 does not apply to an employer in relation to a use of chrysotile if the Commission exempts the employer from the application of the regulation in relation to that use.
- (3) An employer seeking an exemption must apply for the exemption in accordance with Schedule 1B.
- (4) The Commission may exempt an employer only in accordance with Schedule 1B.

Note For further information about the exemption process, see *Guidance on the application, assessment and approval process for exemptions from prohibitions on hazardous substances with carcinogenic properties*, published by the Commission.

[19] Regulations 6.16B and 6.16C

omit

[20] Paragraphs 6.16D (a) to (d)

substitute

- (a) a decision, under any of the following provisions of Schedule 1B, to refuse to grant an exemption:
 - (i) paragraph 2.02 (1) (b);
 - (ii) paragraph 3.04 (1) (b);
 - (iii) paragraph 3.08 (1) (b);
- (b) a decision, under subparagraph 3.08 (1) (a) (ii) of Schedule 1B, to grant a partial exemption;
- (c) a decision, under any of the following provisions of Schedule 1B, to make an exemption subject to conditions:
 - (i) subclause 2.03 (1);
 - (ii) subclause 3.05 (2);
 - (iii) subclause 3.09 (2);
- (d) a decision, under any of the following provisions of Schedule 1B, to add a condition to, or vary or revoke a condition of, an exemption:
 - (i) subclause 2.03 (2);
 - (ii) subclause 3.05 (3);
 - (iii) subclause 3.09 (3);
- (e) a decision, under any of the following provisions of Schedule 1B, to cancel an exemption:
 - (i) paragraph 2.04 (2) (a);
 - (ii) paragraph 3.06 (2) (a);
 - (iii) paragraph 3.10 (2) (a).

[21] Paragraph 6.17 (2) (a)

omit

or produced

[22] Schedule 1A, column 2, heading*omit***Substance name***insert***Substance (identified by substance name)****[23] Schedule 1A, item 14***substitute*

- | | | |
|----|-----------------------------|---|
| 14 | Chrysotile (white asbestos) | <p>All circumstances other than the following:</p> <ul style="list-style-type: none"> (a) removal or disposal of chrysotile in accordance with a law of a State or Territory relating to the removal of asbestos; (b) disturbance of naturally occurring chrysotile that is incidental to operations not related to the extraction or processing of chrysotile, for example, roadworks; (c) use (without disturbance) of chrysotile in products that are in situ |
|----|-----------------------------|---|

[24] Schedule 1A, after item 25*insert*

- | | | |
|----|---------------------|--|
| 26 | Actinolite asbestos | <p>All circumstances other than the following:</p> <ul style="list-style-type: none"> (a) removal or disposal of actinolite in accordance with a law of a State or Territory relating to the removal of asbestos; |
|----|---------------------|--|

- 27 Anthophyllite asbestos
- (b) disturbance of naturally occurring actinolite that is incidental to operations not related to the extraction or processing of actinolite, for example, roadworks
- All circumstances other than the following:
- (a) removal or disposal of anthophyllite in accordance with a law of a State or Territory relating to the removal of asbestos;
- (b) disturbance of naturally occurring anthophyllite that is incidental to operations not related to the extraction or processing of anthophyllite, for example, roadworks
- 28 Tremolite asbestos
- All circumstances other than the following:
- (a) removal or disposal of tremolite in accordance with a law of a State or Territory relating to the removal of asbestos;
- (b) disturbance of naturally occurring tremolite that is incidental to operations not related to the extraction or processing of tremolite, for example, roadworks

[25] **Schedule 1, Part 1, heading**

substitute

**Part 1 Permitted circumstances for using
certain hazardous substances**

[26] **Schedule 1, Part 1, column 2, heading**

omit

Substance name

insert

Substance (identified by substance name)

[27] **Schedule 1, Part 1, item 101, column 3, paragraph 1**

substitute

1. Handling for storage prior to removal or disposal.

IA. Storage prior to removal or disposal.

[28] **Schedule 1, Part 2, heading**

substitute

**Part 2 Permitted circumstances for using
certain hazardous substances with
carcinogenic properties**

[29] **Schedule 1, Part 2, column 2, heading**

omit

Substance name

insert

Substance (identified by substance name)

[30] Schedule 1, Part 2, item 204, column 3, paragraph 2*substitute*

2. Handling for storage prior to removal or disposal of amosite.
- 2A. Storage prior to removal or disposal of amosite.
- 2B. Removal or disposal of amosite in accordance with a law of a State or Territory relating to the removal of asbestos.

[31] Schedule 1, Part 2, item 208, column 3, paragraph 2*substitute*

2. Handling for storage prior to removal or disposal of crocidolite.
- 2A. Storage prior to removal or disposal of crocidolite.
- 2B. Removal or disposal of crocidolite in accordance with a law of a State or Territory relating to the removal of asbestos.

[32] Schedule 1, Part 2, after item 211*insert*

- | | | |
|-----|------------------------|--|
| 212 | Actinolite asbestos | <ol style="list-style-type: none"> 1. Bona fide research. 2. Disturbance of naturally occurring actinolite that is incidental to operations not related to the extraction or processing of actinolite, for example, roadworks. |
| 213 | Anthophyllite asbestos | <ol style="list-style-type: none"> 1. Bona fide research. 2. Disturbance of naturally occurring anthophyllite that is incidental to operations not related to the extraction or processing of anthophyllite, for example, roadworks. |

214	Chrysotile (white asbestos)	<ol style="list-style-type: none">1. Bona fide research.2. Handling for storage prior to removal or disposal of chrysotile.3. Storage prior to removal or disposal of chrysotile.4. Removal or disposal of chrysotile in accordance with a law of a State or Territory relating to the removal of asbestos.5. Disturbance of naturally occurring chrysotile that is incidental to operations not related to the extraction or processing of chrysotile, for example, roadworks.6. Use (without disturbance) of chrysotile in products that are in situ.
215	Tremolite asbestos	<ol style="list-style-type: none">1. Bona fide research.2. Disturbance of naturally occurring tremolite that is incidental to operations not related to the extraction or processing of tremolite, for example, roadworks.

[33] After Schedule 1

insert

Schedule 1B Exemption from regulation 6.16

(regulation 6.16A)

Part 1 General

1.01 Definition

In this Schedule:

relevant employing authority, in relation to an employer seeking an exemption under regulation 6.16A, means:

- (a) if the employer is the Commonwealth — the employing authority that wishes to seek the exemption; or
- (b) if the employer is a Commonwealth authority — that Commonwealth authority.

Note The term *employing authority* is defined in subsection 5 (1) of the Act. See also section 10 of the Act in relation to employing authority.

Part 2 Hazardous substances other than chrysotile

2.01 Applications for exemption

If an employer wishes to seek an exemption under regulation 6.16A in relation to a hazardous substance other than chrysotile, the relevant employing authority must:

- (a) apply to the Commission in writing, using the application form (if any) approved by the Commission; and
- (b) include in the application evidence that:
 - (i) the use of the hazardous substance is essential to the operation of the employer's business; and

-
- (ii) there is no reasonable alternative substance for the hazardous substance.

2.02 Grant or refusal of exemption

- (1) On receipt of an application by a relevant employing authority under clause 2.01, the Commission may, in writing:
 - (a) grant the exemption to the employer, in the name of the relevant employing authority; or
 - (b) refuse to grant the exemption; or
 - (c) ask the relevant employing authority to give it further information about the application.
- (2) Before granting an exemption to the employer, the Commission must be satisfied that:
 - (a) the use of the hazardous substance is essential to the operation of the employer's business; and
 - (b) there is no reasonable alternative substance for the hazardous substance; and
 - (c) there are no circumstances suggesting that granting the exemption would be inconsistent with the objects of Part 6 of these Regulations.
- (3) If the Commission refuses to grant an exemption, it must give the relevant employing authority a written notice setting out its decision and the reasons for its decision.

2.03 Conditions of an exemption

- (1) An exemption granted under clause 2.02 may be subject to conditions that promote the objects of Part 6 of these Regulations.
- (2) The Commission may, by notice in writing to the relevant employing authority to which an exemption relates:
 - (a) add a condition to the exemption, or vary a condition; or
 - (b) revoke a condition.
- (3) The notice must include:
 - (a) the reasons for the addition, variation or revocation; and

- (b) the time when the addition, variation or revocation takes effect.

2.04 Operation of an exemption

- (1) An exemption granted under clause 2.02 commences on:
 - (a) the day on which it is granted; or
 - (b) a later date stated in the exemption.
- (2) The Commission must cancel an exemption if:
 - (a) it is satisfied that continuing the exemption would be inconsistent with the objects of Part 6 of these Regulations; or
 - (b) the relevant employing authority to which the exemption relates asks the Commission to cancel it.
- (3) The Commission is not required to consult the relevant employing authority to which an exemption relates before cancelling the exemption.
- (4) If the Commission cancels an exemption under paragraph (2) (a), it must give the relevant employing authority a written notice setting out:
 - (a) its decision to cancel the exemption; and
 - (b) the reasons for cancelling it; and
 - (c) the time from which it is cancelled.
- (5) An exemption ceases:
 - (a) at the end of the day (if any) stated in the exemption as the day when it ceases; or
 - (b) when it is cancelled.

Part 3 Chrysotile

Division 3.1 General

3.01 Interpretation

(1) In this Part:

defence employing authority means the Secretary of the Department of Defence and the Chief of the Defence Force.

list of exemptions means the table set out in clause 3.02.

Note Plant is defined in subsection 5(1) of the Act to include any machinery, equipment or tool, and any component thereof.

(2) For this Part:

(a) the *Australian Defence Organisation* comprises the Department of Defence and the Australian Defence Force; and

(b) anything required to be done by the defence employing authority may be done by the Secretary of the Department of Defence or the Chief of the Defence Force acting:

(i) for himself or herself; and

(ii) on behalf of the other person; and

(c) anything given or notified to the Secretary of the Department of Defence or the Chief of the Defence Force is taken to be given or notified to the defence employing authority.

(3) For this Part, a part or component of a plant is *mission-critical* if:

(a) the unavailability of the part or component prevents the plant from being available for use; and

(b) the unavailability of the plant prevents a mission from being undertaken.

3.02 List of exemptions

- (1) The Commission may exempt an employer in relation to a use of chrysotile only if the use is a use mentioned in column 2 of the list of exemptions.
- (2) The Commission must not grant an exemption, in relation to a use mentioned in column 2 in the list of exemptions, that purports to have effect after the date mentioned in column 3 in relation to that use.

Note An exemption is not effective after the relevant date mentioned in column 3 in the list of exemptions. See subclauses 3.06 (5) and 3.10 (5).

Item	Uses for which exemption may be granted	Date exemption ceases
1	Use of chrysotile in a compressed asbestos fibre gasket that is: <ol style="list-style-type: none"> (a) for use with: <ol style="list-style-type: none"> (i) saturated steam; or (ii) superheated steam; or (iii) substances that are classified as dangerous goods (as defined in the ADG Code); or (b) for use with chlorine in a plant used in liquid chlorine service with design process conditions of -45°C and 1 500 kPa 	31 December 2004
2	Use of chrysotile in a product that consists of a mixture of asbestos with a phenol formaldehyde resin or with a cresylic formaldehyde resin used in: <ol style="list-style-type: none"> (a) a vane for rotary vacuum pumps; or (b) a vane for rotary compressors; or (c) a split face seal of at least 150 mm in diameter used to prevent leakage of water from cooling water pumps in fossil fuel electricity generating stations 	31 December 2007
3	Use of chrysotile in a diaphragm for use in an electrolytic cell in an existing electrolysis plant for chlor-alkali manufacture	31 December 2006

Item	Uses for which exemption may be granted	Date exemption ceases
4	Use by the Australian Defence Organisation of chrysotile in a part or component of a plant, if: <ul style="list-style-type: none"> (a) the part or component is mission-critical; and (b) there is no reasonable alternative to the use of chrysotile 	31 December 2007

Note The list of exemptions reflects the exemptions listed in the *National List of Exemptions to the Prohibition of the Workplace Use of Chrysotile Asbestos* set out in Schedule 2 to the *National Model Regulations for the Control of Workplace Hazardous Substances* [NOHSC: 1005 (1994)] which includes notes about the exemptions.

Division 3.2 Exemption for uses other than defence mission-critical uses

3.03 Applications for exemption

- (1) If an employer wishes to seek an exemption for a use mentioned in column 2 of any of items 1 to 3 in the list of exemptions, the relevant employing authority must:
 - (a) apply to the Commission in writing, using the application form (if any) approved by the Commission; and
 - (b) state in the application the use for which the exemption is sought; and
 - (c) include in the application:
 - (i) evidence that the use is essential to the operation of the employer's business; and
 - (ii) evidence that there is no reasonable alternative to the use of chrysotile; and
 - (iii) a statement of the measures that the relevant employing authority will take, if the exemption is granted, to deal with any risk that might arise from the use of chrysotile; and
 - (iv) a statement of the actions that the relevant employing authority will take, if the exemption is

granted, to comply with the condition mentioned in paragraph 3.05 (1) (a).

- (2) Subclause (3) applies in relation to an application made in accordance with subclause (1) if:
 - (a) the application is to seek an exemption that is to commence on 31 December 2003; and
 - (b) the application is made before that day; and
 - (c) the Commission has not, before that day, decided whether to grant or to refuse to grant the exemption.
- (3) The exemption sought in the application is taken to be granted to the employer, in the name of the relevant employing authority, on 31 December 2003 and to continue in force until:
 - (a) if the Commission grants the exemption — the exemption commences; or
 - (b) if the Commission refuses to grant the exemption — written notice of the Commission's decision is given to the relevant employing authority; or
 - (c) the application is taken to have been withdrawn under subclause 3.04 (2).

3.04 Grant or refusal of exemption

- (1) On receipt of an application made by a relevant employing authority under subclause 3.03 (1), the Commission may, in writing:
 - (a) grant the exemption to the employer, in the name of the relevant employing authority; or
 - (b) refuse to grant the exemption; or
 - (c) ask the relevant employing authority to give it further information about the application within a reasonable period specified by it.
- (2) If the Commission has asked for information under paragraph (1) (c), and no information has been given to the Commission within the specified period, or a longer period agreed to by the Commission before the end of the specified period, the application is taken to have been withdrawn.

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- (3) Before granting an exemption to the employer, the Commission must be satisfied that:
- (a) the use is a use mentioned in column 2 of any of items 1 to 3 in the list of exemptions; and
 - (b) the use is essential to the operation of the employer's business; and
 - (c) there is no reasonable alternative to the use of chrysotile; and
 - (d) the relevant employing authority has in place appropriate measures to deal with any risk that might arise from the use of chrysotile; and
 - (e) the relevant employing authority will be able to comply with the condition mentioned in paragraph 3.05 (1) (a); and
 - (f) there are no circumstances suggesting that granting the exemption would be inconsistent with the objects of Part 6 of these Regulations.
- (4) If the Commission refuses to grant an exemption, it must give the relevant employing authority a written notice setting out its decision and the reasons for its decision.

3.05 Conditions of an exemption

- (1) An exemption granted under clause 3.04 is subject to the condition that the relevant employing authority:
- (a) takes reasonable steps to find alternatives to the use of chrysotile covered by the exemption, including, if necessary, undertaking, or contributing to the undertaking of, research and development of alternatives to the use of chrysotile covered by the exemption; and
 - (b) informs the Commission, in writing, as soon as the relevant employing authority becomes aware of either of the following:
 - (i) that the use covered by the exemption is no longer essential to the operation of the employer's business;
 - (ii) that there is a reasonable alternative to the use of chrysotile covered by the exemption.

- (2) An exemption granted under clause 3.04 may be subject to other conditions that promote the objects of Part 6 of these Regulations.
- (3) The Commission may, by notice in writing to the relevant employing authority to which an exemption relates:
 - (a) add a condition to the exemption, or vary a condition; or
 - (b) revoke a condition.
- (4) The notice must include:
 - (a) the reasons for the addition, variation or revocation; and
 - (b) the time when the addition, variation or revocation takes effect.

3.06 Operation of an exemption

- (1) An exemption granted under clause 3.04 commences on:
 - (a) the day on which it is granted; or
 - (b) a later date stated in the exemption.
- (2) The Commission must cancel an exemption if:
 - (a) it is satisfied that continuing the exemption would be inconsistent with the objects of Part 6 of these Regulations; or
 - (b) the relevant employing authority to which the exemption relates asks the Commission to cancel it.
- (3) The Commission is not required to consult the relevant employing authority to which an exemption relates before cancelling the exemption.
- (4) If the Commission cancels an exemption under paragraph (2) (a), it must give the relevant employing authority a written notice setting out:
 - (a) its decision to cancel the exemption; and
 - (b) the reasons for cancelling it; and
 - (c) the time from which it is cancelled.

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- (5) Unless sooner cancelled, an exemption is effective until:
- (a) the end of the day stated in column 3 of the item in the list of exemptions that relates to the exemption; or
 - (b) if an earlier day is stated in the exemption as the day when it ceases — the end of the earlier day.

Division 3.3 Exemption for defence mission-critical uses

3.07 Applications for exemption

- (1) If it is necessary for the Australian Defence Organisation to use chrysotile in the circumstance mentioned in column 2 of item 4 in the list of exemptions, the defence employing authority must:
- (a) apply to the Commission in writing, using the application form (if any) approved by the Commission; and
 - (b) include in the application:
 - (i) a list that meets the requirements of subclause (2); and
 - (ii) a statement certifying that each item identified in the list is mission-critical; and
 - (iii) evidence that there is no reasonable alternative to the use of chrysotile; and
 - (iv) a statement of the measures that the defence employing authority will take, if the exemption is granted, to deal with any risk that might arise from the use of those items; and
 - (v) a statement of the actions that the defence employing authority will take, if the exemption is granted, to comply with the condition mentioned in paragraph 3.09 (1) (a).

Note An application may be made by either the Secretary of the Department of Defence or the Chief of the Defence Force acting for himself or herself and on behalf of the other. See subclause 3.01 (2).

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- (2) For subparagraph (1) (b) (i), the list must:
- (a) identify each type of parts and components in relation to which the exemption is sought; and
 - (b) for each type of parts and components identified— identify, using a unique identifier, each item of that type, for the use of which the exemption is sought.
- (3) Subclause (4) applies in relation to an application made in accordance with subclause (1) if:
- (a) the application is to seek an exemption that is to commence on 31 December 2003; and
 - (b) the application is made within 18 days after the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Amendment Regulations 2003 (No. 1)* is notified in the *Gazette*; and
 - (c) the Commission has not, before 31 December 2003, decided whether to grant or to refuse to grant the exemption.
- (4) The exemption sought in the application is taken to be granted to the Commonwealth, in the joint names of the Secretary of the Department of Defence and the Chief of the Defence Force, on 31 December 2003 and to continue in force until:
- (a) if the Commission grants an exemption in relation to the application — the exemption commences; or
 - (b) if the Commission refuses to grant an exemption in relation to the application— written notice of the Commission’s decision is given to the defence employing authority; or
 - (c) the application is taken to have been withdrawn under subclause 3.08 (2).

3.08 Grant or refusal of exemption

- (1) On receipt of an application made under subclause 3.07 (1), the Commission may, in writing:
 - (a) grant an exemption to the Commonwealth, in the joint names of the Secretary of the Department of Defence and the Chief of the Defence Force:
 - (i) for the use of all items identified in the application; or
 - (ii) for the use of some only of the items so identified (*partial exemption*); or
 - (b) refuse to grant an exemption; or
 - (c) ask the defence employing authority to give it further information about the application within a reasonable period specified by it.
- (2) If the Commission has asked for information under paragraph (1) (c), and no information has been given to the Commission within the specified period, or a longer period agreed to by the Commission before the end of the specified period, the application is taken to have been withdrawn.
- (3) Before granting an exemption for the use of an item, the Commission must be satisfied that:
 - (a) the item is mission-critical; and
 - (b) there is no reasonable alternative to the use of chrysotile; and
 - (c) the defence employing authority has in place appropriate measures to deal with any risk that might arise from the use of the item; and
 - (d) the defence employing authority will be able to comply with the condition mentioned in paragraph 3.09 (1) (a); and
 - (e) there are no circumstances suggesting that granting the exemption would be inconsistent with the objects of Part 6 of these Regulations.
- (4) For paragraph (3) (a), the Commission must treat a statement included in the application certifying that an item is

mission-critical as conclusive evidence that the item is mission-critical.

- (5) If the Commission refuses to grant an exemption, or grants a partial exemption, it must give the defence employing authority a written notice setting out its decision and the reasons for its decision.

3.09 Conditions of an exemption

- (1) An exemption granted under clause 3.08 is subject to the conditions that the defence employing authority:
- (a) takes reasonable steps to find alternatives to the use of chrysotile covered by the exemption, including, if necessary, undertaking, or contributing to the undertaking of, research and development of alternatives to the use of chrysotile covered by the exemption; and
 - (b) informs the Commission, in writing, as soon as the Secretary of the Department of Defence or the Chief of the Defence Force becomes aware of either of the following:
 - (i) that any of the items covered by the exemption is no longer mission-critical;
 - (ii) that there is a reasonable alternative to the use of chrysotile for any of the items covered by the exemption.
- (2) An exemption granted under clause 3.08 may be subject to other conditions that promote the objects of Part 6 of these Regulations.
- (3) The Commission may, by notice in writing to the defence employing authority:
- (a) add a condition to the exemption, or vary a condition; or
 - (b) revoke a condition.
- (4) The notice must include:
- (a) the reasons for the addition, variation or revocation; and
 - (b) the time when the addition, variation or revocation takes effect.

3.10 Operation of an exemption

- (1) An exemption granted under clause 3.08 commences on:
 - (a) the day on which it is granted; or
 - (b) a later date stated in the exemption.
- (2) The Commission must cancel an exemption in relation to an item if:
 - (a) it is satisfied that continuing the exemption in relation to the item would be inconsistent with the objects of Part 6 of these Regulations; or
 - (b) the defence employing authority asks the Commission to cancel it.
- (3) The Commission is not required to consult the defence employing authority before cancelling the exemption.
- (4) If the Commission cancels an exemption under paragraph (2) (a), it must give the defence employing authority a written notice setting out:
 - (a) its decision to cancel the exemption; and
 - (b) the reasons for cancelling it; and
 - (c) the time from which it is cancelled.
- (5) Unless sooner cancelled, an exemption in relation to an item is effective:
 - (a) if it is the first exemption for the item — until the earlier of the following:
 - (i) the end of 12 months from the beginning of the day when the exemption is granted;
 - (ii) the end of the day stated in column 3 of item 4 in the list of exemptions; or
 - (b) in any other case — until:
 - (i) the end of the day stated in column 3 of item 4 in the list of exemptions; or
 - (ii) if an earlier day is stated in the exemption as the day when it ceases — the end of the earlier day.

Notes

1. These Regulations amend Statutory Rules 1994 No. 414, as amended by 1995 Nos. 53, 98 and 337; 1996 Nos. 129 and 288; 1997 No. 227; 1999 Nos. 66, 86 and 189; 2000 No. 289; 2001 No. 326.
2. Notified in the *Commonwealth of Australia Gazette* on / 2003.

21 November