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**LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**PLANNING, BUILDING AND ENVIRONMENT
LEGISLATION AMENDMENT BILL 2015**

EXPLANATORY STATEMENT

**Presented by
Mr Mick Gentleman
Minister for Planning**

EXPLANATORY STATEMENT

This explanatory statement relates to the *Planning, Building and Environment Legislation Amendment Bill 2015* (the bill) as presented to the Legislative Assembly. It has been prepared in order to assist the reader of the bill and to help inform debate on it. It does not form part of the bill and has not been endorsed by the Legislative Assembly.

Background

Planning, building and environment legislation has historically been amended by a number of methods, as follows:

- the usual Act amendment process;
- by modification using regulation (commonly referred to as a ‘Henry the Eighth’ amendment);
- through the Statute Law Amendment Bill process; and
- as a consequence of other legislation. For example, the *ACT Civil Administrative Tribunal Legislation Amendment Act 2008* made consequential amendments to the *Building Act 2004*.

These ways of amending legislation in the Planning Portfolio, while effective, can be confusing for community, industry and government users of the legislation. An omnibus planning, building and environment legislation amendment bill enables more minor matters to be dealt with expediently and consolidates amendments into one place, making the amendment process more user-friendly and accessible. It provides greater flexibility in drafting amendments to planning, building and environment legislation and helps to minimise costs associated with keeping the legislation up-to-date.

Under guidelines approved by the government, the essential criteria for the inclusion of amendments in the bill are that the amendments are minor or technical and non-controversial, or reflect only a minor policy change. During development of the bill, relevant government Directorates are consulted and when necessary, industry and the community may be consulted.

The bill forms an important part of maintaining and enhancing the standard of ACT building, environmental and planning law. It enables legislative amendments and repeals to be made that would generally not be of sufficient importance to justify separate legislation. The amendments are also inappropriate to be made as editorial amendments under the *Legislation Act 2001*, chapter 11 (which provides for the republication of Acts and statutory instruments).

This is the eighth planning, building and environment legislation amendment bill. The first bill was passed by the Assembly in June 2011. Previous bills can be accessed on the ACT Legislation Register at www.legislation.act.gov.au.

This bill and future such bills help to keep laws as up-to-date as possible, and to respond to technological and societal change.

Overview of Bill

The bill proposes minor policy and editorial amendments to the *Building Act 2004* and *Building (General Regulation) 2008*, the *Construction Occupations (Licensing) Act 2004* and *Construction Occupations (Licensing) Regulation 2004*, the *Planning and Development Regulation 2008*, the *Work Health and Safety Regulation 2011*, *Environment Protection Act 1997* and the *Utilities Act 2000*.

Minor policy amendments to Building Act and Regulations and Construction Occupations (Licensing) Act and Regulations and Work Health and Safety Regulation

In 2014, the *Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Act 2014* (the Asbestos Reform Act) together with the *Work Health and Safety (Asbestos) Amendment Regulation 2014* harmonised the Territory's asbestos management framework with that of other model jurisdictions in accordance with the Inter-governmental Agreement for Regulatory and Operational Reform in OHS (IGA).

The Asbestos Reform Act removed asbestos related workplace obligations from the *Dangerous Substances Act 2004* (DS Act) and placed them in the *Work Health and Safety Regulation 2011* (WHS regulation). This means asbestos assessor and removalist licensing is now regulated by the WHS regulation. The general intended outcome was that Work Health and Safety and Dangerous Substances laws would regulate asbestos work rather than the *Construction Occupations (Licensing) Act 2004* (COLA) or building law.

However, the COLA and building laws need to continue to regulate the “building integrity” aspect of building work that can adversely affect the integrity of a building, such as structural stability, fire resistance, etc even if the building work involves or may involve the handling of asbestos.

In order to achieve this, the bill amends various sections of the Building Act and the Building (General) Regulation 2008, COLA and the Construction Occupations (Licensing) Regulation 2004 (COLR) and the WHS regulation to clarify that holders of builders licences will be responsible for building work that may involve handling asbestos, such as the demolition of houses that contain residual loose asbestos. The asbestos aspects of such work will continue to be regulated under work health and safety laws and dangerous substances laws, but builders will be responsible for ensuring building work aspects comply with building and construction laws. This ensures there is no gap in the regulatory oversight and management of these areas. There is no alternative to achieving this outcome other than through legislative amendments

In summary, the bill clarifies that a licensed asbestos removalist must be a licensed builder under COLA to do asbestos work that involves building work and a builder must hold an asbestos removal licence under the WHS regulation to carry out building work that involves asbestos removal.

For example, as part of renovating a building, a hole will be made through an existing fire wall so a new drainage pipe can pass through. The wall is lined with asbestos cement sheets. Under section 6 of the Building Act, the work is building

work. Therefore, under section 8 of COLA, the building work must be done or supervised by the holder of a builder's licence that authorises the work, unless the work is exempt. Also, under the WHS regulation, div 8.10.1, the work relating to making the hole in the asbestos wall linings must only be done by the holder of a licence that authorises that work under that Act.

The bill amends provisions related to the exemption of "building work" from the operation of the Building Act (the Act) or parts of the Act. Existing Division 3.1 (section 15), and sections 65 and 83 of the Act relate to the exemption of "building work" from the relevant parts of the Act. This is in contrast to the single exemption provision for "a building" in section 152 of the Act that applies to all of the Act or parts of the Act. These differing approaches to exemptions are unnecessary and counter productive. This is because the concept "building work" is work related to "a building" under s6 of the Act and as such the concepts are closely interwoven and the exemption structure should be the same for both. The bill simplifies these provisions by consolidating them into section 152 of the Act so this exemption provision refers to both building work and building. Consistent with the approach to the exemptions in existing section 152, the new provision makes it clear that exemptions for building work can apply to the Act as a whole or any specified element of the Act.

Amendments to the Environment Protection Act 1997

Schedule 1 of the Environment Protection Act (EPA) lists activities that are class A activities. Under section 42 of the EPA, a class A activity can only be undertaken if approved by an environmental authorisation. Item 7 of Part 1.2 Schedule 1 of the EPA specifies that the putting of 100m³ of soil on specified land is a class A activity. This area includes plantation forestry areas identified in the Territory Plan. A 2012 Territory Plan variation TA2012-06 reconfigured how these plantation forestry areas are referenced/identified in the Territory Plan. A cross reference update in this Schedule 1 item was omitted at the time and is required. A similar amendment in this bill relates to the Planning and Development Regulation noted below.

Amendments to the Planning and Development Regulation 2008 (PD Regulation)

In 2011, Schedule 3 Part 3.4 of the PD Regulation was amended to extend an exemption to third party appeals to the Kingston Foreshore area. A map of the Kingston Foreshore was included in part 3.4. However, the heading of the part was not amended to reflect this. The bill amends the heading.

The bill also amends Schedule 1, section 1.92 and schedule 3, part 3.2, item 9, column 2 to update the reference to P4 (plantation forestry precinct) and insert a more general description ie "an area identified on a precinct map in the territory plan where plantation forestry is permitted subject to development assessment". This is because a 2012 territory plan Variation TA2012-06 removed the reference to P4 in the territory plan.

Amendment to the Utilities Act 2000

The bill makes an editorial amendment to the Utilities Act to correct a reference to the statutory office of 'director general' in section 45 which was mistakenly inserted

by the *Utilities Technical Regulation Act 2014* which commenced on 1 March 2015. The correct statutory office is ‘technical regulator’.

Human Rights

The bill has been assessed against the *Human Rights Act 2004* and no issues identified.

Outline of provisions

Part 1 – Preliminary

Clause 1 — Name

This clause names the Act as the *Planning Building and Environment Legislation Amendment Act 2015*.

Clause 2 — Commencement

This clause provides that the Act commences on the day after its notification.

Clause 3 — Legislation amended

This clause states the Act amends the legislation mentioned in schedule 1, that is:

- *Building Act 2004*
- *Building (General) Regulation 2008*
- *Construction Occupations (Licensing) Act 2004*
- *Construction Occupations (Licensing) Regulation 2004*
- *Environment Protection Act 1997*
- *Planning and Development Regulation 2008*
- *Utilities Act 2000*
- *Work Health and Safety Regulation 2011*.

Clause 4 – Legislation repealed

This clause repeals the named instruments. These instruments are no longer needed because other legislation (the DS Act and WHS Act) now deal with the matters contained in them.

Part 2 Building Act 2004

Clause 5 — Meaning of *building work* Section 6(1) new note

This clause inserts a new note in section 6 as a reminder that although s 6 purports to define the term ***building work*** for the Act, part 6 of the Act redefines that term for part 6 only, to a more restrictive scope—to exclude demolition of a whole building.

The following provisions make various amendments to the Building Act to implement the policy intent of requiring dual licensing for asbestos building work that is likely to affect critical parts of a building, as follows: (a) a WHS licence for asbestos work, and (b) a COLA builders licence for the work critical to a building. Work is critical to a building if it is not exempt building work or work to an exempt building.

Clause 6 — Preliminary Division 3.1

Omits Division 3.1 (section 15) from the Building Act. The ability to exempt building work is incorporated into amended section 152 (refer to clause 19). This omission is in the same terms as the omissions of sections 65 (clause 10) and 83 (clause 12).

Clause 7 — Approval requirements Section 29 (1) (e)

Omits “asbestos code” from section 29(1) (e) and inserts the words “*Dangerous Substances Act 2004* and *Work Health and Safety Act 2011*”. This ensures that the Building Act refers to the more up to date and more comprehensive codes under the DS Act and WHS Act that are equivalent to the asbestos code.

Clause 8 — Sign to be displayed for certain building work Section 37A (1), note

Omits section 37A (1) note from the Building Act. This amendment is consequential to the omission of Division 3.1 (clause 6).

Clause 9 — Sign to be displayed for building work in prescribed development Section 37B (1) note

Omits section 37B (1) note from the Building Act. This amendment is consequential to the omission of Division 3.1 (clause 6).

Clause 10 — Application of pt 5 to building work Section 65

Omits section 65 from the Building Act. The ability to exempt building work is incorporated into amended section 152 (refer to clause 19). This omission is in the same terms as the omissions of Division 3.1 (clause 6) and 83 (clause 12).

Clause 11 — Divisions 6.1 heading

Substitutes a new heading for division 6.1 that removes the words “application and”. This is consequential to the amendment at clause 12.

Clause 12 — Application of pt 6 to building work Section 83

Omits section 83 from the Building Act. The ability to exempt building work is incorporated into amended section 152 (refer to clause 19). This omission is in the same terms as the omissions of Division 3.1 (clause 6) and 65 (clause 10).

Clause 13 — Section 84 heading

Substitutes a new heading for section 84 as a consequence of clause 12.

Clause 14 — Division 8.2, heading

Substitutes a new heading for Division 8.2 as follows:

Division 8.2 Codes of Practice

This amendment is consequential to the amendment made to section 29(1)(e) (see clause 7). Because of the removal of the words “asbestos code” from that section, the Minister will no longer approve asbestos codes. However, a general power for the Minister to approve codes needs to be retained.

Clause 15 — Section 139B, heading

Substitutes a new heading for s139B as follows:

139B Approval of codes of practice

This amendment is consequential to the amendment made to section 29(1)(e) (see clause 7). Because of the removal of the words “asbestos code” from that section, the Minister will no longer approve asbestos codes. However, a general power for the Minister to approve codes needs to be retained.

Clause 16 — Section 139B (2) (a)

Omits the words “if the work involves the use, handling or disposal of asbestos” from section 139B (2) (a). These words are deleted because the Minister will no longer make codes of practice about asbestos under the Building Act as these are now done under the DS Act and WHS Act.

Clause 17 — Section 139B (4)

Omits the word “the asbestos code, and any instrument applied (with or without change) by the asbestos” from section 139B (4) and substitutes the words “a code, and any instrument applied (with or without change) by the’ . This is because the Minister will no longer make codes of practice about asbestos under the Building Act as these are now done under the DS Act and WHS Act.

Clause 18 — Regulation-making power Section 152 (2)

This clause amends section 152 to include ‘building work’ to clarify that there is a regulatory power to exempt ‘building work’ as well as ‘a building’ from the application of the Building Act.

Clause 19 — New section 152 (3) (d)

Inserts a new subsection “(d) an exemption” in section 152 to clarify that the regulations may make provision in relation to an exemption.

Clause 20 — Dictionary, definition of *asbestos code*

Omits the definition of *asbestos code* from the Dictionary of the Building Act. The definition is deleted because the Minister will no longer make codes of practice about asbestos under the Building Act as these are now done under the DS Act and WHS Act.

Clause 21 — Dictionary, definition of *asbestos removal control plan*

Omits the words “asbestos code,” and substitutes the words “*Dangerous Substances Act 2004* and *Work Health and Safety Act 2011*” in the definition of *asbestos removal control plan* in the Dictionary of the Building Act. The definition is amended because the Minister will no longer make asbestos code of practice under the Building Act as these are now done under the DS Act and WHS Act.

Part 3 Building (General) Regulation 2008

Clause 22 — Section 6 heading

Substitutes a new heading in section 6 as a consequence of the amendment at clause 23.

Clause 23 — Section 6 (5)

Omits section 6 (5) from the Building (General) Regulation 2008 (the regulation). It is intended that the asbestos status of building work will no longer determine exemption status ie building work is not exempt just because it involves asbestos. Being excluded from being exempt may mean that a building approval, certifier and licensed builder are required for the removal of a small piece of asbestos. It is intended that they only be required where a building can have its inherent safety or amenity compromised or the building could be brought out of compliance with the building code. In those circumstances, the certifier, building approval and licensed builder add significant relevant expertise and safe guards.

Clause 24 — Section 6 (6) definitions of *minor maintenance* and *minor maintenance work*

Omits the definitions of *minor maintenance* and *minor maintenance work* from section 6 (6). This is consequential to the removal of section 6(5) from the regulation which refers to these terms.

Clause 25 — Requirements for plans for asbestos removal – Act, s27(1)(a) Section 18 (2) (d)

Omits the words “under the asbestos code” from section 18 (2) (d) of the regulation. This is because there will no longer be an asbestos code under the Building Act.

Clause 26 — Consultation required in relation to proposed building work – Act, s152 (3) (c) Section 22 (2) (a)

Omits the words “director-general responsible for municipal services and the director general responsible for registration and regulatory services” and substitutes the words “relevant directors-general”. ‘Relevant directors – general’ is then more fully defined in subsection 22(6) (clause 27). This is for clarification reasons and to update references to the correct administrative units.

Clause 27 — Section 22(6) new definition of *relevant directors-general*

Inserts a new definition of *relevant directors-general* in section 22 (6) as a consequence of the amendment made at clause 26 which substitutes the words “relevant directors-general” in section 22(2)(a). The new definition updates and clarifies which administrative units should be consulted.

Clause 28 — Section 37 heading

Substitutes a new heading as a consequence of the omission of section 83 by clause 12.

Clause 29— Non-application of Legislation Act, s47 (5) Section 45

Omits the words “asbestos removal code or the” from section 45 of the regulation. This is a consequential amendment necessary because the Building Act no longer deals with asbestos removal codes. The relevant codes are now under the DS Act and WHS Act.

Clause 30 — Exempt buildings and building works Schedule 1, part 1.2, item 1, column 3

Omits Schedule 1, part 1.2, item 1, column 3 from the regulation. This amendment removes the reference to asbestos because the Building Act no longer deals with asbestos work.

Clause 31 — Schedule 1, part 1.2, example - item 1

Omits Schedule 1, part 1.2, example item 1 from the regulation. This amendment removes the example because it refers to asbestos with which the Building Act no longer deals.

Clause 32 — Schedule 1, part 1.3, item 25

Omits Schedule 1, part 1.3, item 25 from the regulation. This item is no longer required because the Building Act no longer regulates asbestos work.

Clause 33 — Dictionary, definition of *asbestos removal code*

Omits the definition of ***asbestos removal code*** from the Dictionary of the regulation. This is a consequential amendment necessary because the Building Act no longer deals with asbestos removal codes. The relevant codes are now under the DS Act and WHS Act.

Part 4 Construction Occupations (Licensing) Act 2004

Clause 34 — What is a builder? Section 8 (2)

Omits the words “, other than building work that involves handling asbestos or disturbing friable asbestos” from section 8(2) of the Construction Occupations (Licensing) Act (COLA). This permits the Building Act to apply to building work notwithstanding that the work involves handling asbestos or disturbing friable asbestos. The handling of the asbestos will still be regulated by the *Work Health and Safety Act 2011* and related measures.

In 2014, the *Dangerous Substances (Asbestos Safety Reform) Legislation Amendment Act 2014* (the Asbestos Reform Act) together with the *Work Health and Safety (Asbestos) Amendment Regulation 2014* harmonised the Territory’s asbestos management framework with that of other model jurisdictions in accordance with the Inter-governmental Agreement for Regulatory and Operational Reform in OHS (IGA).

The Asbestos Reform Act removed asbestos related workplace obligations from the *Dangerous Substances Act 2004* (DS Act) and placed them in the *Work Health and Safety Regulation 2011* (WHS regulation). This means asbestos assessor and removalist licensing is now regulated by the WHS regulation. The general intended outcome was that Work Health and Safety and Dangerous Substances laws would regulate asbestos work rather than the *Construction Occupations (Licensing) Act 2004* (COLA) or building law.

However, the COLA and building laws need to continue to regulate the “building integrity” aspect of building work that can adversely affect the integrity of a building, such as structural stability, fire resistance, etc even if the building work involves or may involve the handling of asbestos.

In order to achieve this, the bill amends section 8 to clarify that holders of builders licences will be responsible for building work that may involve handling asbestos such as the demolition of houses that contain residual loose asbestos. The asbestos aspects of such work will continue to be regulated under work health and safety laws and dangerous substances laws, but builders will be responsible for ensuring building work aspects comply with building and construction laws. This ensures there is no gap in the regulatory oversight and management of these areas. There is no alternative to achieving this outcome other than through legislative amendments.

In summary, a licensed asbestos removalist must be a licensed builder under COLA to do asbestos work that involves building work and a builder must hold an asbestos removal licence under the WHS regulation to carry out building work that involves asbestos removal.

Clause 35— Section 8(2), new note

Inserts a new note 2 in section 8(2) to clarify that for building work that involves asbestos removal, a builder must hold an asbestos removal licence.

Clause 36 — Section 8(3)

Omits section 8 (3) as a consequence of amendments to the Act by clause 34 above.

Part 5 Construction Occupations (Licensing) Regulation 2004

Clause 37 — Services that may be provided without licence Section 35 (1), note

Omits section 35 (1) note from the Construction Occupations (Licensing) Regulation 2004 (COLR). This amendment is consequential to the amendments to COLA to remove references to asbestos.

Clause 38 — Classes of construction occupation licence and functions Schedule 1, part 1.3, items 1 to 5, column 3

Omits the words “or handling asbestos” from Schedule 1, part 1.3, column 3, items 1 to 5. This amendment is consequential to the amendments to COLA to remove references to asbestos.

Clause 39 — Schedule 1, part 1.3, new note

Inserts a new note after item 5 in schedule 1, part 1.3 to alert the reader that for building work that involves asbestos removal, a builder must carry an asbestos removal licence.

Clause 40 — Demerit grounds for occupational discipline Schedule 2, part 2.1, item, 2.1.11

Omits Schedule 2, part 2.1, item, 2.1.11. This amendment is consequential to the amendments to COLA to remove references to asbestos.

Part 6 Environment Protection Act 1997

Clause 41 — Activities requiring environmental authorisation Schedule 1, table 1.2, item 7, column 2 paragraph (b)

Substitutes new words in schedule 1, table 1.2, item 7, column 2 (b) because a 2012 Territory Plan variation TA2012-06 reconfigured how plantation forestry areas are referenced/identified in the Territory Plan and a cross reference update in the Environment Protection Act 1997 was omitted at the time and is required.

Clause 42 — Dictionary, note 2

Inserts “territory plan” in note 2 of the Dictionary as a consequence of the amendment made by clause 41.

Part 7 Planning and Development Regulation 2008

Clause 43 — Exemptions from requirement for development approval Schedule 1, section 1.92 (1)

Omits the words “an area as a P4 (Plantation forestry precinct) precinct in the territory plan” from Schedule 1, section 1.92 and substitutes the words “a plantation forestry area”.

Schedule 1 of the PD Regulation lists matters exempt from requiring a DA. Section 1.92 of Schedule 1 of the PD Regulation exempts plantation forestry in specified areas identified in the Territory Plan. A 2012 Territory Plan variation TA2012-06 reconfigured how these plantation forestry areas are referenced/identified in the Territory Plan. A cross reference update in the regulation was omitted at the time and is required.

Clause 44 — Schedule 1, section 1.92 (2) new definition of *plantation forestry area*

This is a consequential amendment to clause 43 and Inserts a new definition of *plantation forestry area*.

Clause 45 — Schedule 3, part 3.2, item 9, column 2

Schedule 3, part 3.2, item 9, column 2 also refers to plantation forestry. A 2012 Territory Plan variation TA2012-06 reconfigured how these plantation forestry areas are referenced/identified in the Territory Plan. A cross reference update in the regulation was omitted at the time and is required. Clause 45 omits the words “as a P4 (Plantation forestry precinct) precinct in the territory plan” and substitutes the words “on a precinct map in the territory plan as an area where plantation forestry is permitted subject to development assessment”. This means the cross reference to the Territory Plan is correct.

Clause 46 — Schedule 3, part 3.4 heading

Substitutes a new heading for Schedule 3, part 3.4 .In 2011, Schedule 3 Part 3.4 of the PD Regulation was amended to extend an exemption to third party appeals to the Kingston Foreshore area. A map of the Kingston Foreshore was included in part 3.4. However, the heading of the part was not amended to reflect this. For this reason, the bill amends the heading to “Maps”.

Part 8 Utilities Act 2000

Clause 47 — Determination of fee Section 45 (2) (a) (ii)

Omits the words ‘director-general under part 5 (Technical regulation)’ and substitutes the words ‘technical regulator’ as this is the correct statutory officer not the director – general. The ‘technical regulator’ is defined in the Dictionary of the Act. The Utilities Technical Regulation Act commenced on 1 March 2015 and the Utilities Act 2000 was consequentially amended. The amended Utilities Act (which also commenced on 1 March) has an incorrect reference in section 45 (2) (a) (ii) to ‘the director-general under part 5 (of the Utilities Act)’. The bill amends the section to include the correct statutory office, that is, the ‘technical regulator’.

Part 9 Work Health and Safety Regulation 2011

Clause 48 — Duty to ensure asbestos removalist is licensed Section 458, new note

Inserts a new note for clarification purposes in the Work Health and Safety Regulation.