

Occupational Health and Safety (Maritime Industry) (National Standards) Amendment Regulations 2004 (No. 1) 2004 No. 228

EXPLANATORY STATEMENT

STATUTORY RULES 2004 No. 228

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

Occupational Health and Safety (Maritime Industry) Act 1993

Occupational Health and Safety (Maritime Industry) (National Standards) Amendment Regulations 2004 (No. 1)

The *Occupational Health and Safety (Maritime Industry) Act 1993* (OHS(MI) Act) aims to secure the health, safety and welfare at work of certain maritime industry employees. A number of obligations are imposed on the operators of certain ships, employees and others to minimise risks to health and safety for maritime industry employees covered by the Act.

Section 121 of the OHS(MI) 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 proposed Regulations is to clarify provisions relating to the workplace use of specified forms of asbestos in the maritime industry.

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 (Maritime Industry) (National Standards) Regulations 2003* (Maritime National Standards Regulations) seek to implement these, to the extent that they are capable of applying to the maritime industry.

The Maritime National Standards Regulations were made on 18 December 2003. The Maritime National Standards Regulations prohibit the use of actinolite, amosite, anthophyllite, chrysotile, crocidolite and tremolite forms of asbestos, except when used in permitted circumstances specified in the Maritime National Standards Regulations.

The prohibition on the workplace use of chrysotile asbestos in the Maritime National Standards Regulations was drafted so that the prohibition 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 Maritime 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 Maritime National Standards Regulations to:

- clarify that the prohibitions contained in the Maritime 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 or operator does not have an obligation to notify an employee or contractor of exposure to non-chrysotile forms of asbestos in relation to the use without disturbance of non-chrysotile in products that are *in situ*.

The Seafarers Safety, Rehabilitation and Compensation Authority (Seacare Authority) and Comcare were consulted in the development of the Regulations. Comcare provides operational support for the Seacare Authority.

Details of the Regulations are set out in the attachment.

The Regulations commence on 31 December 2003.

Subsection 48(2) of the *Acts Interpretation Act 1901* provides that regulations that are expressed to commence prior to their notification have no effect if they disadvantage the rights or obligations of a person other than the Commonwealth. Subsection 48(2) has no application to the Regulations because they would ensure that an operator could not be exposed to a penalty for the use of *in situ* non-chrysotile forms of asbestos for the period when the prohibition on the workplace use of asbestos should not have extended to *in situ* use of these forms of asbestos.

ATTACHMENT

PROPOSED *OCCUPATIONAL HEALTH AND SAFETY (MARITIME INDUSTRY) (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 (Maritime Industry) (National Standards) Regulations 2003*

This regulation provides that the *Occupational Health and Safety (Maritime Industry) (National Standards) Regulations 2003* are amended as set out in Schedule 1.

Schedule 1 - Amendments

Item 1 - Regulation 2.03, 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. This item also amends the note to the definition to provide examples of asbestos in products that are *in situ* in relation to amosite and chrysotile asbestos.

Item 2 - Schedule 1, item 1, third column, paragraph (b)

This item is consequential to the amendment in Item 3.

Item 3 - Schedule 1, item 1, third column, after paragraph (b)

Regulation 2.20 imposes certain duties on an operator who suspects that an employee or a contractor has been exposed to a carcinogenic substance mentioned in Schedule 1.

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

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

Item 4 - Schedule 1, item 2, third column, paragraph (b)

This item is consequential to the amendment in Item 5.

Item 5 - Schedule 1, item 2, third column, after paragraph (b)

This item removes the duty of an operator to notify the employee or contractor of an exposure to amosite asbestos in relation to the use without disturbance of amosite in products that are *in situ*.

Item 6 - Schedule 1, item 3, third column, paragraph (b)

This item is consequential to the amendment in Item 7.

Item 7 - Schedule 1, item 3, third column, after paragraph (b)

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

Item 8 - Schedule 1, item 5, third column, paragraph (b)

This item is consequential to the amendment in Item 9.

Item 9 - Schedule 1, item 5, third column, after paragraph (b)

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

Item 10 - Schedule 1, item 6, third column, paragraph (b)

This item is consequential to the amendment in Item 11.

Item 11 - Schedule 1, item 6, third column, after paragraph (b)

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

Item 12 - Schedule 2, item 1, third column

Regulation 2.08 contains a prohibition on the handling of the hazardous substances mentioned in Schedule 2, except in the circumstances specified in that Schedule.

This item includes in column 3 of Schedule 2 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 2 to allow for the safe removal or disposal of actinolite asbestos.

Item 13 - Schedule 2, item 2, third column, after item 5

This item includes in column 3 of Schedule 2 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 14 - Schedule 2, item 3, third column

This item includes in column 3 of Schedule 2 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 2 to allow for the safe removal or disposal of anthophyllite asbestos.

Item 15 - Schedule 2, item 5, third column, after item 5

This item includes in column 3 of Schedule 2 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 16 - Schedule 2, item 6, third column

This item includes in column 3 of Schedule 2 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 2 to allow for the safe removal or disposal of tremolite asbestos.