

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**TABLING STATEMENT FOR THE GOVERNMENT RESPONSE TO THE
STANDING COMMITTEE ON LEGAL AFFAIRS**

**INQUIRY INTO
THE OPERATION OF THE DANGEROUS GOODS ACT 1975 WITH
PARTICULAR REFERENCE TO FIREWORKS**

Report No. 3 of the Standing Committee on Legal Affairs
June 2002

**Minister for Industrial Relations
12 December 2002**

On 13 December 2001 the Legislative Assembly resolved that the Standing Committee on Legal Affairs inquire into and report on the operation of the *Dangerous Goods Act 1975* with particular reference to the sale of fireworks.

The Committee tabled its report on 27 June 2002, making 16 recommendations. The Government has accepted the major recommendations of that report.

Consistent with the Committee's recommendations, the Government will continue to allow members of the public to buy fireworks for use over the June long week end each year.

However, the Government will make significant changes to the regulatory arrangements for fireworks, to address problems caused by the illegal use of fireworks. At the moment, fireworks are commonly used illegally outside the June long weekend, and this is causing nuisance to the public, distress and injury to animals and damage to property.

The Government will substantially increase penalties for illegal sale and use of fireworks.

The type of fireworks that can be sold to the public will also be overhauled. Noisy, reporting fireworks will be banned, and instead the public will be able to buy larger, fountain style fireworks, which create less noise and disturbance to animals and are more visually appealing.

Fireworks will no longer be sold loose, and will only be available to the public in pre-packaged bags that have been tested and authorised. It will be illegal to possess or sell any fireworks that have not been authorised by the Government, or to sell bags of fireworks that have been opened or tampered with after inspection.

Retailers and importers of fireworks will be required to include prescribed safety information on the use of fireworks in each bag that is available for sale to the public.

New reporting requirements will be introduced to allow the Government to effectively audit firework sales. The new reporting requirements will allow the Government to track all fireworks that are imported into the Territory and check sales receipts to ensure that no fireworks are unaccounted for. Heavy penalties will be introduced for importers and retailers whose records do not account for all fireworks brought into the Territory.

The Government's model for regulating fireworks differs in some respects from the model recommended by the Standing Committee. Some of the Standing Committee's detailed recommendations would be difficult to enforce and expensive to regulate. The Government has suggested alternative approaches that would address the problems highlighted by the Committee, but within a regulatory framework that is sustainable and affordable.

Amendments to the Dangerous Goods legislation to implement these changes will occur as part of a broader review of the regulation of dangerous goods.

The Government would like to thank the Committee members for their work on this difficult issue.

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**GOVERNMENT RESPONSE TO THE STANDING COMMITTEE
ON LEGAL AFFAIRS**

**INQUIRY INTO
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WITH PARTICULAR REFERENCE TO FIREWORKS**

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INTRODUCTION

The Government makes the following response to the Standing Committee on Legal Affairs' Report No. 3 of 2002, Operation of the *Dangerous Goods Act 1975* with particular reference to fireworks.

BACKGROUND

On 13 December 2001 the Legislative Assembly for the Australian Capital Territory resolved that the Standing Committee on Legal Affairs (the Committee) inquire into and report by 27 June 2002, on the operation of the *Dangerous Goods Act 1975* with particular reference to:

- (a) the sale of fireworks in the Territory;
- (b) the general safety of setting off fireworks; and
- (c) any other related matter.

On 27 June 2002 the Committee reported to the Assembly on their findings. The Committee made 16 recommendations.

OVERVIEW

The Committee recommended that members of the public continue to be able to purchase and use fireworks over the June long weekend each year, but that the current regulatory framework be improved to alleviate problems associated with the illegal misuse of retail fireworks.

In general, the Government supports the Committee's findings and recommendations. The Government does not accept some of the Committee's more detailed recommendations about the design of a new regulatory framework for fireworks, and has suggested alternative approaches where this will provide a more efficient and sustainable regulatory regime.

The Government's response to the Committee's report coincides with a planned broader review of the *Dangerous Goods Act* and regulations that will be implemented in stages.

GOVERNMENT RESPONSE TO RECOMMENDATIONS

The Committee's recommendations and the Government's response is as follows:

Submissions referring to a possible prize of fireworks

Committee Recommendation 1:

That the Attorney General investigate the status of those submissions to the current inquiry that contained a reference to a prize of fireworks for members of the public signing a petition intended to be lodged in the Legislative Assembly

Government Response:

It should be noted that while the Committee queried the status of submissions made under this particular petition, it is clear from the report that Committee Members made their own judgement about the weight to be given to those submissions.

The Government accepts this recommendation, and this issue has already been brought to the attention of the Attorney-General. The Department of Justice and Community Safety advise that it is unlikely that any existing Territory laws were breached by the fireworks industry in developing or lodging the petition.

The operation of the Dangerous Goods Act 1975

Committee Recommendation 2:

That the Dangerous Goods Act 1975 and subordinate legislation be urgently redrafted - especially in relation to the sale, safety and definition of fireworks - to improve clarity, incorporate all relevant Australian and International Standards, lessen the current dependence on regulation, ensure appropriate safeguards and make explicit the small group of fireworks exempted from licensing provisions (such as bonbons, party crackers, caps for cap guns, and small sparklers).

Government Response:

The Government agrees with the Committee's recommendation. Work has commenced on developing new dangerous goods legislation that is consistent with the

National Occupational Health and Safety Commission Standard for the Storage and Handling of Dangerous Goods, the Australian Dangerous Goods Code and the Australian Explosives Code.

The first priority will be to develop legislation dealing with explosives (including fireworks), with a view to having the legislation in place before the 2003 June long weekend. New legislation dealing with the remaining eight categories of dangerous goods will be developed in a staged process.

The general safety of setting off fireworks

Committee Recommendation 3:

That the ACT government arrange for a full environmental impact analysis to be undertaken of the effect of fireworks.

Government Response:

Environment ACT has advised that there would be questionable benefits flowing from an environmental impact assessment, as it is difficult to measure the environmental impact of noise, smoke and other by-products of fireworks. Further, material evaluating the impact of fireworks is already available from New South Wales.

For these reasons, the Government does not accept this recommendation.

Committee Recommendation 4:

That the ACT Government pressure the States, Northern Territory and the Commonwealth to work towards the national harmonisation of regulations affecting the sale and use of fireworks in Australia. In particular, all governments should introduce measures to stop the trade in illegal fireworks.

Government Response:

The Government agrees with the Committee's recommendation.

This issue has already been raised at the Workplace Relations Ministers' Council. The federal Government has advised that the Customs Office will make arrangements with each jurisdiction to provide information about quantities of fireworks imported into each jurisdiction, which will assist in identifying illegal fireworks and prosecuting those responsible for importing them.

The Government will continue to raise the issue of national consistency at national dangerous goods and occupational health and safety forums.

Committee Recommendation 5:

That the ACT Government encourage the Commonwealth Government to become more involved in ensuring appropriate certification of fireworks imported into Australia, especially in relation to ensuring that uniform and appropriate standards apply to all imported fireworks.

Government Response:

The Government agrees with the Committee's recommendation, and will raise this matter directly with the federal Government as well as through the National Occupational Health and Safety Commission.

Committee Recommendation 6:

That the ACT Government ensure legislation requires clear and accurate classification and labelling on all explosives including fireworks.

Government Response:

The Government agrees with the Committee's recommendation.

New dangerous goods legislation will be drafted to strengthen the authorisation process for explosives. At the point of import into the ACT, fireworks will be tested to verify that they meet the minimum safety performance requirements. It would be illegal to import or possess unauthorised explosives in the ACT. The new legislation will adopt labelling requirements from the Australian Explosives Code (2nd ed.) and Australian Standard 2187.3 (which specifies labelling requirements for shop-goods fireworks).

The sale of fireworks in the Territory

Committee Recommendation 7:

That the ACT Government permit the use of fireworks on just three occasions: for cultural events such as Chinese New Year; for public displays such as ‘Skyfire’; and for pre-arranged community events during the three-day period over the June long weekend

Government Response:

The Government generally agrees with the Committee’s recommendation.

Fireworks will continue to be available for professional displays, such as ‘Skyfire’ and Chinese New Year. In addition, fireworks will continue to be available for sale to members of the public for use over the June long weekend.

A new system of regulation will be introduced for fireworks that can be sold to the public.

The type of fireworks that can be sold to the public will be changed, to prohibit sale of noisier reporting fireworks, and instead allow sale of larger visual-effect fireworks that produce a fizzing noise (such as fountains). Changing the types of fireworks that can be sold to the public is designed to minimise the impact of fireworks noise on people and animals.

Fireworks will only be able to be sold to the public in pre-packaged bags that:

- contain compulsory safety information about the use of fireworks and emergency contact information; and
- have been inspected and sealed – the sale of loose fireworks will not be permitted, and it would be illegal to sell bags that have been opened or tampered with.

Only permitting the sale of fireworks in pre-packaged bags will impose additional costs on the fireworks industry, and is likely to increase the costs of fireworks to the consumer. However, this approach will allow the Government to authorise, test and

track fireworks more easily and will allow the Government to require that standard safety information be provided with fireworks available for purchase by the public. Prohibiting the sale of loose fireworks may also reduce the number of fireworks that end up in the hands of children, as it will be more expensive to purchase a minimum quantity of fireworks.

Fireworks will continue to be available for sale to members of the public aged over 18 years. The requirement for a person to obtain a permit before purchasing fireworks will be removed. However, fireworks retailers will be required to record details (in prescribed form) for each purchaser and sight identification at the point of sale. The retailer will provide a copy of this form to the purchaser, which will serve as authority to possess and use fireworks over the June long weekend.

Retailers of fireworks would continue to be required to apply for a licence to sell fireworks, and would need to comply with strict licence conditions.

Committee Recommendation 8:

That persons wishing to organise fireworks events during the June long weekend should be required to obtain WorkCover's approval at least two weeks before the weekend. They should be required to state the location and evening of the event. A condition of approval should be that adjacent neighbours are notified at least a week before the event

Government Response:

The Government does not accept this recommendation. It would be very difficult and expensive for the Government to review and approve each proposed use of fireworks in a person's back yard, or to regulate the relationship between neighbours. The Government is instead proposing to alleviate problems associated with noise and nuisance created by fireworks by changing the type and quantity of fireworks that can be sold to members of the public, as set out above.

Guidance on the safe and responsible use of fireworks will be developed in consultation with interested community groups and the fireworks industry. This

guidance material will include information promoting notification of neighbours, particularly those with pets.

Committee Recommendation 9:

That persons wishing to obtain a permit to purchase and use fireworks during the three-day period be required to have prior training or demonstrated competence in basic fireworks technology, use and safety.

Government Response:

The Government does not accept this recommendation.

Training in the use of explosives is provided at various institutions in the ACT, but this training is generally aimed at training professionals to work in the industry and is far more detailed than would be appropriate for members of the public.

The Government considers that the requirement for compulsory training would impose a high barrier for the public to use fireworks over the June long weekend, and this would impact on the viability of the retail fireworks industry. To address safety concerns, the Government instead proposes to change the type of fireworks that can be purchased by the public and to require compulsory safety information to be included with fireworks sold to the public.

Committee Recommendation 10:

That fireworks retailers should be required as part of their licensing to have staff who are trained/accredited in the correct use and performance of fireworks items sold; and that only a relatively small administrative fee should be required to obtain a retailer's licence.

Government Response:

The Government agrees with these recommendations.

New dangerous goods legislation will address mandatory training and/or accreditation of staff that are involved in the handling of explosives.

The Government will also review the fee for a retail licence, recognising the increased costs that will be imposed on retailers through other elements of the proposed regulatory framework for fireworks.

Committee Recommendation 11:

The Committee recommends that fireworks sales for the June long weekend should be undertaken through prior ordering by pre-approved persons only, with pick up of orders to only occur during the three-day period. Stocks of fireworks should only be held in retail outlets to accommodate the pickup of orders.

Government Response:

The Government does not agree with the recommendation regarding pre-ordering. The proposal to only allow the sale of fireworks in pre-packaged bags that have been inspected and sealed will address many of the concerns that this recommendation was designed to address, and will be less administratively complex and expensive to regulate.

Regarding the safe storage of fireworks, the new dangerous goods legislation will strictly regulate the amount of fireworks that can be stored outside of a magazine. The quantity of fireworks that can be stored in retail outlets should be directed by public safety standards, rather than the amount of fireworks that have been pre-ordered by the public.

Committee Recommendation 12:

That the ACT Government introduce a provision in the fireworks legislation to enable the police to impose on-the-spot fines for people and organisations possessing, selling and displaying illegal fireworks. The Committee suggests that the scale of the fine should be set at an appropriately high level, at least as high as those recently announced by the NSW Government (\$1,100 for individuals, and, in the case of commercial operators, \$5,500 for each offence).

Government Response:

The Government agrees with the Committee's recommendation. The new dangerous goods legislation will include significantly increased penalties for breaches of fireworks laws and licences. The legislation will include strict liability offences regarding sale of fireworks to the public and use of fireworks by the public for which the police and other authorised officers can issue on-the-spot fines.

Committee Recommendation 13:

That the Government monitor the operation of the new regulatory regime recommended by the committee and especially of fireworks activities over the June long weekend. A report on the efficacy of the new arrangements should be presented to the Assembly during the Spring Sitzings for the next two years.

Government Response:

The Government agrees with this recommendation, and agrees to report on the implementation of the new regulatory arrangements for fireworks during the 2003 and 2004 Spring sittings.

Committee Recommendation 14:

That all fireworks be tested for compliance and approval by (a) the supplier conducting batch testing on the proposed fireworks with the test outlined in the Standard, and the tests being fully documented; and (b) the regulator either to be present at the testing or to conduct its own test audit for final approval (including of environmental requirements).

Government Response:

The Government agrees with the Committee's recommendation. The Government will introduce a new authorisation process for fireworks that will be sold to the public as well as for other types of explosives. The process will require testing of the explosives and observation by an independent person drawn from a panel established by the Government, with the option of the regulator also undertaking verification testing of batches.

The storage of fireworks by WorkCover

Committee Recommendation 15:

That the government institute an urgent review, by an appropriate and independent body, of WorkCover's fireworks storage facility(ies) to ensure they meet all relevant Australian and International Standards.

Government Response:

The Government agrees with the Committee's recommendation. WorkCover has already instigated an independent review of their storage facilities. The report of the review found that the ACT's facility complied with current requirements of the *Dangerous Goods Act 1975*. The report also made a number of recommendations relating to administrative matters associated with the facility, which have been implemented.

The new dangerous goods legislation will also ensure that facilities in the ACT must meet relevant Australian and international standards.

The role of WorkCover

Committee Recommendation 16:

That the Government, in conjunction with the review and redraft of the Dangerous Goods Act and subordinate legislation, review the role of WorkCover in relation to the regulation of fireworks.

Government Response:

WorkCover will continue to regulate the manufacture, import, storage and transport of fireworks. These are functions that must be undertaken by trained explosives experts, who are located within WorkCover and perform other related safety functions.

Responsibility for issuing retail licences will be moved to the Office of Fair Trading.

The new dangerous goods legislation will very clearly define the role, responsibilities and powers of the regulators, and ensure that powers under the legislation must be exercised in a manner that is consistent with accountable and open government.

