



Australian Capital Territory

Dangerous Substances (Asbestos) Amendment Act 2004

A2004-66

*An Act to amend the *Dangerous Substances Act 2004*, and for other purposes*

2004 080B

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

Preamble

- 1 Substantial medical and scientific evidence indicates that exposure to asbestos fibres significantly increases the risk of contracting cancer and other debilitating or fatal diseases, including asbestosis.
- 2 Measures have been taken to remove loose asbestos from ACT houses. Measures have also been taken to reduce the risk of asbestos exposure for school children and to tell builders about the risks associated with asbestos.
- 3 Asbestos products were commonly used in private and public buildings for fireproofing, soundproofing, decoration, thermal insulation and other purposes.
- 4 When asbestos products deteriorate or become loose, damaged, or friable, they release asbestos fibres into the air. This may result in exposure of people to potentially hazardous levels of asbestos.
- 5 It is vital for the health and safety of the public to identify the location and condition of asbestos products that may be a risk for the public in order to begin to remove or control asbestos as needed and to ensure that, when repairs or renovations are undertaken, any asbestos products present are properly handled.
- 6 The Legislative Assembly declares that it is the public policy of the Territory to ensure that the removal of asbestos, and any work in relation to asbestos, is done properly to safeguard public health and safety.

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Dangerous Substances (Asbestos) Amendment Act 2004*.

2 Commencement

- (1) This Act (other than section 5, section 6, section 7 and schedule 1) commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

- (2) Schedule 1 commences on 1 September 2004.

- (3) Section 5 commences on a day fixed by the Minister by written notice.

Note 1 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 2 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

- (4) Section 6 and section 7 commence on a day fixed by the Minister by written notice.

- (5) If section 6 or section 7 has not commenced before 16 January 2006, it automatically commences on that day.

- (6) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to section 6 or section 7.

3 Legislation amended

This Act amends the *Dangerous Substances Act 2004*.

Note This Act also amends the *Building Act 2004* and the *Building Regulations 2004* (see sch 1).

4 **New chapter 3A**

insert

Chapter 3A Asbestos

Part 3A.1 Important concepts

47A Meaning of *asbestos* and *asbestos product*

In this Act:

asbestos means the fibrous form of the mineral silicates belonging to the serpentine and amphibole groups of rock-forming minerals, including the following:

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

and includes any asbestos product.

asbestos product means anything that contains asbestos.

Example of asbestos product

a material formed by mixing asbestos fibres with plaster, cellulose, clay or an adhesive product

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Part 3A.2 The task force

47B Establishment of task force

The Asbestos Assessment Task Force (the *task force*) is established.

47C Members of task force

The task force has the following members:

- (a) the chief executive of each administrative unit, or a representative of the chief executive;
- (b) the general manager of the Australian Capital Territory Insurance Authority, or a representative of the general manager;
- (c) anyone else appointed by the Minister.

Note 1 For the making of appointments (including acting appointments), see Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

47D Chairperson of task force

The Minister must appoint a member to be chairperson of the task force.

47E Role of task force

- (1) The role of the task force is to analyse the extent and impact of asbestos in the ACT and prepare a report of the analysis.
- (2) The analysis must—
 - (a) be based on empirical data; and
 - (b) include an assessment of risks of exposure to asbestos; and

- (c) include strategies for the inspection, reduction and control required for managing risks identified; and
 - (d) identify high-risk areas; and
 - (e) for each high-risk area, identify strategies for increasing public awareness about risks associated with asbestos; and
 - (f) make recommendations about the regulations to be made for—
 - section 47J (4) (Liability of owners and occupiers to inform)
 - section 47K (4) (Liability of owners and occupiers to inspect).
- (3) To get empirical data, the task force must arrange for the inspection of a representative sample of buildings.
- (4) The task force may do anything else it considers appropriate to carry out the analysis, and may otherwise carry out the analysis as it considers appropriate.

47F Arrangements for use of inspectors etc

- (1) The task force may arrange with the chief executive to use inspectors to assist the task force with the analysis.
- (2) For the analysis, an inspector may—
- (a) at any reasonable time, enter any premises; and
 - (b) examine anything at the premises; and
 - (c) take samples of anything at the premises that the inspector suspects on reasonable grounds may contain asbestos, without complying with part 6.7 (Taking and analysis of samples).
- Note* At premises includes in or on the premises (see dict).
- (3) In exercising a function under subsection (2) (b) or (c), an inspector must comply with—

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- (a) any standards under the building code about the handling of asbestos; and
 - (b) any relevant rules or guidelines published by Standards Australia about the handling of asbestos.
- (4) An inspector who enters premises under subsection (2) is taken to have entered the premises under chapter 7 (Enforcement powers) and to be exercising functions under that chapter.

Note The provisions of ch 7 that apply in relation to an inspector include the following:

- s 143 (Production of identity card)
- s 176 (Damage etc to be minimised)
- s 177 (Compensation to be paid in certain circumstances).

47G Report of analysis

- (1) The task force must give the report of the analysis to the Minister by 1 August 2005.
- (2) The Minister must present to the Legislative Assembly, within 5 sitting days after the day the Minister receives the report—
 - (a) the report; and
 - (b) a draft of regulations proposed to be made by the Executive in response to—
 - (i) recommendations made by the task force under section 47E (2) (f); and
 - (ii) any other aspects of the task force's analysis.

47H Expiry—pt 3A.2

This part expires on 31 August 2006.

Part 3A.3 Public education

47I Duty to publish educational material

The Minister must publish educational material to increase public awareness about risks associated with asbestos.

5 New part 3A.4

insert

Part 3A.4 Special duties of care for asbestos

47J Liability of owners and occupiers to inform

- (1) This section applies to an owner or occupier of premises if the owner or occupier knows, or ought reasonably to know, that there is asbestos at the premises.
- (2) The owner or occupier has a duty of care to a person at risk to give the person, in writing, the required information about the asbestos.

Note If a form is approved under s 222 for this provision, the form must be used.

- (3) This section does not affect—
 - (a) common law rules about the liability of owners or occupiers in relation to their premises; or
 - (b) any obligation that an owner or occupier of premises has under any other Territory law or contract; or
 - (c) any other duty of care; or
 - (d) any other liability, including any liability of manufacturers.

(4) In this section:

construction service—see the *Construction Occupations (Licensing) Act 2004*, section 6.

occupier, of premises, includes the lessor of premises let under a tenancy if the lessor—

- (a) has an obligation to the tenant to maintain or repair the premises; or
- (b) could exercise a right to enter the premises to carry out maintenance or repairs.

person at risk, for premises, means—

- (a) a person doing relevant work at the premises; or
- (b) a person who is, or is likely to be, a purchaser of the premises; or
- (c) a person who is, or is likely to be, a tenant of the premises.

relevant work means—

- (a) a construction service; or
- (b) renovation work; or
- (c) work prescribed under the regulations.

renovation work includes—

- (a) the structural or non-structural alteration of a building; and
- (b) repairs to a building; and
- (c) the installation or removal of a fixture; and
- (d) work prescribed under the regulations.

required information, about asbestos, means—

- (a) up-to-date information about the location and condition of the asbestos; and

- (b) any other information prescribed under the regulations.

6 New section 47K

in part 3A.4, insert

47K Liability of owners and occupiers to inspect

- (1) This section applies to an owner or occupier of premises if—
 - (a) the owner or occupier is engaging in activity at the premises that is a high-risk activity in relation to asbestos; and
 - (b) either of the following subparagraphs applies:
 - (i) the owner or occupier does not know whether there is asbestos at the premises;
 - (ii) the owner or occupier knows that there is asbestos at the premises but does not know the required information about the asbestos.
- (2) The owner or occupier has a duty of care—
 - (a) if subsection (1) (b) (i) applies—to find out whether there is asbestos at the premises and, if there is asbestos at the premises, to find out the required information about the asbestos; or
 - (b) if subsection (1) (b) (ii) applies—to find out the required information about the asbestos.
- (3) This section does not affect—
 - (a) common law rules about the liability of owners or occupiers in relation to their premises; or
 - (b) any obligation an owner or occupier of premises has under any other Territory law or contract; or
 - (c) any other duty of care; or

(d) any other liability, including any liability of manufacturers.

(4) In this section:

high-risk activity means an activity prescribed under the regulations.

required information—see section 47J (4).

7 New part 3A.5 and schedule 1 to this Act

insert

Part 3A.5 Other provisions about asbestos

47L Asbestos reports

- (1) A seller of property commits an offence if the seller does not, before the day the property is first advertised or offered for sale or listed by an agent, obtain an inspection report (an *asbestos report*) for the property that—
- (a) is completed in accordance with the regulations; and
 - (b) contains the required information.

Maximum penalty: 10 penalty units.

- (2) If the property is a residential property, the asbestos report may be included in a building and compliance inspection report from an inspection carried out not earlier than 3 months before the day the property was first advertised or offered for sale or listed by an agent.

- (3) A seller of property commits an offence if an asbestos report for the property is not available for inspection to a prospective buyer (or an agent for a prospective buyer) during the time when an offer to buy the property may be made to the seller.

Maximum penalty: 10 penalty units.

- (4) This section does not apply in relation to a sale of property if—
- (a) the sale arises from the exercise of an option to buy the property and—
 - (i) the option was contained in a will or sublease; or
 - (ii) the period for exercise of the option was longer than 60 days; or
 - (b) the buyer is a related person of the seller.
- (5) An offence against this section is a strict liability offence.

- (6) In this section:

building and compliance inspection report—see the *Civil Law (Sale of Residential Property) Act 2003*, section 7.

property means—

- (a) land on which there are (or there are under construction) premises; or
- (b) a unit under the *Unit Titles Act 2001*; or
- (c) a lot in a community title scheme under the *Community Title Act 2001*.

prospective buyer, of property, includes a prospective grantee of an option to buy the property.

related person—see the *Duties Act 1999*, dictionary.

required information, for property, means—

- (a) up-to-date information about the location and condition of asbestos (if any) at the property; and
- (b) any other information prescribed under the regulations.

residential property—see the *Civil Law (Sale of Residential Property) Act 2003*, section 8.

seller, of property, means a person who—

- (a) has a legal or equitable interest in the property that the person is entitled to sell; and
- (b) offers to sell, or invites an offer to buy, the interest.

Schedule 1 Other amendments

Part 1.1 Building Act 2004

[1.1] New section 42A

insert

42A **Contravention of requirements for building work involving asbestos**

- (1) This section applies to specialist building work that involves the handling of asbestos or disturbance of loose asbestos.
- (2) The person who carries out the building work commits an offence if the carrying out of the work contravenes section 42.

Maximum penalty: 50 penalty units.

- (3) An offence against subsection (2) is a strict liability offence.
- (4) The owner of the parcel of land where the building work is carried out commits an offence if—

- (a) the work is carried out in contravention of section 42; and
- (b) the owner knows that the work is carried out in contravention of that section.

Maximum penalty: 50 penalty units.

- (5) The owner of the parcel of land where the building work is carried out commits an offence if—
 - (a) the work is carried out in contravention of section 42; and
 - (b) the owner is reckless about whether the work is carried out in contravention of that section.

Maximum penalty: 20 penalty units.

- (6) This section expires on 1 September 2006.

Part 1.2 Building Regulations 2004

[1.2] New regulations 4A and 4B

insert

4A Meaning of *building work*—Act, s 6 (2) (a) and (b)

- (1) ***Building work*** includes building work that involves the handling of asbestos or disturbance of loose asbestos.
- (2) The handling of asbestos, or disturbance of loose asbestos, by an inspector, for the purpose of taking a sample under the *Dangerous Substances Act 2004*, chapter 3A (Asbestos) is not ***building work***.

Examples of handling of asbestos or disturbance of loose asbestos

- 1 removal of asbestos
- 2 cutting a hole in a sheet of asbestos

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

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- (3) This regulation expires on 1 September 2006.

4B Meaning of *specialist building work*—Act, s 9 (b)

- (1) *Specialist building work* includes building work that involves the handling of asbestos or disturbance of loose asbestos.
- (2) For subregulation (1), the handling of asbestos does not include the handling of stable asbestos cement sheeting that forms part of a residential building.
- (3) This regulation expires on 1 September 2006.

[1.3] New regulation 12A

insert

12A Building approval for asbestos removal—Act, s 26 (3)

- (1) For an application in relation to building work that involves the removal of stable asbestos cement sheeting from a residential building, the application must describe the method proposed to be used to remove the sheeting from the building.
- (2) For an application in relation to building work that involves the removal of asbestos (other than stable asbestos cement sheeting) from a residential building, the following information must be included:
- (a) the method proposed to be used to remove the asbestos;
 - (b) the approximate quantity and kind of asbestos to be removed;
 - (c) the equipment proposed to be used to remove the asbestos, including any personal protective equipment;
 - (d) details of a program (prepared in accordance with the building code) for monitoring airborne asbestos.
- (3) This regulation expires on 1 September 2006.

[1.4] New regulation 14A

insert

**14A Requirements for plans for asbestos removal—Act,
s 27 (1) (a)**

- (1) Plans that accompany an application that relates to building work involving the removal of stable asbestos cement sheeting must show the location of the sheeting.
- (2) Plans that accompany an application that relates to building work involving the removal of asbestos (other than stable asbestos cement sheeting) from a residential building must include the following information:
 - (a) the location of the asbestos proposed to be removed;
 - (b) the boundary of the area where people removing the asbestos will be working;
 - (c) if asbestos removed from the building is to be stored on the parcel of land where the building is—where the asbestos is to be stored;
 - (d) if a decontamination facility, air filter or air supply equipment is proposed to be used during the building work on the parcel of land—where each is located.
- (3) In this regulation:

air filter—see the building code.

air supply equipment—see the building code.

decontamination facility—see the building code.
- (4) This regulation expires on 1 September 2006.

[1.5] New regulation 31

insert

31 Expiry of definition of *asbestos*

- (1) The definition of *asbestos* in the dictionary expires on 1 September 2006.
- (2) This regulation expires on 1 September 2006.

[1.6] Dictionary, new definition of *asbestos*

insert

asbestos—see the *Dangerous Substances Act 2004*, section 47A.

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 4 August 2004.

2 Notification

Notified under the Legislation Act on 31 August 2004.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Dangerous Substances (Asbestos) Amendment Bill 2004, which originated in the Legislative Assembly as the Residential Property (Awareness of Asbestos) Amendment Bill 2004 and was passed by the Assembly on 25 August 2004.

Acting Clerk of the Legislative Assembly

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