
WORKSAFE

WS301*

Occupational Safety and Health Act 1984

**Occupational Safety and Health Amendment
Regulations (No. 6) 2003**

Made by the Governor in Executive Council.

1. Citation

These regulations may be cited as the *Occupational Safety and Health Amendment Regulations (No. 6) 2003*.

2. Commencement

These regulations come into operation on 1 January 2004.

3. The regulations amended

The amendments in these regulations are to the *Occupational Safety and Health Regulations 1996**.

[* Reprinted as at 19 July 2002.

For amendments to 9 December 2003 see *Western Australian Legislation Information Tables for 2002, Table 4, p. 259, and Gazette 8 April, 27 June, 15 August and 3 October 2003.*]

4. Regulation 5.1 amended

- (1) Regulation 5.1(1) is amended in the definition of “use” as follows:

- (a) by inserting after “substance,” in the first place where it occurs —

“
or an article containing a Schedule 5.6 substance,
”;

- (b) by inserting after “substance” in each other place where it occurs —

“ or article ”.

- (2) Regulation 5.1(1) is amended by inserting the following definition in the appropriate alphabetical position —

“

“**asbestos**” means the fibrous form of mineral silicates belonging to the serpentine and amphibole groups of rock forming minerals and includes actinolite, amosite (brown asbestos), anthophyllite, crocidolite (blue asbestos), chrysotile (white

asbestos), tremolite, or any material containing one or more of those minerals;

”.

5. Regulation 5.28 amended

Regulation 5.28 is amended as follows:

- (a) by deleting the definition of “bona fide research” and inserting the following definition instead —

“

“bona fide research” means —

- (a) a systematic investigative or experimental activity conducted for the purpose of —
- (i) acquiring new knowledge whether or not that knowledge will have a specific practical application; or
- (ii) creating new materials, products, devices, processes or services or improving those things;

and

- (b) the display in a museum or educational display of any article consisting of or containing a Schedule 5.6 substance and work necessary to prepare and maintain the display;

”.

”.

- (b) in the definition of “carcinogenic substance” by deleting “either a Schedule 5.4 substance or a Schedule 5.5 substance;” and inserting instead —

“

a Schedule 5.4 substance, a Schedule 5.5 substance or a Schedule 5.6 substance;

”.

”.

- (c) by deleting the full stop after the definition of “Schedule 5.5 substance” and inserting instead —

“

;

“Schedule 5.6 substance” means a substance set out in Schedule 5.6.

”.

”.

6. Regulation 5.29 amended

Regulation 5.29 is repealed and the following regulation is inserted instead —

“

5.29. Concentration of substances for Division 3 to apply

- (1) A reference in this Division to the use of a carcinogenic substance is a reference to the use of the substance or its salts —
- (a) as a pure substance; or

- (b) in a mixture containing 0.1% or more of that substance determined as a weight/weight (w/w) concentration for solids or liquids, or a volume/volume (v/v) concentration for gases.
- (2) A reference in this Division to the use of an article containing a Schedule 5.6 substance is a reference to the use of an article consisting of or containing a Schedule 5.6 substance —
 - (a) as a pure substance; or
 - (b) in a mixture containing 0.1% or more of that substance determined as a weight/weight (w/w) concentration.

”

7. **Regulation 5.30 amended**

Regulation 5.30(2) is repealed and the following subregulation is inserted instead —

“

- (2) A person who, at a workplace, is an employer or a self-employed person and who intends to use a Schedule 5.4 substance, a Schedule 5.6 substance or an article consisting of or containing a Schedule 5.6 substance for analysis or bona fide research at the workplace must, before using the substance or article, notify the Commissioner of that intention and give to the Commissioner —
 - (a) with any necessary changes being made, the information referred to in subregulation (1) paragraphs (a) to (l) inclusive; and
 - (b) a statement that the substance or article will only be used for analysis or bona fide research.

”

8. **Regulation 5.31 replaced**

Regulation 5.31 is repealed and the following regulation is inserted instead —

“

5.31. Schedule 5.4 and 5.6 substances not to be used at workplaces

- (1) Subject to subregulations (2) and (3) a person who, at a workplace, is an employer or a self-employed person must ensure that a Schedule 5.4 substance or a Schedule 5.6 substance is not used at the workplace, other than to remove and dispose of the substance, unless —
 - (a) the Commissioner has given approval to use the substance at the workplace;

- (b) the substance is used only in analysis or bona fide research; and
- (c) the use is in accordance with any condition imposed by the Commissioner.

Penalty: \$25 000.

- (2) A person does not commit an offence under subregulation (1) if the substance is a Schedule 5.6 substance that is in its natural state and has not been moved from its natural location.

”

9. Regulation 5.32A inserted

After regulation 5.32 the following regulation is inserted —

“

5.32A. Articles containing Schedule 5.6 substances not to be used at workplaces

- (1) Subject to subregulations (2) to (8), a person who, at a workplace, is an employer, the main contractor or a self-employed person must ensure that an article consisting of or containing a Schedule 5.6 substance is not used at the workplace, other than to remove and dispose of the article, unless —
 - (a) the Commissioner has given approval to use the article at the workplace;
 - (b) the article is used only in analysis or bona fide research; and
 - (c) the use is in accordance with any condition imposed by the Commissioner.

Penalty: \$25 000.

- (2) A person does not commit an offence under subregulation (1) in relation to the use with saturated steam, superheated steam or a dangerous substance, of a compressed asbestos fibre gasket consisting of or containing chrysotile (white asbestos) —
 - (a) before 1 January 2005, if the Commissioner has given written approval to use the gasket at the workplace;
 - (b) on and after 1 January 2005, if the location of the gasket in the workplace and its use are the same as they were immediately before 1 January 2005.
- (3) A person does not commit an offence under subregulation (1) in relation to the use in a plant in liquid chlorine service with design process conditions of minus 45° Celsius under 1500 kPa pressure, of a

compressed asbestos fibre gasket consisting of or containing chrysotile (white asbestos) —

- (a) before 1 January 2007, if the Commissioner has given written approval to use the gasket at the workplace;
 - (b) on and after 1 January 2007, if the location of the gasket in the workplace and its use are the same as they were immediately before 1 January 2007.
- (4) A person does not commit an offence under subregulation (1) in relation to the use in an electrolyte cell in an electrolysis plant for chlor-alkali manufacture that existed on 1 January 2004, of a diaphragm consisting of or containing chrysotile (white asbestos) —
 - (a) before 1 January 2007, if the Commissioner has given written approval to use the diaphragm at the workplace;
 - (b) on and after 1 January 2007, if the location of the diaphragm in the workplace and its use are the same as they were immediately before 1 January 2007.
- (5) A person does not commit an offence under subregulation (1) in relation to the use in a rotary vacuum pump or a rotary compressor, of a vane consisting of or containing chrysotile (white asbestos) mixed with a phenol formaldehyde resin or a cresylic formaldehyde resin —
 - (a) before 1 January 2008, if the Commissioner has given written approval to use the vane at the workplace;
 - (b) on and after 1 January 2008, if the location of the vane in the workplace and its use are the same as they were immediately before 1 January 2008.
- (6) A person does not commit an offence under subregulation (1) in relation to the use of a split face seal of at least 150 mm in diameter used to prevent leakage of water from a cooling water pump in a fossil fuel powered electricity generating station, and consisting of or containing chrysotile (white asbestos) mixed with a phenol formaldehyde resin or a cresylic formaldehyde resin —
 - (a) before 1 January 2008, if the Commissioner has given written approval to use the seal at the workplace;

- (b) on and after 1 January 2008, if the location of the seal in the workplace and its use are the same as they were immediately before 1 January 2008.
- (7) A person does not commit an offence under subregulation (1) in relation to the use of an article consisting of or containing chrysotile (white asbestos) that is the subject of an exemption under Schedule 1B of the *Occupational Health and Safety (Commonwealth Employment) (National Standards) Regulations 1994* of the Commonwealth —
- (a) before 1 January 2008, if the Commissioner has given written approval to use the article at the workplace;
- (b) on and after 1 January 2008, if the location of the article in the workplace and its use are the same as they were immediately before 1 January 2008.
- (8) A person does not commit an offence under subregulation (1) in relation to the use of an article as part of a thing if the location of the article in the thing and its use are the same as they were immediately before 1 January 2004.
- (9) In this regulation —
- “**dangerous substance**” has the meaning given to “dangerous goods” in the *Dangerous Goods (Transport) Act 1998* section 3, or in any provision that on the repeal of that section corresponds to that definition.

”.

10. Regulation 5.33 amended

- (1) Regulation 5.33(2) is amended by inserting after “substance” in each place where it occurs —
- “ or article containing a Schedule 5.6 substance ”.
- (2) Regulation 5.33(3) is amended by inserting after “substance” —
- “ or article containing a Schedule 5.6 substance ”.

11. Regulation 5.34 amended

Regulation 5.34 is amended as follows:

- (a) by inserting after “a carcinogenic substance” —
- “ or article containing a Schedule 5.6 substance ”;
- (b) by inserting after “the carcinogenic substance” —
- “ or article ”.

12. Regulation 5.35 amended

Regulation 5.35 is amended as follows:

- (a) by inserting after “ a carcinogenic substance” —
“ or article containing a Schedule 5.6 substance ”;
- (b) by inserting after “the carcinogenic substance” —
“ or article ”.

13. Regulation 5.42 amended

Regulation 5.42 is amended by deleting the definition of “asbestos”.

14. Schedule 5.4 amended

Schedule 5.4 is amended by deleting the item relating to amosite and the item relating to crocidolite.

15. Schedule 5.5 amended

Schedule 5.5 is amended by deleting the item relating to chrysotile.

16. Schedule 5.6 inserted

After Schedule 5.5 the following Schedule is inserted —

“

Schedule 5.6 — Carcinogenic substances — asbestos

[Regulation 5.28]

Note: The number in square brackets is the substance’s chemical abstract number.

Actinolite asbestos [77536-66-5]

Amosite [12172-73-5] (brown asbestos)

Anthophyllite asbestos [77536-67-5]

Crocidolite [12001-28-4] (blue asbestos)

Chrysotile [12001-29-5] (white asbestos)

Tremolite asbestos [77536-68-6]

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By Command of the Governor,

M. C. WAUCHOPE, Clerk of the Executive Council.
